

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1186
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<b>Responsible Officer:</b>	Thomas Burns
<b>Land to be developed (Address):</b>	Lot 82 DP 10782, 114 Whale Beach Road WHALE BEACH NSW 2107
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	E4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Fiona Leigh Champion
<b>Applicant:</b>	Space Landscape Designs Pty Ltd

<b>Application Lodged:</b>	29/09/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	06/10/2020 to 20/10/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 46,870.00
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### PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the following works:

- Demolition of existing stone retaining wall at the front of the site (and partially within the road reserve).
- New block retaining walls at the front of the site (and partially within the road reserve).
- Widen a section of the existing driveway.
- Remove four (4) trees.

### ASSESSMENT INTRODUCTION



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

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

## SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone E4 Environmental Living

Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection

Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality

Pittwater 21 Development Control Plan - B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community

Pittwater 21 Development Control Plan - B4.22 Preservation of Trees and Bushland Vegetation

Pittwater 21 Development Control Plan - C1.1 Landscaping

Pittwater 21 Development Control Plan - D12.14 Scenic Protection Category One Areas

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 82 DP 10782 , 114 Whale Beach Road WHALE BEACH NSW 2107
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the south-western side of Whale Beach Road, Whale Beach.</p> <p>The site is regular in shape with frontage of 20.115m along Whale Beach Road and respective depths of 67.055m and 69.83m along the north-western and south-eastern side boundaries. The site has a surveyed area of 1362sqm.</p> <p>The site is located within the E4 Environmental Living zone pursuant to the <i>Pittwater Local Environmental Plan 2014</i> (PLEP 2014) and accommodates a part-2 part-3 storey dwelling house, including a swimming pool located forward of the front building line.</p> <p>The site is located along a ridge line and slopes away from the dwelling towards the road frontage and rear boundary. The rear yard comprises numerous canopy trees, whilst the</p>



site frontage and road reserve accommodate canopy trees and a retaining wall.

The site is identified within a geotechnical landslip area and is mapped as containing tree species representative of the Pittwater Spotted Gum Forest endangered ecological community.

### **Detailed Description of Adjoining and Surrounding Development**

Adjoining and surrounding development comprises low density residential development within a landscape setting.

Map:



### **SITE HISTORY**

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

- Development Application No. N0391/09 for alterations and additions to existing house approved by Council on 16 June 2010.

### **Application History**

The Assessment Officer undertook a site visit at the subject site on 20 October 2020.

Following a preliminary assessment of the application, which included a site visit at the subject site, Council wrote to the applicant raising concern of the tree removal in the road reserve.

The applicant submitted an amended geotechnical report to argue the embankment in the road reserve was eroding, such that the trees were in poor condition and posed a risk of being compromised.



Council's Landscape Officer noted that there was sufficient soil volume to support the existing trees and that the ongoing erosion was minor and did not impact the stability of the trees.

Following discussions with the applicant, the applicant requested that the application be refused.

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – 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&amp;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>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. The applicant submitted an amended Geotechnical Report throughout the assessment process.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act</p>



Section 4.15 Matters for Consideration'	Comments
	<p>1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>No submissions were received.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>This assessment has found the proposal to be contrary to the relevant statutory and policy requirements stipulated within the <i>Pittwater Local Environmental Plan 2014</i> and Pittwater 21 Development Control Plan, particularly with regard to the E4 zone objectives and natural environment provisions, and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.</p>

## 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 06/10/2020 to 20/10/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application seeks approval to increase the width of an existing driveway and construction of a new retaining wall. The proposal will require the removal of existing native trees within Council's road verge.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 Environmental Living Zone, and the following Pittwater 21 DCP Controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• D12 Palm Beach Locality, and specifically D12.10 Landscaped Area - Environmentally Sensitive Land</li> </ul> <p>The site is located in the E4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, including the retention of existing trees.</p> <p>A Landscape Plan and a Arboricultural Impact Assessment is provided with the application. The proposed widening of the driveway and landscape works incorporating retaining walling are dependent on acceptance of the recommendations of the arboricultural assessment for the removal of four trees within Council's road verge, including trees identified as Angophora floribunda (T1, T3 and T4) and a dead Pittosporum (T2).</p> <p>The existing Angophora floribunda T1 has been the subject of previous requests to Council for removal in 2017 and 2019. Both requests for removal were not supported by Council's Tree Services staff, and the comments included that the tree appears to be stable and healthy and that no visible indication that the tree has moved in the ground as the tree is well anchored into the existing embankment. The Arboricultural Impact Assessment as part of this development application recommends removal of the existing trees T1, T2, T3 and T4 to accommodate building construction (driveway widening and retaining wall), whilst including discussion that the trees may become unstable with the movement of soil.</p> <p>It is noted that the existing root systems are anchored into the embankment and developed away from the embankment such that the area of the road verge is providing sufficient soil volume to support the existing trees within the current physical landform, and without evidence of imminent tree failure the proposal is not supported by Landscape Referral for removal of the existing trees within Council's</p>



Internal Referral Body	Comments
	road verge.
NECC (Bushland and Biodiversity)	<p>Council's Biodiversity referral body cannot support the proposal in its current form.</p> <p>The application has been assessed against the following provisions:</p> <ul style="list-style-type: none"> <li>- Pittwater LEP Clause 7.6 (Biodiversity Protection)</li> <li>- Pittwater DCP Clause B4.7 (Pittwater Spotted Gum Endangered Ecological Community)</li> </ul> <p>Three prescribed trees representative of the Pittwater Spotted Gum Forest endangered ecological community (EEC) are proposed for removal. In accordance with PDCP Clause B4.7, "development shall result in no net loss in native canopy trees". In addition, any new landscaping is to be composed of at least 80% species representative of the Pittwater Spotted Gum Forest EEC.</p> <p>The submitted landscape plan does not include provisions for replacement of the prescribed trees proposed for removal; instead, a single Blueberry Ash (small tree) is proposed. Furthermore, the submitted landscape plan does not comply with the requirement for 80% species of the Pittwater Spotted Gum Forest EEC. The proposal is therefore inconsistent with the intent and technical requirements of the DCP control.</p> <p>Any future application should demonstrate measures proposed to achieve compliance with the relevant controls. This may include replacement plantings of locally native canopy trees at a minimum 1:1 ratio and understory species consistent with the EEC, demonstrated in a landscape plan.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p><b>State Environmental Planning Policy (Coastal Management) 2018</b> The subject land has been included on the 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 14 and 15 of the CM SEPP apply for this DA.</p>



Internal Referral Body	Comments
	<p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Space Landscape Designs Pty. Ltd. dated 27 August 2020, the DA satisfies requirements under clauses 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b></p> <p>No other coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>
NECC (Development Engineering)	<p>The application is for widening of a shared driveway, in order to improve vehicular access to the properties. Road Assets Engineers have not objected to the widening of the driveway subject to Traffic supporting the application and Development Engineer providing appropriate conditions.</p> <p>The widening of the driveway and retainwall may require an existing large tree to be removed. Prior to full assessment of the application Council tree officer and traffic Engineer are requested to comment for my review.</p> <p>13/11/2020</p> <p>I refer to comment from Council Landscape Response (Trim2020/702785) which does not permit the removal of Council's tree. As result the application is not supported.</p>
Road Reserve	No impact on existing road assets. Details of walls and driveway to be submitted to Development Engineering as part of S138 application.
Traffic Engineer	<p>The proposed works are all external, located at the front of the site. The proposed work are as follows:</p> <ul style="list-style-type: none"> <li>Demolition of existing stone retaining wall</li> <li>Construction of new concrete block retaining walls with a section of</li> </ul>



Internal Referral Body	Comments
	<p>the wall located on council verge due to the topography of the site. Widen a section of existing driveway Removal of 4 trees</p> <p>Council's Traffic Team Raise no objection.</p> <p>The location of the wall should be referred to Council's Assets Team for review.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>Ausgrid have reviewed the proposal and provided the following comments:</p> <p>Ausgrid does not have any objections for the proposed development. The applicant/developer should note the following comments below regarding any proposal within the proximity of existing electrical network assets.</p> <p><b>Overhead Powerlines</b></p> <p>Safe work NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.</p> <p>The “as constructed” minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid’s website, <a href="http://www.ausgrid.com.au">www.ausgrid.com.au</a></p> <p>It remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.</p> <p>Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost.</p> <p>It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected be entering and leaving the site.</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 (Infrastructure) 2007**

#### Ausgrid

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

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

#### Comment:

The proposal was referred to Ausgrid, who have reviewed the works and raised no objections, subject to conditions. Noting the report is recommending that the application be refused, Ausgrid's conditions have not been included as part of a conditional consent.

### **SEPP (Coastal Management) 2018**

The site is mapped within the Coastal Use Area pursuant to the *State Environmental Planning Policy (Coastal Management) 2018* (CM SEPP). Accordingly, the proposal is considered against Clauses 14 and 15 of the Policy as follows:

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

*(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*



*(a) has considered whether the proposed development is likely to cause an adverse impact on the following—*

- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
- (iv) Aboriginal cultural heritage, practices and places,*
- (v) cultural and built environment heritage, and*

*(b) is satisfied that—*

- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
  - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

*(2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).*

Comment:

The works are visually and physically separated from the foreshore and will not impact upon access to and along the foreshore; result in overshadowing, wind funnelling or view loss towards the foreshore; detract from the visual amenity of the coastal area; impact upon Aboriginal cultural heritage, places or practices; or impact upon cultural and built environmental heritage.

Based on the above, Council can be satisfied that the development is designed, sited and will be managed to avoid an adverse impact upon the above matters.

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

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

Comment:



The development is not likely to cause increased risk of coastal hazards on the site or adjoining lands.

#### Concluding Remarks

Based on the above assessment, it is concluded that the proposal demonstrates consistency with the relevant provisions within the CM SEPP.

#### **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?	No
zone objectives of the LEP?	No

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	1.56m	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	No
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

#### Detailed Assessment

#### **Zone E4 Environmental Living**

The site is identified within the E4 Environmental Living zone pursuant to the PLEP 2014. The proposed works are related a dwelling house use. Dwelling houses are permitted with Council consent in the E4 Environmental Living zone.

Prior to granting consent, Council is required to consider the objectives of the E4 Environmental Living zone. An assessment against the zone objectives is carried out below:

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



Comment:

The proposed works require the removal of four (4) trees to accommodate the widened driveway and new retaining wall. Council's Landscape Officer has reviewed the development and noted that the existing roots of the four (4) trees are anchored into the embankment and developed away from the embankment, such that the area within the road reserve is providing sufficient soil volume to support the existing trees within the current physical landform. Given the width of the existing driveway complies with relevant Australian Standards and that there is no evidence of imminent tree failure, the provision of the retaining walls and new driveway is not considered to be necessary. The removal of the four (4) trees to accommodate for the works are therefore not considered to be low-impact residential development. The development is not consistent with this objective.

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

Comment:

The works require the removal of four (4) significant trees that form a distinct natural feature within the streetscape. The works are considered to detract from the ecological and aesthetic values of the land and are therefore, contrary to this objective.

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

Comment:

The proposed development requires unnecessary tree removal and as such, is not integrated into the landform and landscape. The works are inconsistent with this objective.

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

Comment:

The site is physically and visually separated from the foreshore and the proposal does not result in the removal of riparian and foreshore vegetation.

Concluding Remarks

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the objectives of the E4 Environmental Living zone. This matter forms a reason for refusal.

## **7.6 Biodiversity protection**

The site is identified within the 'Biodiversity Area' pursuant to the PLEP 2014. Therefore, the provisions of this clause apply. Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) *whether the development is likely to have:*

(i) *any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*



- (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (iv) any adverse impact on the habitat elements providing connectivity on the land, and*

Comment:

The development has been assessed by Council's Biodiversity Team, who has reviewed the proposal and noted as follows:

*"Three prescribed trees representative of the Pittwater Spotted Gum Forest endangered ecological community (EEC) are proposed for removal. In accordance with PDCP Clause B4.7, "development shall result in no net loss in native canopy trees". In addition, any new landscaping is to be composed of at least 80% species representative of the Pittwater Spotted Gum Forest EEC.*

*The submitted landscape plan does not include provisions for replacement of the prescribed trees proposed for removal; instead, a single Blueberry Ash (small tree) is proposed. Furthermore, the submitted landscape plan does not comply with the requirement for 80% species of the Pittwater Spotted Gum Forest EEC. The proposal is therefore inconsistent with the intent and technical requirements of the DCP control.*

*Any future application should demonstrate measures proposed to achieve compliance with the relevant controls. This may include replacement plantings of locally native canopy trees at a minimum 1:1 ratio and understory species consistent with the EEC, demonstrated in a landscape plan.*

*The proposal is therefore unsupported".*

Based on the above comments, Council cannot be satisfied that the proposed development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also not satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land. The proposal is inconsistent with this requirement.

- (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

Council is not satisfied that the proposed development incorporates appropriate measures to avoid adverse impacts upon the existing trees proposed for removal. Given the proximity of the retaining wall relative to the trees in question and earthworks required for the retaining wall, the existing trees cannot be retained subsequent to the proposed development. The proposal is inconsistent with this requirement.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*



### Comment:

As noted above, Council is not satisfied that the development is designed, sited or can be managed to minimise adverse impacts upon the existing trees proposed for removal. The proposal is inconsistent with this requirement.

### Concluding Remarks

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the objectives and requirements of this clause. This matter forms a reason for refusal.

## **Pittwater 21 Development Control Plan**

### Built Form Controls

<b>Built Form Control</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
Building envelope	3.5m then projected at 45 degrees (north-west)	Within envelope	-	Yes
	3.5m then projected at 45 degrees (south-east)	Within envelope	-	Yes
Landscaped area	60% (817.2sqm)	62.17% (824.4sqm)	-	Yes

### **\*Notes:**

1. The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation).

2. The front building line (Clause D12.5 of P21DCP) and side and rear building line (Clause D12.6 of P21DCP) clauses are not considered for this assessment as retaining walls are permitted to be located within the front setback area and side setback areas. Please refer to the above P21DDCP clauses for further information.

### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	No
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	No	No
B4.22 Preservation of Trees and Bushland Vegetation	No	No
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	No	No
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
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	No	No

#### Detailed Assessment

#### **A4.12 Palm Beach Locality**

The Palm Beach Locality Statement notes as follows:

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

The proposed development requires the removal of significant trees within the embankment in the road reserve to accommodate for the widened driveway and retaining walls. The trees show no signs of deteriorating health and form a distinct nature feature within the streetscape. The proposal has not been designed to maintain the natural landform and tree canopy and therefore, is contrary to the desired future character of the Palm Beach Locality.

This matter forms a reason for refusal.

#### **B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community**

The site is mapped as containing tree species representative of the Pittwater Spotted Gum Forest endangered ecological community. Therefore, the provisions within this control must be considered as part of this assessment.



The control stipulates that development shall not have an adverse impact on the Pittwater Spotted Gum Endangered Ecological Community. Three (3) of the trees subject to removal are representative of the Spotted Gum Community. Additionally, any new landscaping must comprise at least 80% of species representative of the Spotted Gum Community.

The proposed development has not been designed to allow for the retention of the Spotted Gum Trees. Moreover, the submitted landscape plan does not include provisions for replacement of the prescribed trees proposed for removal; instead, a single Blueberry Ash (small tree) is proposed. Furthermore, the submitted landscape plan does not comply with the requirement for 80% species of the Spotted Gum Community. The proposal is therefore inconsistent with the intent and technical requirements of this control.

This matter forms a reason for refusal.

#### **B4.22 Preservation of Trees and Bushland Vegetation**

Please refer to the comments prepared by Council's Landscape Officer in relation to the tree removal.

#### **C1.1 Landscaping**

Please refer to the referral comments prepared by Council's Landscape Officer.

#### **D12.14 Scenic Protection Category One Areas**

##### Description of non-compliance

The control requires development to minimise the impact on existing significant vegetation. The proposed development requires the removal of significant canopy trees within the road reserve, which is contrary to this control.

##### Merit Assessment

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

- *To achieve the desired future character of the Locality.*

##### Comment:

As discussed within the section of this report relating to Clause A4.12 of the Pittwater 21 DCP, the proposal is inconsistent with the desired future character of the Palm Beach Locality.

- *To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and the waterfront.*

##### Comment:

The proposed works do not result in view loss.

- *Maintenance and enhancement of the tree canopy.*



Comment:

The proposed development requires the removal of significant canopy trees representative of the of the Pittwater Spotted Gum Forest endangered ecological community. The impacts on the Spotted Gum Community are significant and unreasonable, given the existing driveway complies with Australian Standard access requirements and that there is no evidence of imminent tree failure. The proposal is therefore inconsistent with this outcome.

- *Colours and materials recede into a well vegetated natural environment.*

Comment:

The stone retaining wall would harmonise with the natural environment.

- *To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component.*

Comment:

As discussed throughout this report, the proposed development would have an unacceptable impact upon the natural environment and therefore, cannot be supported.

- *To preserve and enhance district and local views which reinforce and protect the Pittwater's bushland landscape and urban form to enhance legibility.*

Comment:

The proposal does not result in view loss.

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

Comment:

As noted above, the proposal does not give rise to unreasonable view loss.

- *To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.*

Comment:

As discussed throughout the report, the development's impact upon the natural environment is unacceptable and cannot be supported by Council.

- *Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.*



#### Comment:

The trees proposed for removal form a distinct natural feature within the streetscape. The development would have an unacceptable impact upon the visual qualities of the area.

#### Concluding Remarks

Based on the above assessment, it is concluded that the development is inconsistent with the outcomes of this control. This matter forms a reason for refusal.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

### **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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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



It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/1186 for the Alterations and additions to a dwelling house on land at Lot 82 DP 10782,114 Whale Beach Road, WHALE BEACH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the E4 Environmental Living zone of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.6 Biodiversity protection of the Pittwater Local Environmental Plan 2014.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A4.12 Palm Beach Locality of the Pittwater 21 Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community of the Pittwater 21 Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B4.22 Preservation of Trees and Bushland Vegetation of the Pittwater 21 Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.1 Landscaping of the Pittwater 21 Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.14 Scenic Protection Category One Areas of the Pittwater 21 Development Control Plan.

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

**Signed**



**Thomas Burns, Planner**



The application is determined on 10/12/2020, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**