

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2024/1748
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<b>Responsible Officer:</b>	Brittany Harrison
<b>Land to be developed (Address):</b>	Lot 121 DP 789400, 36 Cabbage Tree Road BAYVIEW NSW 2104
<b>Proposed Development:</b>	Alterations and additions to a retirement village complex including a lift
<b>Zoning:</b>	R2 Low Density Residential
<b>Development Permissible:</b>	No
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Applicant:</b>	Aveo Bayview Gardens Retirement Village

<b>Application Lodged:</b>	02/01/2025
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Seniors Living
<b>Notified:</b>	16/01/2025 to 13/02/2025
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 1,078,000.00
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### PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

- Installation of new lift: and
- Installation of new footpath, handrail, slab and balustrade.

### 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 R2 Low Density Residential

Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection

Pittwater 21 Development Control Plan - D4.10 Landscaped Area - Environmentally Sensitive Land

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 121 DP 789400 , 36 Cabbage Tree Road BAYVIEW NSW 2104
<b>Detailed Site Description:</b>	<p>The subject site consists of two (2) allotments that is separated by a drainage channel located on the north-western side of Cabbage Tree Road.</p> <p>The site is irregular in shape with a frontage of approximately 167.0m along Cabbage Tree Road and a depth of approximately 430.0m. The site has a surveyed area of 74970.0m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to the Pittwater Environmental Plan 2014 and accommodates an existing retirement village.</p> <p>The site slopes from the south-eastern front boundary upwards to the north-western rear boundary over approximately 30 metres.</p> <p>The site contains landscaped areas and trees scattered extensively throughout the site.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p>

Adjoining and surrounding development is characterised by one (1) and two (2) storey dwelling houses varying in architectural style and design. Opposite the site is Bayview Golf Club.

Map:



## SITE HISTORY

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

### **Consent No.81A/194 (Development Application No.1981/170a)**

Development Application for Erection of Stage 21, 3a, 5 and comprising nursing home of 40 beds, 60 self care units.

Approved on 28 July 1981.

### **Consent No.81A/367 (Development Application No.1981/316)**

Development Application for Carry out alterations to the proposed nursing home and hostel, comprising ten additional hostel units and eight traditional nursing home beds.

Approved on 11 December 1981.

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Development Application for Alterations and additions to Nursing home to provide for 73 beds.

Approved on 29 October 1982.

### **Consent No.82/427 (Development Application No.1982/308)**

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Approved on 7 January 1983.

### **Consent No.84/126 (Modification of Consent No.82/427)**

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Approved on 5 April 1984.

**Consent No. 87/8 (Development Application No.1986/450)**

Development Application for Erect housing for aged or disabled persons consisting of 51 hostel suites and village centre.

Approved on 15 January 1987.

**Consent No.90/172 (Development Application No.1989/321)**

Development Application for Erection of retaining walls and associated signage.

Approved on 31 May 1990.

**DA0203/92**

Development Application for Retirement village alterations.

Approved on 30 September 1992.

**N0750/00**

Development Application for three storey development comprising 32 two-bedroom self-contained units and associated basement carparking.

Refused on 20 December 2000.

**N0756/00**

Development Application for Subdivision of 1 Lot into 2 Lots (separation of retirement village and nursing home).

Withdrawn on 21 February 2001.

**N0852/02**

Development Application for Additional 32 residential units and carparking under the provisions of SEPP 5.

Approved on 9 February 2004.

Modification of Development Consent N0852/02 for Additional 32 residential units and carparking under the provisions of SEPP 5.

Approved on 27 May 2004.

**N0765/04**

Development Application for Construction of a gardener's enclosure.

Approved on 11 May 2005.

**CC0321/05**

Construction Certificate for Additional 32 residential units and carparking under the provisions of SEPP 5.

Approved on 27 May 2004.

Occupation Certificate for Additional 32 residential units and carparking under the provisions of SEPP 5.

Approved on 16 March 2007.

**T0238/13**

Development Application for Tree Works.

Approved on 4 June 2013.

**T0160/14**

Development Application for Tree/Bushland Works.

Approved on 15 April 2014.

**T0264/14**

Development Application for Tree/Bushland Works.  
Approved on 3 June 2014.

**T0311/15**

Development Application for Tree/Bushland Works.  
Approved on 25 June 2015.

**DA2018/0353**

Development Application for Construction of eight (8) units contained within a three (3) storey building to be operated as a retirement village, basement car park for fifteen (15) cars and associated services, landscaping works and tree replanting.  
Withdrawn on 31 July 2018.

**PLM2024/0078**

Pre-Lodgement Meeting for Alterations and additions to a seniors living development.  
Meeting held on 30 July 2024.

The meeting notes concluded: *In summary, the alterations and additions are relatively minor works to the external parts of the community centre building and for the improvement of accessibility access between the northern and southern part of the site which is bisected by a forested creek-line gully. There are various internal renovations to the community centre building and ancillary areas which are general modernisations and improvements to assist the living environment for retirement village residents and the like. The proposal is supported, however the applicant is strongly advised to “sound out” the NSW Departmental referral bodies, in advance of lodging a DA, to ensure the works intended (as low impact) do not inadvertently trigger high-impact and high-cost (dis-proportionate) conditions or adverse environmental requirements under the Water Management Act, Biodiversity Conservation Act or Rural Fires Act.*

**DA2024/1480**

Development Application for Alterations and additions to a retirement village complex (Community centre building).  
Approved on 13 February 2025.

**APPLICATION HISTORY**

Following the preliminary assessment of the application, additional information was requested in relation to Form 1 and Form 1(a) from Council's Geotechnical Risk Management Policy for Pittwater to accompanying the submitted Geotechnical Report. Subsequently, the applicant submitted the required forms. The forms did not alter the environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

**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	See discussion on “Environmental Planning Instruments” in this report.

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Form 1 and Form 1(a) from Council's Geotechnical Risk Management Policy for Pittwater to accompany the submitted Geotechnical Report. Subsequently, the applicant submitted the required forms.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and	<p>(i) <b>Environmental Impact</b></p> <p>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>

Section 4.15 Matters for Consideration	Comments
built environment and social and economic impacts in the locality	<p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

- **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 this Division, 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 a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use?

### Comment

The Applicant has provided evidence in the form of a list of previous Development Consents within the accompanying Statement of Environmental Effects (prepared by Mecone dated 13 November 2024),

which reveals that the use of the land commenced as a lawful purpose from 1992, prior to the coming into force of Pittwater Local Environmental Plan 2011 on 30 May 2014. Further information obtained from Council's records includes Development Consents issued from 1981 for the purposes of a nursing home/retirement village (seniors housing development), that details the land commenced as lawful purposes from 1981. A detailed list of Development Consents are included under the Site History section of this report, and relevant applications are replicated below:

**Consent No.81A/194 (Development Application No.1981/170a)**

Development Application for Erection of Stage 21, 3a, 5 and comprising nursing home of 40 beds, 60 self care units.

Approved on 28 July 1981.

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Approved on 9 February 2004.

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Approved on 16 March 2007.

**DA2024/1480**

Development Application for Alterations and additions to a retirement village complex (Community centre building).  
Approved on 13 February 2025.

It is noted that the continued use of the Seniors Living provisions of the Housing SEPP is not available to this development as the works are located within a mapped area of biodiversity which excludes the use of the SEPP.

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 on 1981, prior to the coming into force of Pittwater Local Environmental Plan 2011 on 30 May 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 evidence in the form of previous Development Consents reveals that the use of the land has been consistently used as a seniors housing development since 1981 and has not been abandoned. The list of Development Applications after initial approval (the consents noted above) are consisted with the initial approval of a seniors housing development. It is considered that the use of the building as a seniors housing development has continued since that time, beyond 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 162-167 of the Environmental Planning and Assessment Regulation 2021 (“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 principles of *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71 however have been varied by more recent judgements of the Court to the extent described in *Saffioti v Kiama Municipal Council* [2019] NSWLEC 57 and *Made property Group Pty Ltd v North Sydney Council* [2020] NSWLEC 1332 in that the planning controls apply to the existing use provided they do not derogate, due to the planning controls within an EPI being 'incorporated provisions' and therefore matters for consideration as described within Clause 4.67 of the Environmental Planning and Assessment Act, 1979.

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 proposal includes the addition of a lift and associated pathway that is compliant with the height of buildings development standard of Pittwater Local Environmental Plan 2014. It is considered that the proposed development is consistent with the surrounding sites, and indicates a kind of development that is expected. The proposed lift is centralised within the site, and as such it is considered that the new development is consistent with the existing and future context of the site.

**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 proposed development will result in acceptable bulk and scale with a visual presentation that is to commensurate with the existing site and surrounding development.

**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 will not impact neighbouring amenity as the proposed works are located with the centre of the site, and significantly setback from adjoining sites.

#### **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 proposal will provide suitable internal amenity that is expected of a lift structure. The proposal is considered to be modest and will not impact upon any aspects such as sunlight access or private open space.

#### **Conclusion**

The use has been approved under a previous environmental planning instrument and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (Pittwater Local Environmental Plan 2014).

#### **BUSHFIRE PRONE LAND**

The site is classified as bush fire prone land and the proposed development is for a special fire protection purpose under Section 100B of the Rural Fires Act 1997. As such, the proposal is integrated development and requires a bush fire safety authority from the NSW Rural Fire Service.

The application was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety authority, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS as part of the bush fire safety authority, have been included as part of the recommended conditions of consent.

#### **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject application has been publicly exhibited from 16/01/2025 to 13/02/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mrs Therese Jasmine Keane	50 Annam Road BAYVIEW NSW 2104

One (1) submission has been received during the assessment process. The concerns raised are

summarised and addressed below.

- **Concerns that the public utilise Cabbage Tree Road for commuting. cutting through Bayview rather than using Mona Vale Road. Traffic and parking congestion on Cabbage Tree Road.**

Comment

This concern is not a planning consideration that is relevant to the proposal. The proposal is for a new lift including an associated footpath, handrail, slab and balustrade. The works do not include amendments to Cabbage Tree Road.

- **Concerns relating to proposed additional units to the site which would further contribute to traffic and parking congestion. The height of the buildings would obstruct the view of the bush.**

Comment

This development application does not propose additional units to the site but rather an ancillary lift for ease of access. The lift structure is located in the centre of the site. T the proposal does not consist of any parking amendments.

It is noted that the submissions raises concerns that are not related to the proposed works i.e. lift under this development application.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported, no conditions required.</b></p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p><u>Note:</u> The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p><b>Supported, subject to conditions.</b></p> <p>The application as described in reports and as illustrated on plans is assessed by Landscape Referral against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls (but not limited to): B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; D4 Church Point and Bayview Locality.</p> <p>One low retention value tree to be removed as impacted by the proposed development works and it is noted that this is an exempt species (by height - 4m) thus does not require Council consent for management or removal and this is identified in the submitted Arborist Report as tree 22 (<i>Brugmania</i> sp). The Arborist Report</p>

Internal Referral Body	Comments
	<p>provides tree protection measures for preservation of existing trees in proximity to development works and conditions shall be imposed.</p> <p>Landscape Referral raise no concerns with the proposal in term of landscape setting outcomes.</p>
NECC (Bushland and Biodiversity)	<p><b><i>Supported, subject to conditions.</i></b></p> <p>Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable provisions:</p> <ul style="list-style-type: none"> <li>• NSW Biodiversity Conservation Act 2016</li> <li>• NSW Biodiversity Conservation Regulation 2017</li> <li>• Pittwater LEP cl. 7.6 Biodiversity Protection</li> <li>• Pittwater 21 DCP cl. B4.6 Wildlife Corridors</li> <li>• SEPP (Resilience and Hazards) 2021 - Littoral Rainforest Proximity Area</li> </ul> <p>Portions of the site are identified on the NSW Governments Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). Whilst the proposed works are located within the BV mapped area, only minor clearing of ground and shrub layers will be impacted within a highly modified and landscaped area adjoining a built structure. No native canopy trees are required for removal. As such, Council's Biodiversity Referrals team are not requesting a BDAR to accompany the application. A Flora and Fauna Assessment (Australian Wetlands Consulting, October 2024) was submitted with the application with the aim to provide advice as to the extent and severity of likely impacts associated with the proposal. The FFA concluded that impacts to the BV mapping are likely to be very minor. The FFA identified one Threatened Ecological Community within proximity to the proposed works, Littoral rainforest in the NSW North Coast, Sydney Basin and South East Corner bioregions. Impacts to the EEC are restricted to a loss of 16m<sup>2</sup> of PCT 3039 of ground and shrub layers from a highly disturbed and modified area. To minimise biodiversity impacts of the proposal, a range of recommendations were provided by the Ecologist. A Test of Significance in accordance with the BC Act was prepared by the Ecologist for Littoral Rainforest in the New South Wales North Coast, Sydney Basin and South East Corner Bioregions which concluded that the proposal will not significantly impact the Littoral Rainforest TEC.</p> <p>The Arboricultural Impact Assessment (Ezigrow, October 2024) submitted with the application assessed 15 trees within proximity to the proposed works and recommended the removal of Tree 22, an exotic <i>Brugmansia</i> sp. which is exempt by height. All other trees</p>

Internal Referral Body	Comments
	<p>within proximity to the works will be retained and protected.</p> <p>The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Riparian Lands and Creeks)	<p><b>Supported, subject to conditions.</b></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Water Management Act 2000;</li> <li>• Water Management (General) Regulation 2018; and</li> <li>• Relevant LEP and DCP clauses.</li> </ul> <p>The proposal is within 40 metres of a watercourse mapped under the Water Management (General) Regulation 2018 hydroline spatial data.</p> <p>Referral has been made to the Department of Planning and Environment – Water, and General Terms of Approval (GTA) have been received in response.</p> <p>Note, the GTA issued by DPE -Water do not constitute an approval under the Water Management Act 2000. The development consent holder must apply to DPE - Water for a Controlled Activity approval after consent has been issued by Council and before the commencement of any work or activity.</p> <p>No objections regarding riparian lands and creeks.</p>
NECC (Water Management)	<p><b>Supported, subject to conditions.</b></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Northern Beaches Water Management for Development Policy (WMD Policy); and</li> <li>• Relevant LEP and DCP clauses.</li> </ul> <p>No objections regarding water management.</p>
Parks, reserves, beaches, foreshore	<p><b>Supported, subject to conditions.</b></p> <p>The development site is traversed by a Council-owned natural watercourse, which is zoned RE1 Public Recreation, and runs through the property located downslope.</p> <p>No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. The proposed development is not detrimental to the prevailing landscape character when viewed from the adjoining RE1 land, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal. All development works must ensure that surface sediment runoff and/or erosion is controlled,</p>

Internal Referral Body	Comments
	managed and contained within the site boundaries and prevented from travelling across the boundary and into the Reserve.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Rural Fire Service - Local Branch - EP&A Act, s4.14	The proposal was referred to NSW Rural Fire Service who provided a response on 10 February 2025 stating that General Terms of Approval, under Division 4.8 of the <i>Environmental Planning and Assessment Act 1979</i> , and a Bush Fire Safety Authority, under section 100B of the <i>Rural Fires Act 1997</i> , are issued subject to recommended conditions. These recommendations will be included as a condition of consent.
Nominated Integrated Development - DCCEEW - Water - Water Management Act 2000, s91 - Controlled Activity Approval for works within 40m of watercourse	<b><i>Supported, subject to General Terms of Approval.</i></b>  The integrated development application was referred to the Department of Planning and Environment - Water. General Terms of Approval (GTA) for part of the proposed development requiring a Controlled Activity approval under the Water Management Act 2000 (WM Act), have been received (dated 3 March 2025). The GTA's will be referenced as a condition of consent.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

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

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

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

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

### SEPP (Housing) 2021

Section 80 of the *State Environmental Planning Policy (Housing) 2021* details the following:

#### **80 Land to which Part does not apply—general**

- (1) *This Part does not apply to the following land—*
- (b) *land described in Schedule 3.*

Land described in Schedule 3 Environmentally sensitive land of the *State Environmental Planning*

*Policy (Housing) 2021* is as follows:

*Land shown cross-hatched on the Bush Fire Evacuation Risk Map.*

*Land identified as coastal wetlands and littoral rainforests area within the meaning of State Environmental Planning Policy (Resilience and Hazards) 2021, Chapter 2.*

*Land identified as coastal vulnerability area within the meaning of State Environmental Planning Policy (Resilience and Hazards) 2021, Chapter 2.*

*Land declared as an area of outstanding biodiversity value under the Biodiversity Conservation Act 2016, section 3.1.*

*Land identified on the Map within the meaning of the Biodiversity Conservation Regulation 2017, section 7.3.*

*Land identified in another environmental planning instrument as follows—*

- (a) (Repealed)*
- (b) open space,*
- (c) natural wetland.*

The proposed works are located in "Land identified on the Map within the meaning of the Biodiversity Conservation Regulation 2017, section 7.3".

Section 7.3 of *Biodiversity Conservation Regulation 2017* identifies the Map as follows:

*(1) In this clause—*

***the Map*** means the Biodiversity Values Map published, from time to time, on an appropriate Government website under this clause.

Therefore, as the proposed works are located within the Biodiversity Values Map, the *State Environmental Planning Policy (Housing) 2021* does not apply.

## **SEPP (Transport and Infrastructure) 2021**

### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

### Comment

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

## **SEPP (Resilience and Hazards) 2021**

### **Chapter 2 – Coastal Management**

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been

carried out as follows:

## **Division 1 Coastal Wetlands and littoral rainforest area**

### **2.7 Development on certain land within coastal wetlands and littoral rainforests area**

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

#### Comment

The subject site has small portions of land identified as "littoral rainforest", however these portions of land are not located in the area for the proposed development. Therefore, the proposed works will not impact upon the land identified as "littoral rainforest".

### **2.8 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 is located on land identified as "proximity area for littoral rainforest". The proposed development will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent littoral rainforest, and the quantity and quality of surface and ground water flows to and from the adjacent littoral rainforest.

## **Division 5 General**

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

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

#### Comment

The proposed development is not likely to cause an increased risk of coastal hazards on the land or other land.

## 2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

### Comment

There is no certified coastal management program applicable to the land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

### **Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

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

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

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.4m	-	Yes

### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	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

### Detailed Assessment

## Zone R2 Low Density Residential

The proposal is not permissible in Zone R2 Low Density Residential of Pittwater Local Environmental Plan 2014.

A detailed assessment has been conducted under the Existing Use Rights section of this report, that concludes that Existing Use Rights applies.

### 7.6 Biodiversity protection

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 Bushland and Biodiversity Officer, who raised no objections to approval. The 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 satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

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

#### Comment

The development has been assessed by Council's Bushland and Biodiversity Officer, who raised no objections to approval. The proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

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

The development has been assessed by Council's Bushland and Biodiversity Officer, who raised no objections to approval. The development is designed, sited and will be managed to any significant adverse environmental impact.

## Pittwater 21 Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	Primary (Cabbage Tree Road): 6.5m	>6.5m	-	Yes
	Secondary: (Annam Road): 3.25m	>3.25m	-	Yes
Side building line	2.5m	>2.5m	-	Yes
	1m	4.4m	-	Yes
Building envelope	3.5m	Within envelope	-	Yes
	3.5m	Within envelope	-	Yes
Landscaped area	60% (44982m <sup>2</sup> )	32.50% (24362.5m <sup>2</sup> ) Existing: Approx. 32.54% (24400m <sup>2</sup> )	45.84% (20619.5m <sup>2</sup> )	<b>No</b>

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.8 Estuarine Hazard - Medium Density Residential	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.6 Acoustic Privacy	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.20 Undergrounding of Utility Services	Yes	Yes
C1.21 Seniors Housing	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.2 Scenic protection - General	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	Yes	Yes
D4.6 Side and rear building line	Yes	Yes
D4.8 Building envelope	Yes	Yes
D4.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D4.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

#### Detailed Assessment

#### **D4.10 Landscaped Area - Environmentally Sensitive Land**

##### Description of Non-compliance

The existing site obtains a numerical non-compliance with the required 60.0% (44982m<sup>2</sup>) control.

The existing site presents an approximate landscaped area of 32.54% (24400m<sup>2</sup>).

The proposal presents a reduction of 37.5m<sup>2</sup> for the proposed installation of the lift and associated pathway, reducing the landscaped area to 32.50% (24352.5m<sup>2</sup>).

In this instance, it is considered the minor reduction in landscaped area is acceptable for the purposes of accessibility. Furthermore, Council's Landscape and Council's Bushland and Biodiversity Officer have reviewed the proposal, and are supportable subject to recommended conditions.

Therefore, it is considered that the minor reduction of landscaped area is acceptable, and the proposal has demonstrated that the outcomes of the control have been met as detailed below.

##### Merit Consideration

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

- ***Achieve the desired future character of the Locality. (S)***

Comment

The proposal will achieve the desired future character of the Church Point and Bayview Locality.

- ***The bulk and scale of the built form is minimised. (En, S)***

Comment

The proposal is located centrally within the site, and as such will not result in any significant bulk and scale.

- ***A reasonable level of amenity and solar access is provided and maintained. (En, S)***

Comment

The proposal will provide an acceptable level of amenity, and solar access that will provided and maintained to the site and adjoining sites.

- ***Vegetation is retained and enhanced to visually reduce the built form. (En)***

Comment

The proposal will generally retain the existing vegetation on site, that will assist to visually reduce the built form.

- ***Conservation of natural vegetation and biodiversity. (En)***

Comment

The proposal will largely conserve the natural vegetation and biodiversity of the site. Furthermore, the application has been reviewed by Council's Bushland and Biodiversity team who have found the proposal to be supportable, subject to recommended conditions.

- ***Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)***

Comment

The site will retain ample soft surface areas that will assist in the prevention of soil erosion and siltation of natural drainage channels.

- ***To preserve and enhance the rural and bushland character of the area. (En, S)***

Comment

The proposal will appropriately preserve and enhance the rural and bushland character of the area.

- ***Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.(En, S)***

Comment

The proposal will retain sufficient pervious surfaces that will enable the infiltration of water to the water table, whilst minimising run-off and assisting with stormwater management.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

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

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2024**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2024.

A monetary contribution of \$10,780 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,078,000.

### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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 DA2024/1748 for Alterations and additions to a retirement village complex including a lift on land at Lot 121 DP 789400, 36 Cabbage Tree Road, BAYVIEW, subject to the conditions printed below:

### Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

## GENERAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA-011	3	Site & Roof Plan - Proposed	Bokor Architecture + Interiors	30 September 2024
DA-100	3	Outdoor Bush Lift - Plan, Elevations & Sections	Bokor Architecture + Interiors	30 September 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Arborist Report	-	Ezigrow Arboricultural Consulting	3 October 2024
BCA Report	0	BM Plus G Pty Ltd	3 October 2024
Bushfire Report	250162C	Building Code & Bushfire Hazard Solutions	16 October 2024
General Arrangement Plan - CE100	B	ADP Consulting	20 September 2024
Stormwater Plan 2 - CE102	C	ADP Consulting	20 September 2024

Sediment and Erosion Control Plan 2 - CE301	B	ADP Consulting	20 September 2024
Sediment and Erosion Control Details - CE150	B	ADP Consulting	20 September 2024
Geotechnical Report	37080Yrpt2Rev1	JKGeotechnics Pty Ltd	20 February 2025
Flora and Fauna Report	Final	Australian Wetlands Consulting Pty Ltd	16 October 2024
Waste Management Report	-	No Author	n.d.

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

## 2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Referral - Ausgrid	16 January 2025
Department of Planning and Environment-Water	Referral - DPE - Water	3 March 2025
NSW Rural Fire Service	Referral - RFS - 36 Cabbage Tree Road Bayview	11 February 2025

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

## 3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifier for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

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

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
  - A. the name and licence number of the principal contractor, and
  - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
  - A. the name of the owner-builder, and
  - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

#### 4. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) 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.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) 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.
- (f) 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.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
  - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
  - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
  - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

- (i) 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.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) 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.
- (m) 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.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) 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.

**5. General Terms of Approval - Department of Planning and Environment - Water**

The proposal shall strictly comply with the General Terms of Approval prepared by the Department of Planning and Environment - Water as dated 3 March 2025 (Ref. IDAS-2025-10034). The General Terms of Approval, are referenced under Condition 2 of this consent.

Reason: Statutory Requirement.

## FEES / CHARGES / CONTRIBUTIONS

**6. Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$10,780.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,078,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

**7. Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any

damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

## **BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

### **8. No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

### **9. 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 Certifier 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 Certifier 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.

10. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Boundary Identification Survey**

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on a boundary identification survey, prepared by a Registered Surveyor, 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 Certifier 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.

12. **Compliance with Standards**

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

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

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

13. **External Finishes to Roof**

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.43 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

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

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

14. **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 Certifier

demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

## CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

### 15. Sediment and Erosion Controls

For developments that include more than 2500sqm of disturbance:

A Soil and Water Management plan (SWMP), in accordance with section 2.3 of the Blue Book, must be prepared and certified by a suitably qualified professional.

For sites larger than 250sqm and less than 2500sqm of disturbance:

An Erosion and Sediment Control Plan (ESCP) must be prepared by a suitably qualified person in accordance with the following considerations and documents:

- Sites that have slopes exceeding 20% (measured in any direction across the site), and/or where works are within the high-water mark or adjacent to a waterway or watercourses are considered environmentally sensitive areas. These sites require a site-specific ESCP which must be prepared and certified by a suitably qualified professional,
- The guidelines set out in the NSW Department of Housing manual ‘Managing Urban Stormwater: Soils and Construction Certificate – Volume 1, 4th Edition (2004)’ (the Blue Book), and
- The ‘Guidelines for Erosion and Sediment Control on Building Sites’ (Department of Planning, Housing and Infrastructure).

The ESCP must include the following as a minimum:

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

Environmentally sensitive areas (i.e. Sites that have slopes exceeding 20% and/or where works are within the high-water mark or adjacent to a waterway or watercourses) must also consider:

- Identify and mark any environmentally sensitive areas on and immediately next to the site and how you will protect these, including any appropriate buffer zones (for example, marking them out as 'no-go' areas),
- Details on vegetation you will clear, as well as areas of vegetation you will keep (mark no go areas),
- Detail on soil information and location(s) of problem soil types, especially dispersive soils and potential or actual acid sulfate soils,
- Location of any natural waterways that could receive run-off and how these will be protected these from run-off.

For sites smaller than 250sqm or where the disturbance is less than 50sqm:

Run-off and erosion controls must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:

- Diverting uncontaminated run-off around cleared or disturbed areas, and
- Erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties, and
- Preventing the tracking of sediment by vehicles onto roads, and
- Stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot.
- Identifying any environmentally sensitive areas on and immediately next to the site, and demonstrating how these will be protected (for example, by designation as no-go areas).

Details demonstrating compliance with the relevant requirements above are to be submitted to the Certifier, and the measures implemented, prior to the commencement of works.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

## DURING BUILDING WORK

### 16. **Tree and Vegetation Protection**

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

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,

- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment and/or Project Arborist as applicable.

Reason: Tree and vegetation protection.

#### 17. **Wildlife Protection**

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

Reason: To protect native wildlife.

#### 18. **No Access Through Land Owned or Managed by Council**

Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

#### 19. **Storage of Materials on Land Owned or Managed by Council Prohibited**

The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

#### 20. **Protection of Council's Public Assets**

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

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

1993. Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

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

**21. Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

**22. 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 Certifier when the external structure of the building is complete.

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

**23. Maintenance of Sediment and Erosion Controls**

Erosion and sediment controls must be adequately maintained and monitored at all times, particularly surrounding periods of rain, and shall remain in proper operation until all development activities have been completed and the site is in a state where no substance other than rainwater can enter the stormwater system and waterways.

All sediment control measures must be maintained at, or above, their design capacity.

Where more than 2500 square metres of land are disturbed or if the site has a slope of more than 20%, a self-auditing program must be developed for the site. A site inspection using a log book or inspection test plan (ITP) must be undertaken by the site supervisor:

- at least each week
- immediately before site closure
- immediately following rainfall events that cause runoff.

Details demonstrating compliance must be provided to the Certifier during demolition and building works.

Reason: Protection of the receiving environment and to ensure no substance other than rainwater enters the stormwater system and waterways.

**24. Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

**25. DPE - Water Controlled Activity approval**

The attached GTA issued by the Department of Planning and Environment-Water do not constitute an approval under the Water Management Act 2000. The development consent holder must apply to the department for a Controlled Activity approval after consent has been issued by Council and before the commencement of any work or activity.

**BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

**26. Protection of Habitat Features**

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

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

Reason: To protect wildlife habitat.

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

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

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

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

**28. 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 Principal Certifier 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 authority 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 Certifier prior to the

issue of an Occupation Certificate.

Reason: To ensure satisfactory management of stormwater.

29. **Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

30. **Waste Management Confirmation**

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

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

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

31. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

**Signed**



**Brittany Harrison, Planner**

The application is determined on 07/03/2025, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**