

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0064
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Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 5 DP 12797, 41 Wallumatta Road NEWPORT NSW 2106
Proposed Development:	Alterations and additions to a dwelling house and construction of a secondary dwelling
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Gerard Kentwell Lawrence Wendy Kay Lawrence
Applicant:	Gerard Kentwell Lawrence

Application Lodged:	18/03/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	25/03/2021 to 08/04/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 9.4%
Recommendation:	Approval

Estimated Cost of Works:	\$ 99,000.00
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PROPOSED DEVELOPMENT IN DETAIL

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 - 4.6 Exceptions to development standards

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

Pittwater 21 Development Control Plan - D10.7 Front building line (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.13 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 5 DP 12797 , 41 Wallumatta Road NEWPORT NSW 2106
Detailed Site Description:	<p>The subject site consists of a single allotment located on the southern side side of Wallumatta Road.</p> <p>The site is irregular in shape with a frontage of 15.5m along Wallumatta Road and a depth of 72.5m. The site has a surveyed area of 936.5m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a two-storey dwelling house.</p> <p>The site is relatively steep and has an average slope of some 17 degrees.</p> <p>The site has a mixture of native and exotic species of plants, shrubs and trees.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by single and two storey dwellings with associated structures and landscaping gardens.</p>

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:

BC0112/11

Building Certificate for a timber and steel first floor deck addition at the rear of the dwelling. This application was approved by Council on 28 October 2011.

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 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Control Line Consulting, dated 14 January 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 25/03/2021 to 08/04/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Nalin Charles Ralph Perera	39 Wallumatta Road NEWPORT NSW 2106
Mr Denis Owen Heywood	43 Wallumatta Road NEWPORT NSW 2106

The following issues were raised in the submissions and each have been addressed below:

- **Overshadowing,**
- **Awning,**
- **Landscaping,**
- **Cost of works,**
- **Materials and finishes,**
- **Site coverage,**
- **Parking.**

The matters raised within the submissions are addressed as follows:

- **Overshadowing:** Concern has been raised that the proposal will result in additional overshadowing to the western property.

Comment:

It is acknowledged that the application does not include shadowing diagrams, however, the proposal involves the construction of a single storey secondary dwelling, which will have a maximum height of 5.5m. In addition, the works involve the removal of two large canopy trees within the rear setback, which will reduce overshadowing to the western property within the morning hours. Furthermore, the concerned property's private open space is substantially set back from the works and is located at a much higher level. Overall, it is considered that the proposal has been sufficiently designed to allow equitable access to sunlight.

This matter does not warrant the refusal of this application.

- **Awning:** Concern has been raised with the proposed awning and that it remains open for the preservation of views.

Comment:

The proposed roof structure over the existing deck will remain open sided and will not have an impact on views.

This matter does not warrant the refusal of this application.

- **Landscaping:** Concern is raised that the proposed landscaping in the western setback will have an impact on views.

Comment:

The proposed landscaping within the western setback area has a maximum maturity height of 3.0m. As such, this will not impact upon No. 43 Wallamatta Road's views, as the concerned dwelling's rear deck (RL58.84) is situated approximately 6 meters above the projected landscaping height.

This matter does not warrant the refusal of this application.

- **Cost of works:** Concern has been raised with the estimated valuation of the proposal and the impacts this will have on the quality of works.

Comment:

Irrespective of the estimated valuation of the proposal imposed conditions will ensure that the works are constructed to the relevant Australian Standard and in accordance with the Building Code of Australia.

- **Materials and finishes:** Concern is raised with the the proposed materials and finishes.

Comment:

Part D10.4 of the P 21 DCP requires that structures be finished in a medium to dark range colour palette to ensure that buildings blend in with the surrounding environment. The proposed schedule of finishes is considered consistent with the provisions of this control.

This matter does not warrant the refusal of this application.

- **Site coverage:** Concern is raised with the additional hard surfaces and the associated impacts upon local biodiversity.

Comment:

The proposal achieves reasonable compliance with the landscaped area requirements prescribed by Part D10.13 of the P21DCP. Furthermore, the proposal has been assessed by Council's Bushland and Biodiversity division. This assessment concluded that the proposed development complies with the relevant biodiversity provisions (subject to conditions).

- **Parking:** Concern is raised with the proposal will creating unreasonable impacts by the way of additional traffic and congestion.

Comment:

The proposal provides two off street parking spaces onsite, which is increasing upon the existing parking arrangement. Notwithstanding, one additional off-street parking space has not been provided for the secondary dwelling which does not comply with the requirement for a total of three spaces. As such, an assessment against Part B6.3 of P21DCP has been undertaken, which has found that the proposal provides adequate off-street parking within the low density residential context.

This matter does not warrant the refusal of this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>This application is for the construction of a secondary dwelling, a new deck and associated pergola, as well as a media room as an addition to the primary residence.</p> <p>Councils Landscape Referral section has considered the application against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D10.13 Landscaped Area - Environmentally Sensitive Land <p>A Landscape Plan is provided with the application and proposed works include the in-ground planting of tree, shrubs and grasses.</p> <p><u>Original Comments - 12/04/2021</u></p> <p>The Arboricultural Impact Statement provided with the application has identified a total of thirty five trees located both within the site, the road reserve as well as adjoining properties to the east and west. Of these thirty five existing trees, a total of six trees are proposed for removal as part of this application. These six trees proposed for removal have been identified as Trees No. 10, 11, 15, 20, 27 and 28. Of these six trees to be removed, Trees No. 11 and 20 are both exempt species, and therefore do not require Councils approval to be removed. Tree No. 15 has also been noted for removal as significant decay is present at the base of the trunk, and has been recommended for removal irrespective of the proposal. For this reason, the Arborists recommendation for removal is supported.</p> <p>Of the remaining three trees proposed for removal, Tree No. 10 is located in the backyard and within the footprint of the proposed works. For this reason the tree would be required to be removed. Tree No. 10 is a significant canopy tree, and has been identified as having a medium landscape significance. The remaining two trees proposed for removal, Trees No. 27 and 28, are both located within the front of the site and are located within the proposed works footprint. Both Trees No. 27 and 28 have been identified as having high landscape significance. Concerns however are raised as there appears to be a</p>

Internal Referral Body	Comments
	<p>discrepancy between the Architectural and Landscape Plans with both plans raising additional concerns and requiring further clarification.</p> <p>It is currently unclear as to the extent of works within the front setback of the site, as the Landscape Plan indicates a large paved area, new stairs as well as a driveway running parallel to the northern boundary. The layout shown on the Landscape Plan would indicate that Tree No. 27 can be retained, however the new driveway along the boundary would likely have significant impacts to the existing significant trees within the road reserve. The removal of these trees, or the damage towards their long term health would not be supported. In contrast, the Architectural Plan indicates a car park adjacent to the proposed media room, with a small concrete extension towards the northern boundary. This layout would require the removal of Tree No. 27, and would pose a reduced risk towards the existing street trees when compared to the layout as shown on the Landscape Plan. Currently no proposed levels are shown, making it difficult to fully understand what is being proposed. It is noted that the existing front fence/wall will likely already restrict the root structure of these street trees, however if the proposal seeks to alter these walls, or the existing ground levels surrounding these trees, further Arborist investigation is needed to ensure the proposed works will result in a minimal impact on the ongoing health and vitality of these trees. It is therefore recommended that amended Architectural and Landscape Plans be provided, ensuring that the proposed works are consistent across packages and the full extent of works are shown.</p> <p>The Arboricultural Impact Assessment has noted that all six trees proposed for removal should be replaced in order to compensate for the loss of these trees. For this reason the Arborists recommendations are supported. The current Landscape Plans do indicate the planting of six trees, however it is recommended that at least two of these six trees be <i>Corymbia maculata</i> as the current trees proposed will not reach a mature height as significant as those proposed for removal. The remaining landscape works as proposed on the Landscape Plans would be supported.</p> <p>In its current form, Councils Landscape Referral section does not support the application due to conflicting Landscape and Architectural Plans. It is recommended that amended plans be provided so that further assessment can be made.</p> <p><u>Updated Comments 12/07/2021</u></p> <p>Following original concerns regarding the unknown impacts of the proposed works on existing trees at the front of the site due to conflicting documentation, amended Landscape and Architectural Plans have been provided with the application.</p> <p>It is now clear that the proposal seeks to modify an existing retaining wall at the front of the site in order to accommodate access to an existing paved area that is to support an additional car park. The proposal still seeks to remove two significant canopy trees within the</p>

Internal Referral Body	Comments
	<p>front of the site in order to accommodate these works. Due to the presence of high value endangered ecological communities within the site, it has been recommended by the Biodiversity Team that six canopy trees be proposed within the site to supplement those lost as a result of proposed works. In its current form, only three canopy trees have been proposed alongside three smaller trees. It is therefore recommended that either an additional three canopy trees are to be proposed, or those three smaller trees are to be replaced with canopy trees instead. It should be noted at least three of the proposed trees shall be required to be <i>Corymbia maculata</i> in order to enhance the Pittwater Spotted Gum Forest endangered ecological community found on site.</p> <p>Due to the proximity of proposed works to existing trees, it is recommended that a Project Arborist be engaged to supervise all works within Tree Protection Zones and Structural Root Zones of trees to be retained, as per the Arboricultural Impact Assessment. This is to ensure no significant roots are impacted by proposed works, as the removal of any additional trees to that approval shall not be supported.</p> <p>The landscape component of the proposal is therefore supported subject to the protection of existing trees and vegetation, as well as the completion of landscape works as proposed on the Landscape Plan, including the planting of six canopy trees within the site (three of which must be <i>Corymbia maculata</i>).</p>
NECC (Bushland and Biodiversity)	<p>Updated Comments (9th July 2021)</p> <p>The applicant has provided the following additional or amended reports/plans to support the application:</p> <ul style="list-style-type: none"> • Flora and Fauna Impact Assessment Report (Total Earth Care, July 2021) • Amended Landscape Plan (A Total Concept, July 2021) • Amended Bushfire Hazard Assessment Report (Control Line Consulting, Jan 2021) • Amended Architectural Plans (Belli Design Building Plans, May 2021). <p>The Flora and Fauna Impact Assessment (FFIA) confirmed that Pittwater Spotted Gum Forest EEC occurs within the subject site, and approximately 0.013ha will be removed as a result of the proposed development. The report provides confirmation that entry into the BOS is not triggered and as such a BDAR is not required, and delivered assessment of potential impacts to threatened entities within the subject site, including 5-part tests confirming no significant impact as a result of the proposed development for the following:</p> <ul style="list-style-type: none"> • Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion Endangered Ecological Community

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • Large Bent-winged Bat (<i>Miniopterus orioanae oceanensis</i>) • Little Bent-winged Bat (<i>Miniopterus australis</i>) • Powerful Owl (<i>Ninox Strenua</i>) • Grey-headed Flying-fox (<i>Pteropus poliocephalus</i>) <p>A number of mitigation measures were recommended by the Ecologist and will be conditioned within these conditions of consent.</p> <p>The amended Landscape Plans and Architectural plans still display discrepancies and should be updated for consistency.</p> <p>In accordance with the recommendations of the submitted Arboricultural Impact Assessment, the following trees are permitted to be removed with consent; Trees 10, 11, 15, 20, 27 & 28. No additional tree removal is permitted without further assessment.</p> <p>Original biodiversity comments required a 1:1 replacement ratio for canopy trees that require removal, and it is noted that in the updated landscape plan only three (3) canopy trees have been proposed for planting. Three (3) additional canopy trees, including three (3) <i>Corymbia maculata</i> are to be included in the landscape plan in an appropriate location within the subject site. This is to ensure that no net canopy loss is achieved as a result of the proposed development, in accordance with cl.B4.7 of the P21DCP.</p> <p>Subject to these conditions of consent, Council's biodiversity referrals team are satisfied that the proposed development complies with the relevant biodiversity provisions.</p> <p>Original Comments (7th April 2021)</p> <p>Council's biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related provisions:</p> <ul style="list-style-type: none"> • Biodiversity Conservation Act 2016 (BC Act) • Pittwater LEP cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community • Coastal Management SEPP (2018) cl. 11 Development on land in proximity to littoral rainforest <p>The Statement of Environmental Effects (SEE) submitted with the development application has not addressed the applicable biodiversity provisions listed above. The SEE is to be amended and resubmitted to include discussion relating to the proposals impact on the above listed provisions.</p> <p>The Arborist Report (The Ents Tree Consultancy 2020) has identified</p>

Internal Referral Body	Comments
	<p>that six (6) trees will require removal in order to facilitate the proposed development, including Trees 10, 11, 15, 20, 27 & 28, all of which are Prescribed trees. In accordance with cl. B4.7 of the P21DCP, an Ecological Impact Assessment (EIA) is required to be prepared to assess the biodiversity impacts on Pittwater Spotted Gum Forest Endangered Ecological Community that has been mapped on the Subject Site. A 5-part Test pursuant to Section 7.3 of the Biodiversity Conservation Act 2016 (BC Act) is required to be included in the EIA. The EIA will also need to address any potential impacts associated with the establishment and on-going maintenance required for the Asset Protection Zone (APZ) as prescribed by the Bushfire Consultant. This includes identifying which trees (if any) require removal.</p> <p>The Bushfire Hazard Assessment (Control Line Consulting 2020) provides conflicting advice in relation to the vegetation required for removal in order to achieve APZ requirements in accordance with Planning for Bushfire Protection 2019. On page 6, the report notes <i>"The proposed scope of works does necessitate the removal of some vegetation as required to satisfy the recommendations for asset protection zones"</i> whilst on page 10 the report states <i>"The maintenance of the majority of area upon the subject allotment currently would satisfy the requirements of an inner protection area of an asset protection zone as contained in Planning for Bush Fire Protection 2019"</i>. Clarification as to the species and number of trees and/or vegetation required for removal in order to achieve PBP is to be included in the updated Bushfire Hazard Assessment and resubmitted to Council for assessment.</p> <p>The Landscape Plan (A Total Concept 2020) submitted with the application has not provided adequate replacement plantings for the loss of six (6) prescribed trees within the site. The plan is to be amended to ensure that at least 80% of any new planting incorporates native vegetation (as per species listed in Pittwater Spotted Gum Endangered Ecological Community), and include a replacement ratio of at least 1:1 for native trees proposed for removal.</p> <p>Upon amendment and resubmission of updated documentation, Council's biodiversity referrals team will assess the Development Application for compliance against biodiversity provisions listed above.</p>
NECC (Development Engineering)	<p>25/03/2021: Stormwater</p> <p>The site is falling to the rear and proposal is to construct a secondary dwelling at rear and hard stand area at front for car parking. The proposed development leads to total hardstand area more than 50sqm, an Onsite Stormwater Detention System is required.</p> <p><i>All new storm water shall be collected and carried to rainwater tanks, located beneath the lower floor deck. Refer drg. No. 2001 – 02, 04 and WaterDesign Civil Engineers stormwater management</i></p>

Internal Referral Body	Comments
	<p>design drawings Nos. 2020-073 /SW1 – 3</p> <p>Above mentioned stormwater drawings in the Statement of Environmental Effects Report are not provided.</p> <p>But before Council consider these drawings applicant is advised as below:</p> <p>a) The Stormwater drainage for the site shall demonstrate compliance with Council's Water Management for Development Policy, particularly Stormwater Drainage from Low Level Properties Technical Specification Section 5.5. As the subject site falls to the rear, an easement to drain water is to be created in favor of the site over the downstream properties. Evidence of owners consent by the property owners (41 Irrubel Road) shall be submitted with the Development Application. The Application shall be supported by a long section of the inter-allotment drainage to the connection with Council's road drainage system.</p> <p>b) Should this method of stormwater disposal not be possible, evidence shall be submitted with the Application.</p> <p>For sample letter refer Appendix 2, Easement Letter of Council's Water Management for Development Policy.</p> <p>Access</p> <p>The architectural plans and landscape plans are contradictory to each other and do not show similar arrangement for car parking.</p> <p>Applicant to provide amended plans.</p> <p>05/05/2021: Stormwater</p> <p>An easement refusal letter is provided, TRIM 2021/305296. Stormwater plans prepared by Water Design Civil Engineers, drawing number SW1 to SW3, Job No. 2020-073, dated 14-01-2021 are satisfactory.</p>

External Referral Body	Comments
Aboriginal Heritage Office	The proposal was referred to AHO for further comment. This assessment concluded that no sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. The recommended conditions have formed part of this consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A398886 dated 08 December 2020).

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

SEPP (Coastal Management) 2018

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

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

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

Comment:

Not applicable.

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

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

The land is classified as a proximity area for littoral rainforest.

The works have been designed and sited appropriately to ensure that the development will not adversely affect the matters raised in Points (a) and (b). Furthermore, the imposed conditions will ensure that the proposal does not adversely impact upon significant vegetation.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
 - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes*

and
current
and
future
coastal
hazards.

Comment:

Not applicable.

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The site is located within the Coastal Environment Area.

The development will be contained relatively within the existing building footprint such that no impact will occur which adversely affect the matters raised in Points (a) to (g). Conditions are also imposed to appropriately address construction activity such as structural adequacy and excavation work and erosion/sediment control to ensure that the development will not adversely affect the matters raised in Points (a) to (g).

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

Comment:

Council is satisfied that the development is designed, sited and will be managed (subject to condition) to avoid an adverse impact referred to in sub-clause (1).

14 Development on land within the coastal use area

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

Comment:

Not applicable.

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

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 will not increase the risk of any coastal hazards.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies

Height of Buildings:	8.5m	9.3m (Awning) 5.3m (Secondary dwelling)	9.4%	No
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Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	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

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	9.3m
Percentage variation to requirement:	9.4%

Assessment of request to vary a Development Standard

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*.

Clause 4.6 Exceptions to Development Standards

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 4.3 - Height of Buildings development standard is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) Assessment

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v

Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.’

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Applicants Written Request

The applicants written request argues, in part:

- *"Being consistent with the prevailing building height and desired future streetscape character.*
- *The bulk and scale of the building is consistent with similar developments in Wallumatta Road and the surrounding local area.*
- *There is no disruption to any existing view lines.*
- *Adequate sunlight access to has been maintained to adjacent dwellings with no change to the existing shading patterns.*

Comment:

It is agreed that compliance with Council's Building height standard is constrained by the placement of the existing dwelling and the sites topography. Additionally, it is acknowledged that the proposed development does not create unreasonable bulk, as the works are not readily visible from the street, given that it will be orientated towards the rear boundary and screened by existing vegetation.

Whilst the proposal doesn't comply with Council's maximum building height development standard, it is agreed that this non-compliance will not create unreasonable impacts with regard to view loss, overshadowing, or bulk and scale, as the proposed awning is a relatively lightweight and open structure. Overall, it is considered that demanding compliance with Council's maximum height standard is both unreasonable and unnecessary for this proposal, due to the constraints caused by the placement of the existing dwelling and the sloping nature of the site.

It is considered that the applicants written request has adequately demonstrated that the proposed

development will protect the surrounding natural environment, through retaining the site's existing topographical features and landscape elements. In addition, the written request has justified that the development is of good design and will protect the amenity of the surrounding built environment, therefore satisfying cl 1.3 (e) (g) of the EPA Act.

In this regard, the applicants written request has adequately identified that there are sufficient environmental planning grounds to justify breaching the development standard as required by cl 4.6(3) (b).

Therefore, it is concluded that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment

Clause 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of the Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality

Comment:

The proposal involves the construction of an open awning over the exiting elevated rear deck, creating a maximum building height of 9.3m. The proposed roof form will not be readily visible from the street, due to the works being orientated towards the rear boundary and screened by existing vegetation. Furthermore, the proposal will not extend above the existing ridge height. Overall, the proposed awning will remain relatively consistent within the locality, by virtue of its height and scale.

b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development

Comment:

The proposed awning is effectively integrated with the existing dwelling and is relatively minor in nature, as it will not be readily visible from the street or adjoining properties, due to the proposal's situation and existing landscaping. Overall, it is considered that the proposed will not unreasonably affect the subject sites compatibility with the height and scale of surrounding and

nearby development.

c) to minimise any overshadowing of neighbouring properties

Comment:

The solar impacts of this aspect of the development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces. The proposal satisfies requirements of Clause C1.4 Solar Access of the Pittwater 21 DCP, as the main private open space areas of adjoining properties receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

d) to allow for the reasonable sharing of views,

Comment:

The proposal will not result in the loss of views.

e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment:

The construction of the proposed awning will not require any excavation, as it will be carried out above the existing deck.

f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,

Comment:

The proposed awning will not result in any adverse visual impacts upon the surrounding natural environment, as its design is lightweight and open natured. Furthermore, imposed conditions will ensure that the proposed roof form materials are characteristic of the surrounding natural environment.

Objectives of the Zone

The underlying objectives of the E4 Environmental Living zone are:

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

Comment:

The proposed roof over the existing deck provides greater occupant amenity, without causing unreasonable environmental impacts to neighbours or to the site itself. Amenity to adjoining properties is maintained and the proposal will allow for the reasonable sharing of views.

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

Comment:

The development will not have an adverse effect on any special ecological, scientific or

aesthetic values.

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

Comment:

The proposed development does not dominate the natural environment and will not significantly alter the existing built form. In addition, the proposed awning will not involve the removal of any landscape, nor will it unreasonably disrupt existing topographical features. Overall, it is considered that the proposal successfully achieves a residential development of a low density and scale integrated with the landform and landscape.

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

Comment:

The development will not effect wildlife corridors nor will it have an effect on riparian and foreshore vegetation.

Conclusion on Zone Objectives

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 Environmental Living zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	4.0m (Hardstand)	38.5%	No
Rear building line	6.5m	21m (Secondary dwelling)	N/A	Yes
Side building line	2.5m - East	1.7m (Deck)	32%	No
	1m - West	1.0m (Entry deck)	N/A	Yes
Building envelope	3.5m	Within	N/A	Yes
	3.5m	Within	N/A	Yes
Landscaped area	60%	58.9% (568.1sqm)	N/A	Yes* (Exception)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.23 Eaves	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D10.15 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

Description of non-compliance

One additional off-street parking space has not been provided for the secondary dwelling which does not comply with the requirement for a total of three spaces to be provided on site.

Merit consideration:

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

- *An adequate number of parking and service spaces that meets the demands generated by the development.*

Comment

The proposal provides two off street parking spaces onsite, which is increasing upon the existing parking arrangement. The site is located within a residential area where on-street parking is available for the future residents of the secondary dwelling. In addition, the proposed driveway provides sufficient space for an additional informal space. Overall, adequate off street parking has been provided that will meet the demand generated by the development.

- *Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety. Safe and convenient parking.*

Comment

To facilitate an additional parking space a substantial increase in hardsurfaced area and excavation would be required as well as removal of significant trees. The proposal provides for safe and convenient parking arrangement which will not have a detrimental effect upon pedestrian and vehicle safety.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D10.7 Front building line (excluding Newport Commercial Centre)

Description of non-compliance

The proposed hardstand will be set back 4.0m to the front boundary. This control requires structures to be set back at a minimum of 6.5m.

Merit consideration:

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

- *Achieve the desired future character of the Locality.*

Comment:

The proposal will maintain the desired future character of the locality.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

The proposed hardstand will be low lying and there will be no views impacts.

- *The amenity of residential development adjoining a main road is maintained.*

Comment:

The site does not adjoin a main road and as such, this objective is not of relevance.

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

Comment:

The proposed works within the front setback will involve removal of two significant trees within the front setback. However, the proposal has included a detailed landscape plan which ensure critical vegetation is protected, while sufficient tree replacement planting and boundary planting is implemented, such that the landscape outcomes of Pittwater 21 DCP are achieved. Overall, it is considered that the proposal will provide adequate vegetation, which visually reduces the built form.

- *Vehicle manoeuvring in a forward direction is facilitated.*

Comment:

The proposed on site parking will allow for vehicles to enter and exit the site in a forward direction. Therefore, the proposal is considered acceptable in this regard.

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

Comment:

Despite the variation to the front setback requirement, the proposal is in keeping within the height and scale of the existing streetscape.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment:

Having regard to the matters stipulated above, the proposal will not adversely impact the street frontage.

- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment*

Comment:

As noted throughout this report, the proposal responds to established development within the locality.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D10.8 Side and rear building line (excluding Newport Commercial Centre)

Description of non-compliance

The control requires structures be setback a minimum of 1m from one side boundary and a minimum of 2.5m from the other side boundary.

The proposed development is sited 1.7m at its closest point to the northern side boundaries, therefore representing a variation of 32% (2.5m).

Merit consideration

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

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

Comment:

The proposed secondary dwelling is centrally sited and is well articulated such that the dominance of the built form is reduced. The development remains within the maximum allowable building height, and it is also noted that the proposal generally complies with P21DCP landscaped area provisions, so that native vegetation is retained and protected. In turn, the built form will remain sufficiently screened as presented to the public domain and surrounding properties. The proposal is therefore considered to achieve the desired future character of the locality.

- *The bulk and scale of the built form is minimised.*

Comment:

The inclusion of varying materials and setbacks allows for the bulk and scale of the built form to be minimised. It is also noted that sufficient planting is proposed within the eastern setback area, which will provide adequate screening to the ground floor deck and eastern elevation of the proposed secondary dwelling.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

The proposal is considered to equitably preserve the available views and vistas to and/or from public and private places.

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

Comment:

The proposal is considered to achieve a reasonable level of view sharing as a result of the complimentary siting of the built form, in conjunction with its site-specific design.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

Comment:

The proposal is considered to provide reasonable amenity for the dwelling occupants and those of adjoining and surrounding properties as a result of adequate building separation, site orientation and aspect and landscape treatment.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

Comment:

The proposal has included a detailed landscape plan which ensure critical vegetation is protected, while sufficient tree replacement planting and boundary planting is implemented, such that the landscape outcomes of Pittwater 21 DCP are achieved. Furthermore, Council's Landscape Officer has reviewed the proposal and raised no objection subject to conditions requiring protection of existing vegetation and adequate tree replacement. As a result of the site's topography in conjunction with the provision of landscaping, the built form will remain largely unseen as viewed from the streetscape.

- *Flexibility in the siting of buildings and access.*

Comment:

The development has been sited appropriately in accordance with the site constraints and the surrounding residential context, ensuring reasonable amenity can be maintained for the dwelling occupants and those of adjoining and surrounding properties.

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

Comment:

As above, the proposed development will provide high quality landscaping outcomes. In turn, the built form will remain significantly screened from the existing provision of vegetation. Conditions of consent have been imposed requiring the protection of significant species currently on-site which will assist in the retention of landscape treatment.

- *To ensure a landscaped buffer between commercial and residential zones is established.*

Comment:

Not applicable, given the subject site does not adjoin and commercially zoned property.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D10.13 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

The proposal provides 58.9% (568.1sqm) of the site towards landscaped area.

The control requires a minimum of 60%.

Notwithstanding, when including the 6% impervious variation allowed by the control, the proposal complies with the minimum requirements of this control.

Merit assessment

The development is assessed against the outcomes of the control, as follows:

- *Achieve the desired future character of the Locality.*

- *The bulk and scale of the built form is minimised.*
- *A reasonable level of amenity and solar access is provided and maintained.*
- *Vegetation is retained and enhanced to visually reduce the built form.*
- *Conservation of natural vegetation and biodiversity.*
- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*
- *To 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.*

Comment:

The proposal is for a secondary dwelling house in an E4 Environmental Living zone. The non-compliance is minor, the dwelling is of a good design with a minimal bulk and scale, and the amenity impacts on the neighbouring properties are not unreasonable given the circumstances and site constraints. In addition, the proposal includes a landscape that demonstrates high quality landscape outcomes, which will enhance the site while improving biodiversity. Stormwater runoff will be appropriately managed and usable outdoor spaces for the residents will be provided.

Overall, the development will be consistent with the desired future character of the locality.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/0064 for Alterations and additions to a dwelling house and construction of a secondary dwelling on land at Lot 5 DP 12797, 41 Wallumatta Road, NEWPORT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

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Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
2001 - 01 Rev3: Site plan	10 June 2021	Belli Design Building Plan
2001 - 02 Rev2: Secondary dwelling ground floor plan	10 June 2021	Belli Design Building Plan
2001 - 03 Rev2: Secondary dwelling east west elevations	10 June 2021	Belli Design Building Plan
2001 - 04 Rev2: Secondary dwelling north south elevations, section A-A	10 June 2021	Belli Design Building Plan
2001 - 05 Rev2: Secondary dwelling and upper awning plan	10 June 2021	Belli Design Building Plan
2001 - 06 Rev2: Main residence floor plan	10 June 2021	Belli Design Building Plan
2001 - 07 Rev2: Main residence east west elevations	10 June 2021	Belli Design Building Plan
2001 - 08 Rev2: Main residence roof plan, north elevation, section B-B	10 June 2021	Belli Design Building Plan
2001 - 09 Rev1: Schedule of finishes	10 June 2021	Belli Design Building Plan

Engineering Plans		
Drawing No.	Dated	Prepared By
SW2 - Stormwater management plan	14 January 2021	Water design civil engineers
SW3 - Section and details	14 January 2021	Water design civil engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Flora and Fauna Impact Assessment	01 July 2021	Total Health Care
Bushfire Hazard Assessment Report	14 January 2021	Control Line Consulting
Geotechnical Report	31 March 2021	White Geotechnical Group
Arboricultural Impact Assessment & Tree Protection Plan	01 December 2020	The Ents Tree Consultancy

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

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

Landscape Plans		

Drawing No.	Dated	Prepared By
L/01: landscape plan	02 July 2021	A Total Concept

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	20 January 2021	Gerard & Wendy Lawrence

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

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

2. 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
AHO	Response AHO Referral	03 May 2021

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website 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 Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the

following information:

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are

breaking up/removing materials from the site).

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

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

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

adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. **Security Bond**

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

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

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

To process the inspection fee and bond payment a Bond Lodgement Form must be completed

with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

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

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

6. Pier Footing Design Near Trees to be Retained

Pier footing structural layout plans for the external works including the proposed secondary dwelling and access pathway, shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer. The Arborist shall review, comment, recommend design revision as required and approve the pier footing layout, to ensure the locations of piers will be manageable in terms of tree protection measures.

The Arborist shall submit certification to the Certifying Authority, that the locations of the pier footings are accepted. The agreed pier footing structural layout plans shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate.

Reason: Tree protection.

7. 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 prepared by White Geotechnical Group, J3100, dated 02-12-2020 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 Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

8. Compliance with Ecologist's Recommendations – Pre-construction

All pre-construction biodiversity-related measures specified in the Flora and Fauna Impact Assessment Report (Total Earth Care, July 2021) and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with pre-construction measures are to be certified by the Project Ecologist and provided to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

9. No Clearing of Vegetation

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

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

Reason: To protect native vegetation.

10. **Amendment of Landscape Plans**

The submitted Landscape Plan is to be amended in accordance with the following:

- Provision of an additional three (3) *Corymbia maculata* for planting within the site, in addition to the three (3) replacement canopy trees.

The amended Landscape Plan is to be certified by a qualified landscape architect and provided to the Certifying Authority prior to issue of the Construction Certificate.

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

11. **Boundary Identification Survey**

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

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

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

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

12. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Water Design Civil Engineers, drawing number SW1 to SW3, Job No. 2020-073, dated 14-01-2021 and also certify that the existing approved stormwater system can accommodate the additional flows. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. OSD to be provided in accordance with Clause 9.0 of Council's Water Management for Development Policy.
- ii. Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

13. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a

gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

14. Engagement of Project Ecologist

A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures are carried out in accordance with the Flora and Fauna Impact Assessment Report (Total Earth Care, July 2021).

The Project Ecologist must have one of the following memberships / accreditation:

- Practising member of the NSW Ecological Consultants Association (<https://www.ecansw.org.au/find-a-consultant/>) OR
- Biodiversity Assessment Method Accredited Assessor under the relevant legislation (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

Evidence of engagement of the Project Ecologist is to be provided to the Certifying Authority Prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife.

15. Compliance with Standards

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

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

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

16. Sydney Water "Tap In"

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on

Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.

Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including:

i) all demolition, excavation and construction works within the TPZ's and SRZ's of trees to be retained.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

18. **Tree Removal Within the Property**

This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment):

- i) *Alpitonia exelsa*, located centrally within the rear yard within the footprint of proposed works, Tree No. 10,
- ii) *Cryptocarya glaucescens*, located centrally within the rear yard within the footprint of proposed works, Tree No. 15,
- iii) *Corymbia maculata*, located within the front setback adjacent to the existing driveway, Tree No. 27,
- iv) *Corymbia maculata*, located within the front setback adjacent to the existing driveway and western boundary, Tree No. 28.

Note:

- i) Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.
- ii) Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with

minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

Reason: To enable authorised building works.

19. Compliance with Ecologist's Recommendations – During Construction

All biodiversity-related measures are to be implemented during construction in accordance with Flora and Fauna Impact Assessment Report (Total Earth Care, July 2021)

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifying Authority.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

20. Impacts to Protected Native Wildlife

Habitat for native wildlife including all vegetation proposed for removal is to be inspected for native wildlife by the Project Ecologist prior to removal. If native wildlife is found within habitat to be removed, the wildlife is to be safely relocated by the Project Ecologist.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded, in addition to details of any action taken in response.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be prepared by the Project Ecologist and provided to the Principal Certifying Authority

Reason: To protect native wildlife.

21. Dead or Injured Wildlife

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

Reason: To protect native wildlife.

22. Temporary Protection Fencing – Exclusion Zones

Prior to the commencement of any works onsite, temporary mesh construction fencing is to be erected and maintained for the duration of construction activities to delineate the southern portion of the site mapped within the BV mapped area. This is to ensure no removal of vegetation from within the BV mapped area.

Details demonstrating compliance must be prepared by the Project Ecologist and submitted to the Principal Certifying Authority prior to any commencement.

Reason: To protect native vegetation.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

23. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Tree protection.

24. **Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, as listed in the following sections:

- i) Section 5 - Recommendations,
- ii) Appendix 4 - Proposed Site Plan & Tree Protection Plan.

The Certifying Authority must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
- e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

25. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

26. **Survey Certificate**

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

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

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

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

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

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

28. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

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

29. **Landscape Completion**

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

i) at minimum, 6x locally native canopy trees shall be planted within the site. Of these, 3x must be *Corymbia maculata* in order to reinforce the Pittwater Spotted Gum Forest located within the site. It is noted the amended Landscape Plans show 3x canopy trees, hence the replacement of *Elaeocarpus reticulatus* with *Corymbia maculata* would be supported as this would total 6x canopy trees within the site.

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

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

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

Reason: Environmental amenity.

30. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by the project arborist shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

31. **Compliance with Ecologist's Recommendations – Post Construction**

All biodiversity-related measures are to be implemented at the appropriate stage of development in accordance with the Flora and Fauna Impact Assessment (Total Earth Care, July 2021).

Satisfactory establishment/initiation of post-construction measures is to be certified by the Project Ecologist and provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

32. **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 Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

33. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the amended and approved Landscape Plans and these conditions of consent.

Details demonstrating compliance are to be prepared by the landscape architect and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

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

34. **Replacement of Canopy Trees**

At least six (6) locally native canopy trees are to be planted on site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m. Three (3) are to be *Corymbia maculata*.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

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

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2021 – 2026) are to be imported on to the site prior to or during construction works.

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

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

36. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original 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 by a Registered Surveyor) and Hydraulic Engineers' certification for the completed onsite stormwater detention system works. A guide to the process can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdfforms/legaldocumentsa-on-site-stormwater-detention-systems/guide-submitting-lda-anov19.pdf>

The form for the application can be found on Council's website using the following link.

[https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdfforms/legaldocumentsa-on-site-stormwater-detention-systems/4023 legaldocumentsauthorisationoct19.pdf](https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdfforms/legaldocumentsa-on-site-stormwater-detention-systems/4023%20legaldocumentsauthorisationoct19.pdf)

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 lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard and not altered.

37. Retaining wall

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Final Occupation Certificate.

Reason: Public and Private Safety

38. 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 Certifying Authority prior to issue of the Final Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

39. Landscape Maintenance

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

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

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

Reason: To maintain local environmental amenity.

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

Signed



Kye Miles, Planner

The application is determined on 19/07/2021, under the delegated authority of:



Lashta Haidari, Acting Development Assessment Manager