

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2232
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Responsible Officer:	Adam Susko
Land to be developed (Address):	Lot B DP 416603, 1851 Pittwater Road BAYVIEW NSW 2104
Proposed Development:	Demolition works and construction of a dual occupancy
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Marjorie Vera Gamble
Applicant:	Marjorie Vera Gamble

Application Lodged:	30/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	07/12/2021 to 12/01/2022
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,595,000.00
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EXECUTIVE SUMMARY

This Development Application seeking consent for demolition works and the construction of an attached dual-occupancy development is reported to the Development Determination Panel (DDP) as more than three unique objections have been received and the capital investment value of the proposal exceeds \$1 million.

The exhibition of the application attracted submissions from five (5) households which raised a number of concerns regarding the driveway location, car parking and a restrictive development covenant that applies to the land. Questions were raised in submissions about the site's right to have an access on the adjoining Vista Avenue when the property address is on Pittwater Road.

The concerns raised are all addressed later in this report, but in summary is it found that there is no

issue with retaining the existing driveway crossing onto Vista Avenue; that the shortfall in car parking has been rectified by amended plans; and that the restrictive covenant is not a matter for Council to consider as it has not been imposed by Council for a planning purpose.

Generally the proposal is compliant with all relevant built form controls, with two variations to the front building line (5%) and the building envelope to the southern elevation (28.5%). These variations, and the proposal as a whole, are not found to have any unreasonable impacts on the environment and amenity of neighbouring property owners.

On balance it is considered that the proposed development is reasonable in its context, and therefore this report concludes that the DDP, as the consent authority, **APPROVES** the DA.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for demolition works and the construction of a part-one/part-two storey dual-occupancy development with associated parking and private open space areas.

ADDITIONAL INFORMATION

During the course of the application, Council requested additional information from the applicant, including; a Biodiversity Development Assessment Report, a new car parking space (from 3 to 4 spaces), further details about the extent of an existing covenant, and stormwater details.

The applicant provided the additional information to Council which has been made available on Council's website. The additional information did not necessitate the renotification of the application.

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 - 1.9A Suspension of covenants, agreements and instruments
Pittwater Local Environmental Plan 2014 - 4.1B Minimum lot sizes for dual occupancies
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve
Pittwater 21 Development Control Plan - D4.5 Front building line
Pittwater 21 Development Control Plan - D4.8 Building envelope

SITE DESCRIPTION

Property Description:	Lot B DP 416603 , 1851 Pittwater Road BAYVIEW NSW 2104
Detailed Site Description:	<p>The subject property is legally described as Lot B in Deposited Plan 416603 and is known as 1851 Pittwater Road, Bayview.</p> <p>The site falls within the R2 Low Density Residential zone pursuant to the Pittwater Local Environmental Plan 2014.</p> <p>The site is irregular in shape with a width of around 39m, depth of 30m and an access handle to Vista Avenue to the northwest measuring some 14m in length. Overall the site has a surveyed area of 1,043m².</p> <p>Presently the site accommodates a part-one / part-two storey detached brick dwelling.</p> <p>Topographically the site falls by about 8m from west to east, and then drops another 7m across Council's road reserve down to Pittwater Road.</p> <p>The property accommodates a number of large, mature native trees as well as other vegetation.</p> <p>The property is bound by a Council pathway to the north, a 15m wide densely vegetated road reserve to the north, a private driveway to the south and a dwelling house to the west.</p>

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000	Division 8A 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

Section 4.15 Matters for Consideration	Comments
(EP&A Regulation 2000)	<p>consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to stormwater management and covenants applying to the property.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan 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 not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 07/12/2021 to 12/01/2022 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 6 submission/s from:

Name:	Address:
Mr John Joseph William Illingsworth	7 Vista Avenue BAYVIEW NSW 2104
Natalie Jane Parkinson	13 / 90 Mona Vale Road WARRIEWOOD NSW 2102
Mrs Dorothy Louise Anderson	11 Vista Avenue BAYVIEW NSW 2104
O'Brien Legal	Suite 2 196 Military Road NEUTRAL BAY NSW 2089
Ms Heather Margaret Rulli	1847 Pittwater Road BAYVIEW NSW 2104
Ms Lynette Illingsworth	7 Vista Avenue BAYVIEW NSW 2104

During the notification of the application, submissions were received from five (5) individual households. One of those submissions included a petition with several signatures, however in accordance with Council's Community Participation Plan, the petition only constitutes one objection.

Another submission objected to any changes to the vehicular access point into the site via an existing private road, however such is not proposed under this application.

The following issues were raised in the remaining submissions:

- **Driveway**
- **Carparking**
- **Covenant**
- **Construction impacts**

The above issues are addressed as follows:

- **Driveway**

Four (4) objections received stated that the proposal should not get vehicular access from Vista Avenue, but should instead obtain access from Pittwater Road or an adjoining private road. One objection from a partial owner of the private road objects to the proposal obtaining access over the private road.

Comment:

The existing dwelling obtains vehicular access from Vista Avenue across Council's road reserve before reaching the boundary of the site. The proposal seeks to retain this driveway and crossing. There is no legal impediment to the property obtaining access from Vista Avenue.

The alternatives suggested by objectors have been considered. Requiring vehicular access to Pittwater Road would require major tree removal, ground works and disruption to a main road. It is unlikely that the vegetative impacts would be supported. The alternate access proposed is over private property. The proposed vehicular access is on the subject site itself and Council land. Despite the shape of the road reserve being different to neighbouring sites, the operation of a driveway over a road reserve exists on every property, and this application is no different.

A submission states that the proposal doesn't comply with the relevant Australian Standards, and it is noted that such matters are addressed by way of condition if a consent is granted.

A submission also states that the proposal could jeopardise pedestrian safety, particularly along the adjoining pathway. No evidence to demonstrate a safety risk has been supplied. In the absence of such evidence, it is not considered that pedestrian safety is jeopardised, and it is considered that the relevant Australian Standards would ensure a safe pedestrian environment is achieved.

These concerns are addressed by condition and do not warrant the refusal of the application.

- **Carparking**

The submissions raised concerns that the proposal provided only 3 spaces and not the required 4 spaces.

Comment:

Amended plans were received during the course of the application which provided for an additional car parking space, therefore achieving the 4 spaces and complying with the controls.

This matter has been satisfied by amended plans.

- **Covenant**

The submissions raised concerns that the proposal is inconsistent with a covenant that applies to the property which seeks to restrict the buildable area.

Comment:

The covenant in question is not a covenant imposed or required to be imposed by Council. It is understood (but not confirmed) that the original intention of the covenant was to protect a view corridor. The covenant does not constitute a Planning Agreement.

Clause 1.9A of the Pittwater Local Environmental Plan 2014, makes it clear that given the above factors, the covenant does not apply to the development, and therefore no weight can be given to this matter.

Notwithstanding the above, for clarity it appears that the building complies with the covenant, but that a small pergola covered with an operable roof and bound by a clear glass screen (for acoustic attenuation) encroaches beyond the covenant line. No amenity concerns regarding the

encroachment beyond the covenant line have been stated by objectors.

This matter does not warrant the refusal of the application.

- **Construction Impacts**

The submissions raised concerns that the construction process would result in increased traffic, on-street parking, noise and dust.

Comment:

Construction inherently creates a temporary period of increased noise and traffic, and this is somewhat unavoidable with any construction works on a property. Conditions are imposed in the recommendations of this report which regulate hours of construction, and enforce noise and dust requirements as per the Australian Standards. Whilst inconvenient, there is no legal basis to prohibit trades people from utilising public street parking that is available for anyone to park in.

These concerns do not warrant the refusal of the application, and are appropriately addressed via conditions where possible.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application is for the demolition of the existing dwelling and the construction of a dual occupancy residence, and landscape works. A Landscape Plan and a Arboricultural Impact Assessment accompany the application and are assessed as part of this Landscape Referral.</p> <p>Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none">• B4.22 Preservation of Trees and Bushland Vegetation• C1.1 Landscaping• D4 Church Point and Bayview Locality <p>The Landscape Plan submitted proposes landscape surface treatments, structures and planting that enhance the landscape outcome of the property and no concerns are raised.</p> <p>The Arboricultural Impact Assessment recommends the removal of one locally native tree species, identified as tree number 25 - Spotted Gum, of high retention value. The concerns of Natural Environment Referral Team - Biodiversity are noted regarding this tree and any approval to either remove this tree or otherwise is subject to approval from Council's Biodiversity Referral Team.</p> <p>The Arboricultural Impact Assessment recommends the removal of three Exempt Species identified as tree numbers 10, 23 and 24 in proximity to development works, and these do not require Council consent.</p>

Internal Referral Body	Comments
	<p>It is noted that the property contains many locally native trees that are not impacted by development works and recommendations for protection measures are included in the Arboricultural Impact Assessment, and that it is noted that any redesign shall not result in the building alignment altered to be closer to these locally native trees, including the high retention value trees located east of tree number 25 such as other Spotted Gums numbered 13, 14, 15, and 16, and the Lemon Scented Gum numbered 11.</p> <p>Should the development application be approved, Landscape Referral provide conditions of consent for landscape works completion and for the tree protection measures.</p>
NECC (Bushland and Biodiversity)	<p>The application seeks approval for the demolition of the existing single dwelling and construction of new one and two storey attached residences with external works and landscaping.</p> <p>Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p>Biodiversity Conservation Act 2016 (BC Act) Biodiversity Conservation Regulation 2017 Pittwater Local Environmental Plan (PLEP)</p> <ul style="list-style-type: none"> 7.6 Biodiversity Protection <p>Pittwater Development Control Plan (PDCP)</p> <ul style="list-style-type: none"> B4.6 Wildlife Corridors <p><u>Updated Recommendation - 28/04/2022</u> The submission of the updated BDAR is noted. All requests for update or clarification to the biodiversity aspects of the DA have been made by the consultant, therefore Council's Natural Environment Unit - Biodiversity have no objection to the proposal.</p> <p>Subject to conditions the Natural Environment Unit - Biodiversity find the application to be consistent against relevant environmental controls.</p> <p><u>Original Recommendation - 8/12/2022</u> The rear (east) of the site is located within the Department of Planning, Industry and Environment's (DPIE) Biodiversity Values mapping: https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap</p> <p>Any removal of native vegetation from within mapped areas will trigger the Biodiversity Offset Scheme (BOS).</p>

Internal Referral Body	Comments
	<p>No objection is raised by Council's Natural Environment Unit - Biodiversity with regard to the proposed removal of exotic trees (T. 10, 23 & 24), however Tree 25 (<i>Corymbia maculata</i>) is a native species, the removal of which requires assessment under the Biodiversity Assessment Methodology 2020 as it is situated within DPIE's Biodiversity Values mapping.</p> <p>The applicant is encouraged to redesign in order to retain Tree 25, or must alternatively submit a Biodiversity Development Assessment Report (BDAR) prepared by an Accredited Assessor: https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor</p> <p>On receipt of updated designs providing for retention of Tree 25 and all other native vegetation, otherwise the submission of the required BDAR, Council's Natural Environment Unit - Biodiversity can reassess the application.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 The subject land has been included on the ' Proximity to Coastal Wetlands Area' map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 11 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under clauses 11 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p>

Internal Referral Body	Comments
	<p>No other coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>
NECC (Development Engineering)	<p><i>Planner comment: At the time of writing final conditions and comments remain outstanding from Council's Development Engineering department, however the extent of those comments are not considered to be tantamount to a recommendation other than Approval.</i></p> <p><i>On that basis, this report is proceeding to the DDP in anticipation of Engineering comments being received before that date.</i></p> <p>3/3/2022: The development application is for the demolition of the existing dwelling and construction of a dual occupancy residence with landscape works.</p> <p>Access There is bushland Reserve between the site and Pittwater Road therefore the site has no direct frontage to Pittwater Road. Pedestrian access is by a public pathway runs beside the northern side of the site. There is existing driveway and crossing from Vista Avenue. No changes are proposed to existing driveway.</p> <p>Existing driveway seems to be non compliant to Council's standard driveways profiles, applicant to apply for vehicle crossing application.</p> <p>Stormwater No site stormwater management plans are provided. Applicant to provide the same.</p> <p>Geotech Site is mapped as Geotechnical Hazard Area H1. Geotechnical assessment by ASCENT Geotechnical Consulting, Ref AG 21412, Dated 2nd Dec 2021 is provided with form 1 and 1a.</p> <p>13/04/2022: Stormwater plans prepared by ITM Design Pty Ltd, Issue A, Job No 21/154, Drawing No-H-DA-00 to H-DA-03, Dated 04/04/2022 are provided.</p> <p>Onsite Stormwater Detention system for both dwellings is proposed but no hydraulic calculations are provided (Volumes of tanks etc.).</p> <p>Also it is unclear that how much freeboard is available between habitable floor and top of OSD tank?</p>

Internal Referral Body	Comments
	<p>Underground OSD tanks should have maintenance access hatch and it must be able to be accessed externally to the building.</p> <p>Applicant to provide hydraulic calculations, sections showing locations of tanks (with dimensions) and access to tanks.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater.</p> <p>No objection to the application, subject to conditions.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Aboriginal Heritage Office	<p><i>Supported, with conditions</i></p> <p><i>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.</i></p> <p><i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i></p> <p><i>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</i></p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and

operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

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

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

Comment:

The site is noted as being in land proximate to coastal wetlands. The consent authority may be satisfied that the proposed development will not significantly impacted on the criterion of cl.2.8(1)(a) and (b) as

above.

Division 5 General

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

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

Comment:

The development is to be constructed on an already developed site in a residential area, notwithstanding the fact that the land is proximate to coastal wetlands. The proposal is not considered likely to caused an increased risk of coastal hazards generally.

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

Is the development permissible?	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
Minimum Lot sizes for Dual Occupancy	800sqm	Lot Size: 1,043sqm	-	Yes
Height of Buildings	8.5m	7.5m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.1B Minimum lot sizes for dual occupanices	Yes
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

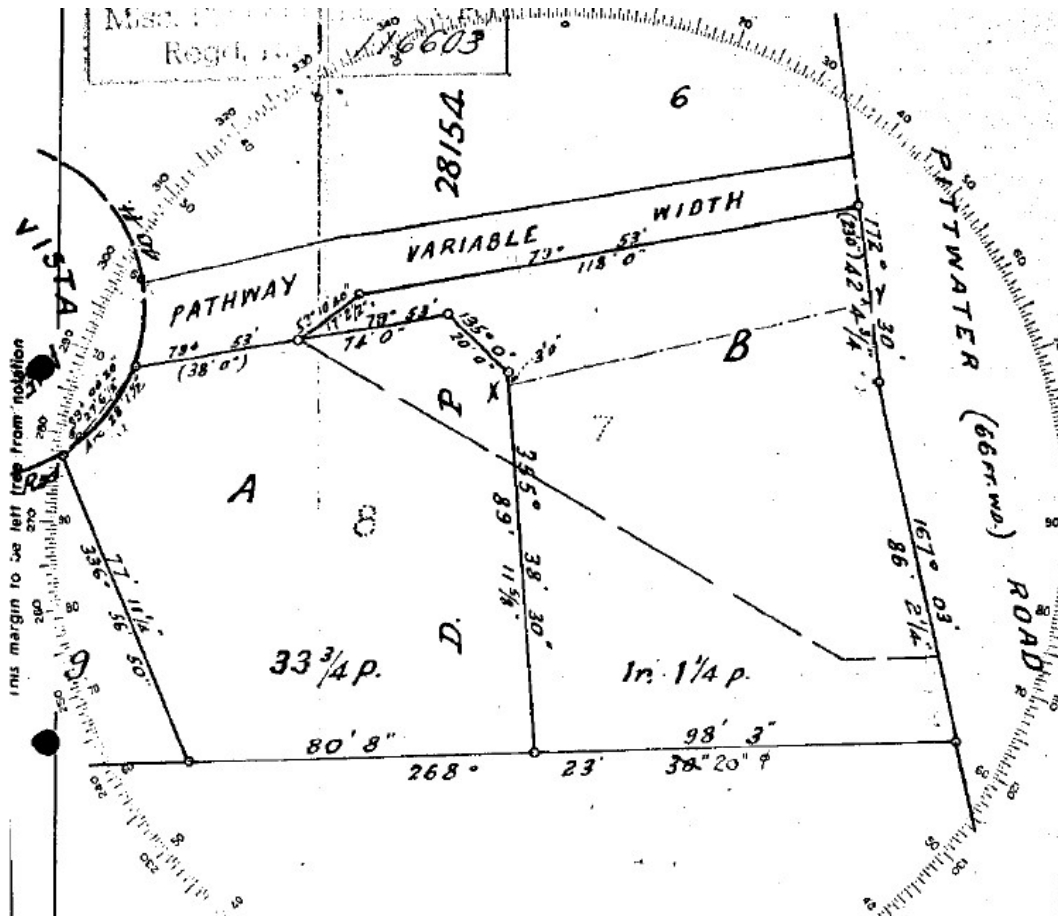
Detailed Assessment

1.9A Suspension of covenants, agreements and instruments

The site is subject to a covenant referenced as 'H566786' which relevantly includes a provision which reads:

(a) That no building or structure ill be erected North of a line parallel with and 9 feet south of the line marked X-Y on the said plan.

The title documents include a diagram depicting the aforementioned line:



It is understood (but not confirmed) that the original purpose of this covenant was to retain a view corridor from No. 11 Vista Avenue to the west ('A' on the diagram) over the site and towards Bayview.

Clause 1.9A of PLEP 2014 reads:

1.9A Suspension of covenants, agreements and instruments

- (1) For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.*
- (2) This clause does not apply—*
 - (a) to a covenant imposed by the Council or that the Council requires to be imposed, or*
 - (b) to any relevant instrument within the meaning of section 13.4 of the [Crown Land Management Act 2016](#), or*
 - (c) to any conservation agreement within the meaning of the [National Parks and Wildlife Act 1974](#), or*
 - (d) to any Trust agreement within the meaning of the [Nature Conservation Trust Act 2001](#), or*
 - (e) to any property vegetation plan within the meaning of the [Native Vegetation Act 2003](#), or*
 - (f) to any biobanking agreement within the meaning of Part 7A of the [Threatened Species Conservation Act 1995](#), or*
 - (g) to any planning agreement within the meaning of Subdivision 2 of Division 7.1 of the Act.*
- (3) This clause does not affect the rights or interests of any public authority under any registered instrument.*
- (4) Under section 3.16 of the Act, the Governor, before the making of this clause, approved of subclauses (1)–(3).*

The covenant is understood to have been made in a civil capacity and was not imposed or required to be imposed by Council. The covenant does not constitute a Planning Agreement.

The covenant restricts the carrying out of development on a portion of the site, however that restriction is not consistent with the requirements of the relevant environmental planning instruments.

Given the inconsistency between the relevant instruments and the covenant, the covenant which restricts the carrying out of development does not apply to the extent necessary to serve that purpose.

Therefore, the covenant is not a relevant consideration to the determination of this application and holds no weight.

4.1B Minimum lot sizes for dual occupancies

Clause 4.1(B) of the Pittwater Local Environmental Plan 2014 (PLEP 2014) requires that:

1. *Development consent may only be granted to development on a lot for the purpose of a dual occupancy if:*
 - a. the development is permitted on that lot with development consent, and*
 - b. the area of the lot is equal to or greater than 800 square metres.*

Development for the purpose of a dual occupancy development is permitted in the R2 Low Density Residential zone with development consent.

The site has a surveyed area of 1,043sqm and therefore complies with the minimum lot area pursuant to subclause (b).

Therefore, the site is permitted and capable of accommodating a dual occupancy.

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment: The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

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

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

(b) the consent authority is satisfied that:

- (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and*

significant adverse impact on the development and the land surrounding the development, or
(ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or
(iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	(east to Pittwater Road) 10.0m	Balcony (dwelling 2) - 9.5m Building - 10-11m	5% -	No Yes
Rear building line	(west) 6.5m	6.5 - 9.0m	-	Yes
Side building line	(north) 2.5m	Patio - 4.9m Building - 8.0m	- -	Yes Yes
	(south) 1.0m	1.0m	-	Yes
Building envelope	(north) 3.5m	No encroachments	-	Yes
	(south) 3.5m	Two encroachments, maximum 1m in height by 4.5m in width	28.5%	No
Landscaped area	60% (625.8sqm)	60.2% (628sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.8 Dual Occupancy Specific Controls	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.2 Scenic protection - General	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	No	Yes
D4.6 Side and rear building line	Yes	Yes
D4.8 Building envelope	No	Yes
D4.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D4.11 Fences - General	Yes	Yes
D4.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

B6.1 Access driveways and Works on the Public Road Reserve

Concerns have been raised in several submissions received about the location of the proposed driveway.

The proposal seeks to utilise the existing driveway location which connects to Vista Avenue to the west. The curtilage of the site and its relationship to Vista Avenue and Pittwater Road is shown on the below aerial image:



The remainder of land between the cul-de-sac end of Vista Avenue and the westernmost edge of the site (as well as the strip of land to the north of the site) is Council road reserve and is no different in classification to a traditional road reserve that runs in front of other houses.

The applicant is seeking to retain their existing driveway location, and no objections to this have been raised by Council's Development Engineers, subject to conditions.

On this basis, there are no concerns about the driveway location or its crossing-over of the road reserve.

D4.5 Front building line

Description of Non-Compliance

Clause D4.5 of the P21DCP requires a 10.0m setback to Pittwater Road. Whilst the building complies with this, a portion of the balcony on Dwelling 2 encroaches the setback area by 500mm, thus equating to a variation of 5%.

Merit Consideration

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

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

Comment:

The extent of variation to the front building line only occurs for a small portion of the width of frontage and is limited to a balcony only. The extent of variation does not inhibit the ability for the development to achieve the desired future character of the locality.

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

Comment:

The encroachment within the front building area does not detract from any views of vistas currently enjoyed from the public or private domain.

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

Comment:

The development is considered to provide an acceptable level of amenity to future occupants, notwithstanding the fact that the building is positioned on the busy Pittwater Road.

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

Comment:

The proposal does require the removal of one tree, however that removal is not consequent of the encroaching balcony, and is supported by the relevant referral bodies. The remaining landscaping in combination with the new landscape plan will visually reduce the built form from viewed from the public domain.

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

Comment:

Vehicular access to the site is not via the front boundary given topography and the extent of vegetation. This matter is discussed in more detail elsewhere in this report.

- *To preserve and enhance the rural and bushland character of the locality.*

Comment:

The proposal adequately preserves and enhances the bushland character of the locality.

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

Comment:

The building is of a compliant height and overscale

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

Comment:

The development provides an attractive street frontage and sits well within the landscape. The proposal maintains the existing driveway to Vista Avenue and the pedestrian experience does not change.

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

Comment:

The footprint, envelope and design of the building are considered to appropriately respond to the sites context, topography and landscaped setting.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant Outcomes of the Pittwater 21 Development Control plan 2014 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.

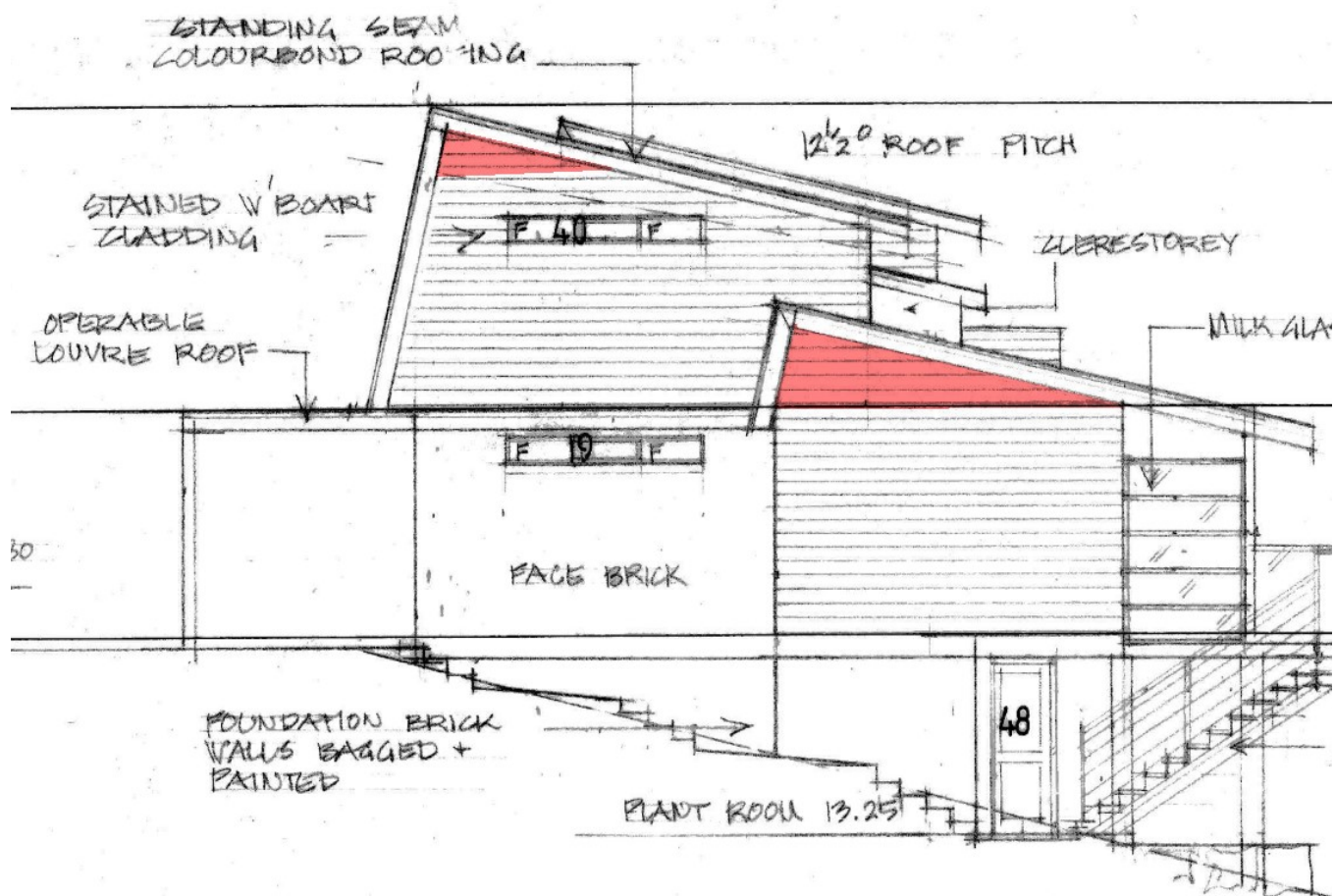
D4.8 Building envelope

Description of Non-Compliance

Clause D4.8 of the P21DCP prescribes a 3.5m building envelope control, measured from the northern and southern edges of the site.

In this instance, the southern elevation of the development encroaches the prescribed envelope in two locations, both in the form of gradually diminishing triangles. The larger of the two encroachments measures at a maximum height of 1.0m with a maximum width of 4.5m, thus equating to a variation of 28.5%.

The extent of variation is highlighted in red on the below diagram:



Merit Consideration

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

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

- Comment:

The variation sought to the building envelope control does not detract from the quality of the locality nor its desired future character.

The building as a whole is well articulated, formed of an interesting palette of materials and is surrounded by landscaping. The building would not be readily visible from the public domain, and the extent of variation is only visible from a shared communal driveway to the south.

On balance the proposal achieves the desired future character of the locality.

- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

- Comment:

The building is of a compliant density and height and generally sits beneath the height of trees on the site.

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

Comment:

The development is sensitively designed in response to the topography of the site and the placement of trees throughout.

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

Comment:

The overall bulk and scale of the built form is considered to be appropriate by way of having a 'broken up' massing, an interesting palette of materials and significant landscaping throughout.

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

Comment:

The encroachment of the building envelope is not considered to detract from the equitable preservation of views and vistas from the private and public domain.

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

Comment:

The development is not found to result in any adverse visual privacy or solar access impacts on adjoining properties.

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

Comment:

The development does seek to remove one tree, however that loss is supported by Council's Landscape and Bushland Officers as the loss is adequately compensated for. The encroachment of the building envelope does not require the removal of any vegetation.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes of the P 21 DCP 2014 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$15,950 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,595,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 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

The assessment of this application has concluded that the proposed development is appropriate for the context of the site and is appropriately sited and designed to minimise impacts on neighbours and the environment. Whilst concerns have been raised by the community regarding several aspects of the application, those concerns are not tantamount to the refusal of the application.

It is on that basis that this report concludes that the Development Determination Panel should **APPROVE** the development application.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/2232 for Demolition works and construction of a dual occupancy on land at Lot B DP 416603, 1851 Pittwater Road,

BAYVIEW, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
01 Rev. B - Site Plan	21 February 2022	Emiat Pty Ltd
02 Rev. B - Roof Plan, Ground & First Floor Plans	21 February 2022	Emiat Pty Ltd
03 Rev. B - Elevations & Cross Section	21 February 2022	Emiat Pty Ltd
04 Rev. A - Site Section & Longitudinal Section	21 February 2022	Emiat Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment & Tree Protection Plan	01 October 2021	The Ents Tree Consultancy
BASIX Certificate No. 1250248M	07 November 2021	Concept Designs Australia
Biodiversity Development Assessment Report	21 April 2022	ACS Environmental Pty Ltd
Geotechnical Assessment (ref:AG21412)	02 December 2021	Ascent Geotechnical Consulting
NatHERS Certificate No. 0006766158	07 November 2021	Concept Designs Australia
NatHERS Certificate no. 0006766125-01	07 November 2021	Concept Designs Australia

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
LP-01 Rev. B - Landscape & Open Space Area Diagram + Existing Trees Schedule	04 November 2021	Caldesign
LP-02 Rev. B - Landscape Plan + Proposed Planting List	04 November 2021	Caldesign

Waste Management Plan		
Report Title	Dated	Prepared By
Waste Management Plan	13 November 2021	Marjorie Gamble

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
Ausgrid	Ausgrid Referral Response	Undated

(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. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$15,950.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$1,595,000.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater

Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

6. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

7. **Notification of determination to which the Biodiversity Offset Scheme applies**

The applicant or Project Ecologist, on behalf of the applicant, must download and complete the "Biodiversity Offsets Scheme – Notification of Determination" form.

The completed form and attachments, including a copy of the determination and any conditions of approval, must be emailed to the LMBC Service Centre bam.support@environment.nsw.gov.au. The LMBC Service Centre arranges for determination outcomes to be recorded in the Biodiversity Offset and Agreement Management System (BOAMS).

Council's Manager Bushland and Biodiversity and the Certifying Authority must be copied into the notification email to confirm compliance.

Reason: To ensure the NSW Department of Planning, Industry and Environment are notified of determinations where the Biodiversity Offsets Scheme applies and Council are notified for compliance.

8. **Like for like credit retirement conditions - Ecosystem credit retirement conditions**

Prior to issue of the relevant Construction Certificate the class and number of ecosystem credits in Table 1 must be retired to offset the impacts of the development.

The requirement to retire credits outlined in Table 1 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table 1 requirements must be provided to the Manager Bushland and Biodiversity of Northern Beaches Council and to the Certifying Authority prior to release of construction certification.

Table 1 Ecosystem credits required to be retired – like for like

Impacted Plant Community Type	TEC	Number of ecosystem credits	Containing HBT	IBRA sub-region	Plant community type(s) that can be used to offset the impacts from development
1214 - Pittwater Spotted Gum Forest	Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion	1	No	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometers of the outer edge of the impacted site.	Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion This includes PCT's: 1214, 1589

Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

9. **Variation rule credit retirement conditions - Ecosystem credit retirement conditions**
Prior to issue of the relevant Construction Certificate the class and number of species credits in Table 2 must be retired to offset the impacts of development.

Evidence of the retirement of credits in satisfaction of Table 2 requirements is to be provided to the Manager Bushland and Biodiversity of Northern Beaches Council and the Certifying

Authority prior to release of construction certification.

Table 2 Ecosystem credits required to be retired – variation rules

Impacted plant community type	Number of ecosystem credits	Containment
1214-Pittwater Spotted Gum forest	1	No

Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

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

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

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

11. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

12. **Compliance with Standards**

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

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

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

13. **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

14. **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.

15. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

16. **Installation and Maintenance of Sediment and Erosion Control**

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. **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) or vi) 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 4 - Discussions
- ii) section 5 - Recommendations, excluding removal of tree 25 until advised for either removal, retention, or replacement

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.

18. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls 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 vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

19. **Geotechnical Requirements**

All recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent, that are required to occur during works must be done.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

20. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

21. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

22. **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.

23. **Waste Management During Development**

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

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

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

24. **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.

25. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan,

i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees, and shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3 metres from buildings for small trees and 5 metres from buildingd for medium to large trees, and at least 2 metres from common boundaries,

ii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space, and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative.

<https://5milliontrees.nsw.gov.au/>

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

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

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

27. **Priority Weed Removal and Management**

All Priority weeds as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) within the development footprint are to be removed.

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 weeds.

28. **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 Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

29. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from

demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

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

30. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

31. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.