

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0885
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Responsible Officer:	Luke Zajac
Land to be developed (Address):	Lot 30 DP 22275, 82 Binburra Avenue AVALON BEACH NSW 2107
Proposed Development:	Alterations and additions to a dwelling house including garage
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Kirsten Jane Higgins Simon Travis Coles
Applicant:	Kerrie Shimeld

Application Lodged:	03/06/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	14/06/2022 to 28/06/2022
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 250,000.00
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PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for construction of a new single garage with a landscaped rooftop terrace and pergola and associated earthworks. The existing driveway would be removed and replaced with landscaping including a ground level deck.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report)

taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater 21 Development Control Plan - A1.7 Considerations before consent is granted

Pittwater 21 Development Control Plan - A4.1 Avalon Beach Locality

Pittwater 21 Development Control Plan - D1.1 Character as viewed from a public place

Pittwater 21 Development Control Plan - D1.4 Scenic protection - General

Pittwater 21 Development Control Plan - D1.8 Front building line

Pittwater 21 Development Control Plan - D1.9 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot 30 DP 22275 , 82 Binburra Avenue AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Binburra Ave.</p> <p>The site is irregular in shape with a frontage of 14.3m along Binburra Ave and a depth of 77m-92m. The site has a surveyed area of 1,782m².</p> <p>The site is located within the C4 Environmental Living zone and accommodates a two storey weatherboard dwelling house, concrete driveway, landscaping in the front setback and steep natural bushland in the rear.</p> <p>The site slopes steeply on a westerly aspect from Badgally Headland to the east to the low point at the Binburra Ave street frontage.</p> <p>The site contains extensive natural bushland in the rear setback. The front setback where the works are proposed consists of weeds, banana trees and turf.</p> <p>Detailed Description of Adjoining/Surrounding Development</p>

The locality contains extensive natural bushland that adjoins the Badgally Headland Reserve. The site, and adjoining sites including 78, 80 and 84 Binburra Ave contain extensive vegetation within the front setback that, due to the slope of the land, present as a green wall to the streetscape that bookends the curve of Binburra Ave.

Adjoining development is characterised by one-two storey dwellings sited within a landscaped setting that responds to the steep slope of the land. In response to the slope, most sites contain curved driveways that negotiate the hill to provide access to attached lower ground garages behind the building line.

Front car parking structures are limited in number and are provided to the low side of Binburra Ave, consisting light weight carport structures.

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:

- Alterations and Additions - Alterations and additions to an existing dwelling house - Approved 3/8/2016.

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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. This matter would be addressed via a condition of consent were the application recommended for approval.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Council advising that it does not support the proposed non-complying building elements.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter would be addressed via a condition of consent were the application recommended for approval.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter would be addressed via a condition of consent were the application recommended for approval.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter would be addressed via a condition of consent were the application recommended for approval.</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 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</p>

Section 4.15 Matters for Consideration	Comments
	impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for a dwelling house and ancillary development. However, the proposed development does not provide an appropriate contextual response in relation to the applicable controls or the character of the surrounding locality.
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	This assessment has found the proposal to be contrary to the relevant requirements of the P21 DCP and PLEP 2014 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

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 (prepared by Building Code & Bushfire Hazard Solutions Pty Limited, dated 13 May 2022). The report stated that the bushfire attack level of the site is “Flame Zone”. The application was subsequently referred to the RFS who issued concurrence to the proposed development, subject of recommended Conditions.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 14/06/2022 to 28/06/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Paul Colin Boler	80 Binburra Avenue AVALON BEACH NSW 2107
Mr Peter Raymond Sylvester Jones	43 Binburra Avenue AVALON BEACH NSW 2107

The following issues were raised in the submissions:

- Flooding
- Geotechnical
- Bulk and Scale

The above issues are addressed as follows:

- **Flooding**

The submissions raised concerns that serious flash flood events occur from Bangalley Headland.

Comment:

Council's development engineer has assessed the application and, following the submission of additional geotechnical information, has supported the application and proposed drainage scheme.

- **Goetechnical**

The submission from 80 Binburra Ave raised concerns regarding landslip risk to the rear of the subject site and surface water diversion as a result of the development.

Comment:

The submitted geotechnical report provides a number of recommendations to address landslip concerns, specifically the area of concern to the rear of the subject site as identified in the submissions. Should the development be approved these recommendations would form a condition of consent to reduce the risk of landslip in the locality.

- **Bulk and Scale**

The submissions raised concerns that the proposed garage will have adverse visual impacts on the locality due to its bulk and scale.

Comment:

In a Request For Information (RFI) letter dated 2 August 2022, Council advised that the proposal was not supported due to its visual, landscape, bulk and scale and character impacts on the locality. It was suggested that the proposal be amended to consist a light weight carport structure, which would minimise apparent bulk and scale in particular and reduce visual, landscape and character impacts. The applicant responded arguing that the proposed garage was a superior outcome, as it did not result in the adverse impacts listed in council's RFI, and that a carport would contribute to visual clutter. The response also referenced a past consent for a similar structure at 88 Binburra Ave (N0134/15), which Council had previously supported. It is noted that this consent was never commenced and lapsed on 13 August 2022, and is now invalid. No design amendments were made to the proposal.

Notwithstanding the response received, Council's original concerns were not resolved and the garage design, for the reasons specified throughout this report, cannot be supported in its current form. Refer to the recommendation section of this report for further discussion.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p>The development application is for alterations and additions to an existing dwelling including garage, landscaped roof top terrace, and landscape works including access provisions, walling and decking, as described and illustrated in the Reports and Plans.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, 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 • D1 Avalon Locality <p>The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone.</p> <p>The property is located at the frontage in proximity to the street upon the lower slopes. The majority of the property is natural bushland with many native trees and vegetation located away from the dwelling. No development impacts upon the natural bushland landscape is proposed and the objectives of the C4 land zone are maintained. The proposed garage at nil front boundary setback impacts the landscape setting along the streetscape and shall be considered by the Planning Assessment Officer under merit consideration.</p> <p>A garage rooftop landscape treatment is proposed including planters to the front edge of the garage facing the streetscape. Additionally the front setback includes landscape works comprising retaining walls, stairs and decking. No indication of planting to soften the proposed works is provided and should the application be approved, Landscape Referral shall provide conditions of consent.</p>
NECC (Bushland and Biodiversity)	<p>The potential impacts of the proposed garage has been assessed against the following planning controls:-</p> <ul style="list-style-type: none"> • Pittwater LEP 2014 cl 7.6 Biodiversity

Internal Referral Body	Comments
	<ul style="list-style-type: none"> P21 DCP B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor. <p>The site is bush fire prone land, and will other DCP controls apply such as B4.11 and B4.18, they are superseded by the above controls. The development will not require the removal of any significant vegetation for the purposes of an asset protection zone.</p> <p>The development is proposed on parts of the site identified as not containing native vegetation, and will not impact on bushland on the site or adjoining properties, and there will be no net loss of native vegetation. Therefore the development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Development Engineering)	<p>Applicant seeks approval for a garage within the front set back area.</p> <p>The proposed development is located within a Geotechnical Hazard H1 area. In accordance with Clause B3.1 Landslip Hazard of Pittwater 21 DCP, a risk assessment was under taken by White geotechnical group, however Risk Management Policy for Pittwater forms 1 and 1 (a) have not been submitted.</p> <p>DATED 16/06/2022</p> <p>Applicant has provided the above requested forms and applicant's Geotechnical Engineer has certified that an acceptable risk can be achieved. No Development Engineering objection subject to recommended conditions.</p> <p>09/09/2022: Proposed driveway and retaining structure works within public road reserve to be assessed under Road Act Application-Condition included.</p>
Parks, reserves, beaches, foreshore	<p>The development site adjoins Bangalley Headland Reserve that is located upslope of the property. The development proposal is located upon the lower slopes of the property and the proposed works do not impact upon adjoining Reserve land.</p> <p>Public access to the Reserve is not impacted by the proposed development and the development is not detrimental to the landscape character of the adjoining Reserve, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.</p>
Road Reserve	<p>There is limited impact on existing road infrastructure assets.</p> <p>Please refer DA back to Development Engineering Team to include condition for Road Act Application for Civil Works to provide details of and obtain approval for the demolition of the existing dry stack retaining wall and construction of new retaining wall to support excavation across road reserve for new driveway construction.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Rural Fire Service - Local Branch - EP&A Act, s4.14	The DA was referred to RFS who provided a responses stating that the proposal is acceptable subject to compliance with the relevant conditions included in their referral. These conditions would have been included as conditions of consent would the DA have been recommended for approval.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A449036 dated 23 May 2022).

A condition would have been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate would the DA have been recommended for approval.

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 would have been included in the recommended conditions of consent, had the development been recommended for approval.

SEPP (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?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	4.6m	N/A	Yes

Compliance Assessment

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

Detailed Assessment

Zone C4 Environmental Living

The underlying objectives of the C4 Environmental Living zone are:

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

Comment:

The proposed garage and associated structures will have adverse visual impacts to the special aesthetic values of the C4 Environmental living zone. The proposed garage will present to the streetscape as a 4.6m high solid wall, that due to its nil setback from the street, cannot be screened by native vegetation. This scale of development will have an adverse impact upon the sensitive aesthetic value of the site's C4 Environmental Living zoning, and is considered incompatible with the low density, bushland character of the locality.

It is considered that the development does not satisfy this objective.

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

Comment:

As discussed above, the proposed garage will have an adverse visual impact on the aesthetic of bushland character of the locality.

It is considered that the development does not satisfy this objective.

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

Comment:

The proposed development provides a 4.6m high garage with a nil setback to Binburra Ave, that is not considered compatible with expected low density development in the C4 Environmental Zone within Pittwater. The development requires substantial cut into the sloping site, failing to integrate with the existing landform of the locality.

The nil setback excludes any opportunity for substantial vegetation that would screen the development from the streetscape, reduce apparent bulk and scale and integrate the development into a landscaped setting. Located on the high side of Binburra Ave, the garage will be a dominant site feature when viewed from the public domain. The visual impact of the structure is exacerbated by the particular design, height and bulk of the proposal situated right on the front boundary, with the proposed rooftop planters failing to ameliorate the impacts. The impact is further exacerbated by the siting of the rooftop pergola and decking forward of the front building line within the front setback area.

A site visit was conducted by Council to investigate the nature of development within the vicinity of the site. The only structures forward of the front building line along Binburra Ave are limited to light weight, visually recessive carport structures, as envisioned by the expressed car parking structure variation under Clause D1.8 Front building line of the P21 DCP.

The siting of the garage with a nil setback to Binburra Ave represents a scale of development that fails to integrate with the landform and landscape of the site and surrounds,

resulting in adverse impacts to the special aesthetic values of the C4 zone and locality.

It is considered that the development does not satisfy this objective.

- *To protect and enhance the natural landscape by conserving remnant bushland and rock outcrops and by encouraging the spread of an indigenous tree canopy.*

Comment:

The portion of the site to be developed does not contain natural bushland or rocky outcrops. The dense bushland and rocky outcrops to the rear of the dwelling will be retained.

It is considered that the development satisfies this objective.

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C4 Environmental Living zone.

7.2 Earthworks

The objective of Clause 7.2 - '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 result in unreasonable amenity impacts on adjoining properties. The earthworks will facilitate the construction of an unreasonably bulky garage that will negatively impact the streetscape as viewed from the public domain and adjoining property, whilst the side setback variations provide insufficient separation between the adjoining properties. These visual and amenity impacts are further discussed throughout this assessment report.

(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 site is not mapped as being a potential location of Aboriginal or other relics.

(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 inconsistent 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 not supported, in this particular circumstance.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Nil (garage) 2m (Terrace) 4.7m (Deck) 5.5m (pergola)	100%	No
Rear building line	6.5m	>6.5m	N/A	Yes
Side building line	2.5m (S)	1m (Deck and privacy screen)	40%	No
	1m (N)	0.9m (Garage and Pergola)	10%	No
Building envelope	3.5m (S)	Within envelope	N/A	Yes
	3.5m (N)	Within envelope	N/A	Yes
Landscaped area	60% (1069.2sqm)	86% (1532sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.1 Avalon Beach Locality	No	No
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.18 Heathland/Woodland Vegetation	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.5 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
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D1.1 Character as viewed from a public place	No	No
D1.4 Scenic protection - General	No	No
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	No	No
D1.9 Side and rear building line	No	No
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes

Detailed Assessment

A1.7 Considerations before consent is granted

As discussed throughout this report, the proposed development is inconsistent with the aims of the PLEP 2014 and objectives of the C4 Environmental Living zone, will have an adverse impact to the desired character of the Avalon Beach locality and does not comply with key front and side building line development controls. The proposal is therefore unsupported.

A4.1 Avalon Beach Locality

The Avalon Beach Locality statement notes as follows:

"The locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape".

"Carparking should be provided on site and where possible integrally designed into the building".

"A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land".

Comment:

The proposed development is considered to be inconsistent with the desired future character statement of the Avalon Beach locality for the following reasons:

- The siting and size of the proposed garage and rooftop terrace fails to integrate with the existing steep landform and bushland landscape. The proposal requires over 5m of cut into the existing slope, with its nil setback unable to provide sufficient screening or replanting demanded by the bushland locality. The proposal will be incompatible with the surrounding vegetated streetscape and is more characteristic of an urban or medium density zone.
- Located on the high side of Binburra Ave, the garage will be a dominant site feature when viewed from the public domain. The visual impact of the structure is exacerbated by the particular design, height and bulk of the proposal situated right on the front boundary, with the rooftop planters and colour choice failing to ameliorate the impacts. The existing garage is integrated into the design of the dwelling, and whilst not the easiest to access, is the preferred option given the special aesthetic qualities of the streetscape.
- For the reasons discussed above, the proposed development fails to balance the landforms and landscape of the particular locality with the development of land.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the desired future character for the Avalon Beach locality. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

D1.1 Character as viewed from a public place

Clause D1.1 requires:

The bulk and scale of buildings must be minimised.

Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place. Parking structures should be located behind the front building line, preferably set back further than the primary building, and be no greater in width than 50% of the lot frontage, or 7.5 metres, whichever is the lesser.

Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.

Clause D1.1 allows variations in the following circumstances:

Council may permit parking spaces in front of building line where site constraints limit location such

variation must be justified in the discussion below.

The DA proposes a number of elements within the front building line including:

- Nil (garage)
- 2m (Terrace)
- 4.7m (Deck)
- 5.5m (pergola)

This is contrary to the expressed variation to this clause, which requires all structures other than carparking structures to be behind the front building line. Further, the proposal is not considered to be just a carparking structure, given the integration of a rooftop terrace and pergola.

Detailed Assessment:

The proposal is assessed against the requirements and outcomes of the control:

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

Comment:

For the reasons discussed throughout this report the proposal does not achieve the desired future character of the Avalon Locality.

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

Comment:

The site is zoned C4 Environmental living and contains extensive natural bushland that adjoins the Badgally Headland Reserve. The site, and adjoining sites including 78, 80 and 84 Binburra Ave contain extensive vegetation within the front setback that, due to the slope of the land, present as a green wall to the streetscape that bookends the curve of Binburra Ave. This green wall is the main contributory element to the bushland character of the street and special aesthetic value protected by the C4 zoning.

The proposed 4.6m high, solid wall structure with a nil setback to Binburra Ave represents a serious departure from the existing vegetated streetscape and disrupts the bushland character of this particular portion of Binburra Ave. The nil setback excludes any opportunity for substantial vegetation that would screen the development from the streetscape, reduce apparent bulk and scale and integrate the development into a landscaped setting. Located on the high side of Binburra Ave, the garage will be a dominant site feature when viewed from the public domain. The visual impact of the structure is exacerbated by the particular design, height and bulk of the proposal situated right on the front boundary, with the proposed rooftop planters failing to ameliorate the impacts. The impact is further exacerbated by the siting of the rooftop pergola and decking forward of the front building line within the front setback area.

In this regard, the proposal fails to reinforce and sensitively relate to the spatial characteristics of the existing built and natural environment as required by this control.

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

Comment:

As discussed, the proposal will disrupt the heavily vegetated streetscape in this locality of Binburra Ave. The nil setback of the 4.6m high garage will detract from the existing vegetated streetscape character of the locality, with no opportunity for significant planting provided to screen the development. A site visit was conducted by Council to investigate the nature of development within the immediate visual catchment (200m radius) of the site. The only structures forward of the front building line along Binburra Ave are limited to light weight, visually recessive carport structures, as envisioned by the expressed car parking structure variation under Clause D1.8 Front building line of the P21 DCP. The scale and density of the solid garage and rooftop terrace are incompatible with the vegetated C4 Environmental living zoned locality, and more akin to an urban or medium density zone.

- *The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation.*

Comment:

The proposal provides a nil setback to the street frontage, with no opportunity other than rooftop planters afforded to screen the proposal. Adverse visual impacts will result, with the built form no longer secondary to the landscaping outcomes of the site.

- *High quality buildings designed and built for the natural context and any natural hazards.*

Comment:

The development has not been designed to respond to the natural context of the site, with significant cut proposed in the C4 Environmental Living zone and lacking visual integration with the bushland locality.

- *Buildings do not dominate the streetscape and are at 'human scale'.*

Comment:

For the reasons discussed above the garage dominates the streetscape. Particularly, the garage proposes a 4.6m high solid façade to the streetscape, which is not considered to be 'human scale' or compatible with the landscaped characteristics of the locality.

- *To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.*

Comment:

The proposal will not result in unreasonable impacts on district or local views.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the outcomes of the control and will have an adverse impact to the character of the locality. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance

D1.4 Scenic protection - General

Clause D1.4 requires:

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

Comment:

The proposal is assessed against the outcomes of the control.

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

Comment

For the reasons discussed throughout this report the proposal is inconsistent with the desired future character of the Avalon Locality.

- *Bushland landscape is the predominant feature of Pittwater with the built form being the secondary component of the visual catchment.*

Comment

As a result of the removal of the existing vegetation and replacement with a nil setback garage, the proposal will have a visual impact from the road.

In summary, the proposal is inconsistent with the requirements and outcomes of Clause D1.4.

D1.8 Front building line

Clause D1.8 requires

The front setback to be 6.5m, or established building line, whichever is the greater.

On steeply sloping or constrained sites, reduced or nil setbacks for carparking structures and spaces may be considered, however all other structures on the site must satisfy or exceed the minimum building line applicable.

The propose works provide the following setbacks to Binburra Ave:

- Nil (garage)
- 2m (terrace)
- 4.7m (deck)
- 5.5m (pergola)

It is noted that the control allows for exemptions for car parking structures on sloping sites, however all other structures must be setback as per the control.

The proposal is assessed against the outcomes of the control:

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

Comment:

The front setback is inconsistent with the established building line with multiple elements forward of the control and will result in a built form dominating the natural setting contrary to the desired future character of the Locality.

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

Comment:

Binburra Ave is not a main road and this objective is not applicable.

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

Comment:

The proposal includes the removal of existing vegetation and does not provide opportunity for significant plantings to screen the development from the streetscape, contrary to the outcome of the control.

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

Comment:

Vehicle maneuvering in a forward direction would not be expected in this instance.

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

Comment:

As discussed throughout this assessment, the bulk and scale of the proposed garage would not encourage an attractive streetscape or improve pedestrian amenity.

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

Comment:

The garage is sited on a nil setback and is not adequately screened from the streetscape, failing to reinforce or sensitively relate to the spatial characteristics of the area.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the outcomes of the control and will have an adverse impact to the character of the locality. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

D1.9 Side and rear building line

Description of non-compliance

Part D1.9 Side and rear building lines of the Pittwater 21 Development Control Plan 2014 prescribes side setbacks of 1m to one side and 2.5m to the other side.

To the southern side boundary, a portion of the 'deck and privacy screen' encroaches the 2.5m setback area, instead proposing a 1m setback. To the northern side boundary, the 'garage and pergola' encroaches the 1m setback area, instead proposing a 0.9m setback.

Merit Assessment

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 breaching elements are located forward of the building line and, combined with the front building line setback variation, will detrimentally impact the amenity of neighbouring properties and have adverse impacts upon the streetscape. As discussed in further detail under control A4.1 Avalon Beach locality of this assessment, the proposal fails to achieve the desired future character.

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

Comment:

The proposed additions will be unreasonably bulky when viewed from the public domain and adjoining properties. The development does not represent an appropriate bulk and scale.

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

Comment:

The encroachment of the building into the side boundary setback is not anticipated to generate any unreasonable view impacts from the public or private domain.

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

Comment:

The proposed works are located forward of the front building line and within the front building line setback. Development forward of the building line in the locality is limited to light weight and visually recessive carport structures. The siting of the works represent an inappropriate alignment with neighbouring properties. The design requires significant cut into the site, failing to adequately respond to the topography of the sloping site.

- *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 maintains an appropriate level of amenity to adjoining properties.

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

Comment:

As discussed in detail elsewhere in this assessment report, the proposed works, particularly the garage, fail to provide an attractive streetscape representative of the bushland character of the locality.

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

Comment:

Given the adverse impacts derived from the non-compliance, flexibility in the application of the control is

considered unsupportable in this instance.

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

Comment:

No trees are to be removed by the proposed works, with removal limited to existing shrubs and exempt trees. The reduced side setbacks will contribute to the visual dominance of the built form, particularly to Binburra Ave.

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

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of P 21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is unsupported, 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 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$2,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$250,000.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects,

all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2022/0885 for the Alterations and additions to a dwelling house including garage on land at Lot 30 DP 22275,82 Binburra Avenue, AVALON BEACH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone C4 Environmental Living of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.2 Earthworks of the Pittwater Local Environmental Plan 2014.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A1.7 Considerations before consent is granted of the Pittwater 21 Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A4.1 Avalon Beach Locality of the Pittwater 21 Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1.4 Scenic protection - General of the Pittwater 21 Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1.8 Front building line of the Pittwater 21 Development Control Plan.

9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1.9 Side and rear building line of the Pittwater 21 Development Control Plan.

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

Signed



Luke Zajac, Planner

The application is determined on 21/10/2022, under the delegated authority of:



Adam Richardson, Manager Development Assessments