

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0039
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Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 22 DP 209493, 38 Therry Street AVALON BEACH NSW 2107
Proposed Development:	Construction of a carport
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Mark Gregory Arblaster
Applicant:	Jack Evans

Application Lodged:	19/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/02/2022 to 15/02/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 35,815.00
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PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the construction of a carport at the front of the dwelling.

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 21 Development Control Plan - B8.5 Construction and Demolition - Works in the Public Domain

Pittwater 21 Development Control Plan - C1.24 Public Road Reserve - Landscaping and Infrastructure

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

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

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

Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 22 DP 209493 , 38 Therry Street AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southeastern side of Therry Street.</p> <p>The site is irregular in shape with a curved frontage of 48.365m along Therry Street and a maximum depth of 30.905m. The site has a surveyed area of 696.6m².</p> <p>The site is located within the C4 Environmental Living zone and accommodates single storey residential dwelling.</p> <p>The site falls approx. 4m from the south towards the north.</p> <p>The site contains mostly landscaped front and setback areas. Several small and medium sized trees are located on and adjacent to the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings.</p>

Map:



SITE HISTORY

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

Application **N0624/06** for an inground swimming pool was approved on 20/12/2006 by Council staff. This works relating to this application were never commenced and the consent has since lapsed.

Application **N0303/09** for Alterations and additions to the existing dwelling was approved on 08/09/2009 by Council staff.

Works in the northeast corner of the site appear to have been undertaken to raise, retain and concrete the land adjacent to the dwelling. The retaining wall and a portion of the raised land is located within the road reserve. There are no records of development consent being issues for such works to be undertaken. Under N0303/09, this area is approved as natural grade landscaped area. The applicant has not provided any consent documents to Council that permitted the works in the northeast corner of the site and road reserve.

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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land).

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	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 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the siting of the proposed carport relative to the front boundary. Information was also sought regarding alleged unauthorised works within the road reserve that the proposed carport appears to rely upon. The applicant has not been forthcoming with the requested information. As such, there is insufficient information to allow Council to assess the application.</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 clause is not relevant to this application.</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> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration	Comments
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	Due to the lack of sufficient information regarding the siting of the carport relative to the front property boundary and reliance on alleged unauthorised structures partially location within the road reserve, this assessment has found the proposal to be contrary to the relevant requirement(s) of the P21DCP 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 not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 01/02/2022 to 15/02/2022 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>The application seeks approval for construction of a carport roof over an existing driveway. 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) State Environmental Planning Policy (Coastal Management) 2018</p> <ul style="list-style-type: none"> Proximity to Littoral Rainforest <p>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"> B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community <p>The application does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
NECC (Development Engineering)	<p>Applicant seeks to obtain approval for a car port over a newly built driveway/car standing area. This area has been filled above the existing ground level. The survey plan indicate that there is an encroachment within the road reserve which Road Assets generally do not permit.</p> <p>The proposal is to be referred to Transport & Civil Infrastructure Assets (Road Assets) for comments/approval..</p> <p>DATED 22/03/2022</p> <p>Comments from Road and Assets dated 18/03/2022 referral does not support the application and therefore the application can not be supported.</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>As this site drains into Careel Bay and the greater Pittwater estuary , the development must not significantly impact on the biophysical, hydrological or ecological integrity of these waters, or on the quantity and quality of surface and ground water flows to creeks or the waterway.</p> <p>This application is supported as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Pittwater and its surrounding environment if conditions</p>

Internal Referral Body	Comments
	are adhered to.
Road Reserve	<p>Although there are no works proposed on the public road reserve, the recent unauthorised construction on Council's public road reserve of a treated pine retaining wall encroaches some 700mm into the public road reserve. It would appear the newly concreted area also encroaches on the road reserve to provide private use of the public reserve for parking. The survey plans also suggest the retaining walls and concrete area also encroaches on the neighbouring property up to approximately 1.1m. It is noted that a previous survey plan dated 1998 on file for 40 Therry St indicates the side boundary to be fenced.</p> <p>The site plan (2062-1) does not show the location of the posts in relation to the property boundary and the car port plans (2062-2) do not appear to correlate with the survey or indicate the property boundary in relation to the car port posts. Given the hand drawn nature of the plans, it is not possible to ascertain if the car port structure is located within the boundary of the property. The car port structure unacceptably will also rely on support from unauthorised structures (retaining wall) on the public road reserve.</p> <p>As the proposed development relies on the use of unauthorised works on the public road reserve, the application cannot be supported. The unauthorised works will not be approved retrospectively as a minor encroachment and must be removed from the public road reserve and located within the property boundary.</p> <p>The works encroaching on the adjoining property should also be addressed by the applicant.</p> <p>It is recommended that application be refused until such time as the unauthorised works are removed from Council's road reserve.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Coastal Management) 2018

The site is classified as land in proximity to coastal wetlands or littoral rainforest under the State Environmental Planning Policy (Coastal Management) 2018. Accordingly, an assessment under the SEPP has been carried out as follows:

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

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

Comment:

Council is satisfied that the proposed development will not significantly impact upon the natural integrity of the nearby littoral rainforest.

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

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

Comment:

Council is satisfied that the proposed development is not likely to cause increase to coastal hazards on the site and surrounding land.

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

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?	Yes
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Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	3.3m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Unclear	N/A	See discussion
Side building line	S - 2.5m	>2.5m	N/A	Yes
	E - 1m	Nil	100%	No
Building envelope	S - 3.5m	Within envelope	N/A	Yes
	E - 3.5m	Within envelope	N/A	Yes
Landscaped area	60% (418m ²)	53.5% (372.8m ²)	10.8% (45.2m ²)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
B8.5 Construction and Demolition - Works in the Public Domain	No	No
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	No	No
D1.1 Character as viewed from a public place	No	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	No	No
D1.9 Side and rear building line	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	No
D1.20 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B8.5 Construction and Demolition - Works in the Public Domain

The submitted plans are unclear as to whether the pier supports for the proposed carport are located within the lot boundaries. Additionally, the pier supports for the carport appear to rely upon an area that has been filled and retained that partially encroaches into the road reserve. A search of Council's records reveals that no consent for such works has been obtained. As such, there is insufficient information for Council to be able to assess the application's compliance with this control.

C1.24 Public Road Reserve - Landscaping and Infrastructure

The pier supports for the proposed carport appear to rely upon an area that has been filled and retained that partially encroaches into the road reserve. A search of Council's records reveals that no consent for such works has been obtained. As such, there is insufficient information for Council to be able to assess the application's compliance with this control.

D1.1 Character as viewed from a public place

Description of non-compliance

The control states that parking structures should be located behind the front building line, preferably setback further than the primary building. The proposed carport would be set forward of the building line

and therefore does not comply with the requirements of the control. Council may consider a variation for parking spaces in front of building line where site constraints limit location.

The outcome of pre-lodgement written advice for the proposed carport indicates that while the structure is inconsistent with the requirement of the control, a small lightweight design may be supported assuming the roof of the carport is setback a minimum 1.5m from the front boundary and a 1.5m landscaped area is provided between the front boundary and the hardstand parking area. The submitted plans do not provide sufficient detail to determine whether the landscaped area has been incorporated into the design. As such, it is considered the proposal does not achieve the outcomes of the control.

D1.8 Front building line

The proposed carport is to be located within the front setback area adjacent to the eastern boundary. However, the submitted plans do not provide sufficient information to determine whether the pier supports for the carport are located within the front property boundary. As such, Council is unable to determine whether the proposed front setback is acceptable.

D1.9 Side and rear building line

The proposed carport is proposed to have a nil setback to the eastern side boundary. A detailed assessment of the potential impacts of the proposed setback has not been undertaken due to insufficient information being provided to Council regarding issues discussed elsewhere in this report.

D1.14 Landscaped Area - Environmentally Sensitive Land

The proposed development does not alter the existing provision of landscaped area on the site, which is 53.5% (372.8m²). However, the proposed development relies upon a hardstand parking area within the front setback that appears to have been constructed without any form of development consent. The most recent development consent approved on the site indicates that part of the area beneath the proposed carport should be landscaped area. Due to the inconsistency between the last approved site conditions and the current site conditions, the applicant has not provided sufficient information to assess the impact of the proposed development on the landscaped area of the site.

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

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

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation

submitted by the applicant and the provisions of:

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2022/0039 for the Construction of a carport on land at Lot 22 DP 209493,38 Therry Street, AVALON BEACH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to enable the assessment of the application.
2. 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.
3. 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.
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 D1.8 Front building line 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 D1.14 Landscaped Area - Environmentally Sensitive Land of the Pittwater 21 Development Control Plan.
6. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the

proposed development is not in the public interest.

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

Signed



Nick Keeler, Planner

The application is determined on 19/05/2022, under the delegated authority of:



Phil Lane, Acting Development Assessment Manager