

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/0084
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<b>Responsible Officer:</b>	Claire Ryan
<b>Land to be developed (Address):</b>	Lot 114 DP 8394, 73 Marine Parade AVALON BEACH NSW 2107
<b>Proposed Development:</b>	Demolition works and construction of a dwelling house, secondary dwelling and swimming pool
<b>Zoning:</b>	C2 Environmental Conservation C4 Environmental Living
<b>Development Permissible:</b>	Yes - Zone C2 Environmental Conservation Yes - Zone C4 Environmental Living
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Lincoln John Courtney Megan Jane Lynch
<b>Applicant:</b>	Sean Clive Gartner

<b>Application Lodged:</b>	07/02/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Other
<b>Notified:</b>	11/02/2022 to 25/02/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	7
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 1,649,850.00
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### EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a dwelling house, secondary dwelling and swimming pool.

The application is referred to the Development Determination Panel at the discretion of the Executive Manager, with respect to objections raising concern that cost of works is underestimated. Other concerns raised in the objections related to character, the zone objectives, excavation and geotechnical hazards, amenity (view loss, overshadowing and privacy), tree removal, built form and colours, and the

proposed heater.

Critical assessment issues related to coastal risk planning and geotechnical hazards, view sharing, privacy, solar access, side building line, and building envelope.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks consent for the following works:

- Demolition of the existing dwelling house;
- Reconstruction of the existing driveway;
- Construction of a new three-storey dwelling house, plus a secondary dwelling above a new double garage;
- Construction of an in-ground swimming pool; and
- Landscaping works.

In May and June 2022, the Applicant provided an arborist report and amended plans addressing concerns with building bulk, setbacks, amenity, stormwater and tree removal. The application did not require re-notification, as they resulted in lesser environmental impact, in accordance with Council's Community Participation Plan.

On 17 May 2022, in response to submissions raising concern with potential underestimation of the cost of works, the Applicant provided a Cost Summary Report prepared by a Quantity Surveyor. The original cost of works was estimated at \$987,800. The updated cost of works was estimated at \$1,649,850. The discrepancy arises between the first estimation being based on the owner being the building and the second estimation being based on market value. The updated estimation by a Quantity Surveyor is relied upon for the assessment.

## **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 - 5.1 Relevant acquisition authority  
Pittwater Local Environmental Plan 2014 - 5.1A Development on land intended to be acquired for public purpose  
Pittwater Local Environmental Plan 2014 - 5.4 Controls relating to miscellaneous permissible uses  
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils  
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks  
Pittwater Local Environmental Plan 2014 - 7.5 Coastal risk planning  
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection  
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards  
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area  
Pittwater Local Environmental Plan 2014 - 7.10 Essential services  
Pittwater 21 Development Control Plan - C1.3 View Sharing  
Pittwater 21 Development Control Plan - C1.4 Solar Access  
Pittwater 21 Development Control Plan - C1.5 Visual Privacy  
Pittwater 21 Development Control Plan - D1.9 Side and rear building line  
Pittwater 21 Development Control Plan - D1.11 Building envelope

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 114 DP 8394 , 73 Marine Parade AVALON BEACH NSW 2107
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the eastern side of Marine Parade, Avalon Beach.</p> <p>The site is irregular in shape with a frontage of 19.405m along Marine Parade and a maximum depth of 103.63m. The site has a surveyed area of 1,878m<sup>2</sup>.</p> <p>The site is located partially within the C4 Environmental Living zone (western three-quarters) and partially within the C2 Environmental Conservation zone (eastern quarter) and accommodates a two-storey detached dwelling house.</p> <p>The site slopes up to the east from the street to the rear by approximately 15m, for the western-most three quarters of the site. The eastern-most quarter of the site is a cliff face that drops steeply away to the ocean. The site is heavily vegetated to its eastern-most half.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by generally two-storey detached dwelling houses.</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:

- N0309/17 for alterations and additions to dwelling including new basement garage, gym and workshop to the front of the existing dwelling, extension to existing first floor deck and a new two (2) storey pavilion extension to the rear of the property with inclinor was with drawn by the Applicant on 25 October 2017.
- DA2017/1200 for alterations and additions to a dwelling house was classified as a deemed refusal and an appeal through the NSW Land and Environment Court was filed by the Applicant on 26 March 2018. The application was refused by Council's Development Determination Panel 11 April 2018. The appeal was dismissed by the NSW Land and Environment Court on 10 October 2018.

## 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

Section 4.15 Matters for Consideration	Comments
	development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;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&amp;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&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to built form non-compliances, landscaped area, view loss, solar access, tree removal, stormwater management, and cost of works. Amended information was received in May and June 2022.</p> <p><u>Clause 92</u> of the EP&amp;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&amp;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&amp;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&amp;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&amp;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 (1) (b) – the likely	(i) <b>Environmental Impact</b>

Section 4.15 Matters for Consideration	Comments
impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

A portion of the site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection. A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning Services, dated 5 October 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 11/02/2022 to 25/02/2022 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 process council is in receipt of 7 submission/s from:

Name:	Address:
Mr Paul Anthony Miniter	75 Marine Parade AVALON BEACH NSW 2107
Courcheval Pty Ltd	C/- Garry Farrell Po Box 207 DOUBLE BAY NSW 1360
Ms Sarah Sibella Robson	79 Marine Parade AVALON BEACH NSW 2107

<b>Name:</b>	<b>Address:</b>
David Shannon	77 Marine Parade AVALON BEACH NSW 2107
Mrs Kimberley Sheridan	58 Marine Parade AVALON BEACH NSW 2107
Mrs Aime Joy Van Dyck	C/- Vaughan Milligan Development Consulting Pty Ltd Po Box 49 NEWPORT NSW 2106
Susan Farrell	71 Marine Parade AVALON BEACH NSW 2107

The following issues were raised in the submissions:

- The proposed development is inconsistent with the desired character of the locality, due to its bulk and scale, and prominence in the streetscape.
- The proposed development is inconsistent with the objectives of the C4 Environmental Living zone.
- The proposed development relies on excessive excavation in consideration of the coastal hazards applicable to the site (cliff on site and cave under), and the geotechnical report and coastal engineering report are inadequate.
- The proposed development will result in view loss to Nos. 71, 75 and 77 Marine Parade.
- The proposed development will result in unreasonable overshadowing to No. 71 Marine Parade.
- The proposed development will result in unreasonable visual privacy impacts.
- The proposed development will result in unreasonable removal of vegetation, and does not provide adequate landscaped area.
- The proposed development is not compliant with the building envelope and building colours and materials controls.
- The proposal does not provide adequate detail about the proposed heater.
- The stated construction cost is underestimated for the works proposed.

It is noted that one of the submissions received was in support of the proposed development.

The above issues are addressed as follows:

#### **Inconsistent with Character of the Locality**

##### Comment:

The proposed development is compliant with the requirements of Clause A4.1 Avalon Beach Locality of the P21 DCP, which details the desired future character of the site and surrounds.

#### **C4 Environmental Living Objectives**

##### Comment:

The proposed development is consistent with the objectives of the C4 Environmental Living zone, as detailed in the section of this report relating to the zone.

#### **Excavation and Geotechnical/Coastal Hazards**

##### Comment:

The proposed development is supported by an up-to-date coastal engineering report prepared by a suitably qualified coastal engineer, and an up-to-date geotechnical report prepared by a suitably qualified geotechnical engineer. These reports suitably assess the coastal and geotechnical hazards applicable to the site, and detail the recommendations for construction of the development. The recommendations within these reports are to be adhered to throughout construction and the ongoing use of the site, as required by conditions of consent.

The proposed development includes excavation to a maximum of 5.7m below the ground level for the

purpose of the lift shaft. The P21 DCP does not stipulate a maximum depth or volume of excavation. Clause B8.1 Construction and Demolition - Excavation and Landfill provides that certain categories of excavation must comply with the requirements of the Geotechnical Risk Management Policy for Pittwater. The submitted geotechnical report demonstrates that the proposal complies with the Policy.

Additionally, the proposed development and the relevant reports have been reviewed by Council's Development Engineer, and Council's Principal Officer for Coast & Estuary, who are supportive of the proposed development, subject to conditions of consent.

### **Amenity - View Loss, Overshadowing and Privacy**

#### Comment:

The proposed development is acceptable in relation to view loss, overshadowing and privacy, for the reasons detailed in the sections of this report relating to Clauses C1.3 View Sharing, C1.4 Solar Access, and C1.5 Visual Privacy of the P21 DCP.

### **Landscaping and Tree Removal**

#### Comment:

Amended plans dated 5 May 2022 were provided that detail reconstruction of the existing driveway, rather than demolition of the existing driveway and relocation. The amended driveway allows for acceptable tree removal. The proposed development is compliant with the required landscaped open space under Clause D1.13 Landscaped Area of the P21 DCP. The proposal has also been reviewed by Council's Landscape Officer and Biodiversity Officer, who are supportive of the proposal, subject to conditions of consent.

### **DCP Controls - Building Envelope and Colours/Materials**

#### Comment:

The proposed development is compliant with the requirements of Clause D1.5 Building Colours and Materials of the P21 DCP. The proposed development is proposed to be predominantly mid-grey, with white accents, and stone/timber features. Clause D1.5 provides that external materials and finishes shall appear to be natural, with subdued natural and dark coastal colours, and that brighter colour accents shall be permitted.

The proposed non-compliance with the building envelope is addressed in the section of this report relating to Clause D1.11 Building Envelope of the P21 DCP.

### **Proposed Heater**

#### Comment:

The heater shown in the living room at the upper level is noted as gas-powered, so is not solid fuel burning and does not require a chimney. It is noted that a second heater is shown diagrammatically in the outdoor living area at the upper level. A condition of consent has been applied, detailing that the heater must not be solid fuel burning without prior consent.

### **Cost of Works**

#### Comment:

The Cost Summary Report originally provided with the application is based upon the owner being an owner builder, totalling \$987,800. This method reduces the cost of works by a significant amount. The Cost Summary Report is accurate with respect to the cost of the build where the owner is constructing and managing the project, as a qualified landscaped contractor. The Applicant has since provided a Cost Summary Report prepared by a Quantity Surveyor based on market construction cost. The updated cost of works was estimated at \$1,649,850. The updated estimation by a Quantity Surveyor is relied upon for the assessment.

## **REFERRALS**



Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Landscape Officer	<p><u>Additional Information Comment 08/06/2022:</u></p> <p>The amended Landscape Plan by Banksia Design Group (12/05/2022), amended Arboricultural Impact Assessment by Aura Tree Services (June 2022), and amended Architectural Plans by Gartner Trovato (03/05/2022 and 05/05/2022) are noted.</p> <p>The retention of the existing driveway alignment adjacent to the street trees is noted and supported. The Arboricultural Impact Assessment (AIA) identifies 14 trees for removal and 14 trees for retention, supported by the architectural plans. Of the 14 trees to be removed, six are exempt trees and one is proposed to be transplanted. If the development application is approved, seven native trees will be required to be removed due to their proximity to the proposed works. Tree 2 is shown on the Survey Plan as located in the road reserve, however its removal can be supported due to its location and the retention of all other street trees. Tree 3, <i>Livistona australis</i>, is proposed to be transplanted which will need to be supported by a Transplanting Methodology Plan, subject to the imposed conditions. The recommendations in the AIA for tree protection of all trees to be retained is supported, and a Project Arborist shall be engaged to supervise all works within the tree protection zone of trees to be retained, subject to the imposed conditions.</p> <p>The amended Landscape Plan shows sufficient screen planting adjacent to the pool. Tree 3, proposed to be transplanted, is shown adjacent to two additional <i>Livistona australis</i>, however these additional trees are missing from the planting schedule. Landscape Referral can support the proposed 4 x <i>Banksia integrifolia</i> and 2 x <i>Livistona australis</i> as replacement tree planting taking into consideration the trees to be retained within the property boundary and the bush fire requirements. All new landscaping should be implemented in accordance with the Asset Protection Zone requirements as specified within Appendix 4 of Planning for Bushfire Protection 2019, and the recommendations of the Bushfire Assessment Report. All planting on slab shall meet the soil depth requirements outlined in the conditions of consent.</p> <p><u>Original Comment:</u></p> <p>The development application is for demolition works and construction of a dwelling house, secondary dwelling and swimming pool.</p>

Internal Referral Body	Comments
	<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"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• C1.5 Visual Privacy</li> <li>• C1.24 Public Road Reserve - Landscaping and Infrastructure</li> <li>• D1 Avalon Beach Locality</li> </ul> <p>The Landscape Referral cannot support the application due to these primary concerns:</p> <ul style="list-style-type: none"> <li>• The relocation of the driveway which results in significant loss of tree canopy within the road reserve and within the property boundary. No information is provided to suggest the existing driveway location cannot be utilised for the proposed scheme.</li> <li>• The Landscape Plan, Architectural Plans and the Arboricultural Impact Assessment are not coordinated. The following has been identified (but not limited to): <ul style="list-style-type: none"> <li>○ Trees to be removed/retained differ between the Landscape Plan and Architectural Plans (tree T1 and T14 in particular).</li> <li>○ The Landscape Plan shows an entrance stair, pathway/pond and stair to the driveway which is not shown on the Architectural Plans.</li> <li>○ The Landscape Plan shows a different arrangement of retaining walls to the front of the dwelling compared to the Architectural Plans.</li> <li>○ The Arboricultural Impact Assessment does not assess the impacts to existing trees to be retained (tree T2, T4 and T13 in particular), caused by the construction of an entrance pathway, proposed retaining walls and likely fill in this area.</li> <li>○ The survey indicates tree T2 and T13 to be located outside the property boundary however on the Landscape and Architectural Plans these trees are located inside the property boundary.</li> </ul> </li> <li>• The Landscape Plan shows insufficient information for materiality and identifying the difference between lawn and planting areas. There are blank areas with no information as to what is proposed. The Landscape Plan does not show any screen planting adjacent to the pool, along the southern boundary, which is required for privacy from the neighbouring property. Please refer to the Northern Beaches Council Development Application &amp; Modification Lodgement Requirements, Landscape Plan section for further information.</li> </ul>

Internal Referral Body	Comments
	<p>Furthermore, the Landscape Referral highlights the below requirements to assist the applicant for future amendments:</p> <ul style="list-style-type: none"> <li>• Once it is clearly identified as to how many trees are to be removed, further comment can be provided on tree replacement numbers. It is noted the property is in a bush fire risk area and must comply with Planning for Bushfire Protection 2019 however the inclusion of small trees to help reduce the built form, with fire retardant properties and to achieve at least 6 metres height at maturity, shall be included in the proposal. Trees shall be located at least 3.0 metres from buildings, 2.0 metres from structures, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn. 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.</li> <li>• Landscape Area calculations cannot include any area outside the C4 (E4) Environmental Living zone. The area above the 30,000L rainwater tank cannot be included in the Landscape Area calculation unless 1m of soil depth is achieved.</li> <li>• On slab landscaping requires soil depth to be 600mm for shrubs and 1000mm for small trees. Soil depth is not indicated on the drawings and Council has concerns the species proposed on the Landscape Plan do not have adequate soil volume for a successful outcome.</li> <li>• <i>Rhaphiolepis</i> 'Oriental Pearl', although a cultivar, is considered an environmental weed and is not supported and an alternate species shall be selected.</li> </ul>
NECC (Bushland and Biodiversity)	<p><u>Revised Comments</u></p> <p>As detailed within the Landscape Referral, the amended design including changes to the proposed tree removals and tree retentions has been provided. The proposed conditions identify at least six tree replacements and a tree transplant methodology. While the amended development includes residual impacts that cannot be reasonably avoided, the development is designed, sited and will be managed to minimise that impact, and includes suitable impact mitigation measures.</p> <p><u>Original Comments</u></p> <p>The proposed development has been assessed against the objectives and controls of P21 DCP B4.22 Preservation of Trees and Bushland Vegetation, and State Environmental Planning Policy (Resilience and Hazards) 2021 cl. 2.10 Development on land within the coastal</p>

Internal Referral Body	Comments
	<p>environment area. The PLEP cl7.6 Biodiversity and P21 DCP B4.6 Wildlife Corridors only apply to the portion of the site zoned C2, and limited works within this area are proposed and a significant impact to biodiversity unlikely.</p> <p>The development should be designed, sited and managed to avoid adverse impacts on remnant native vegetation, including canopy trees and understorey vegetation, and on remnant native ground cover species. Development must also avoid any impact on trees on public land.</p> <p>As identified within the Landscape Referral, the driveway results in loss of tree canopy within the road reserve and within the property boundary. The development will result in a net loss of trees and native vegetation, and does not comply with the relevant planning controls. Alternate designs should be considered to retain additional trees. Where the applicant demonstrates that no reasonable alternative design exists and a tree must be removed, suitable compensatory tree planting is required.</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><b><i>Coastal Management Act 2016</i></b> 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><b>State Environmental Planning Policy (Coastal Management) 2018</b> The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Gartner Trovato Architects Pty. Ltd. dated January 2022 and Coastal Engineering Advice prepared by Horton Coastal Engineering Pty. Ltd. dated 10 January 2022, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</p>

Internal Referral Body	Comments
	<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><b>Pittwater LEP 2014 and Pittwater 21 DCP</b></p> <p>The subject site is also shown to be affected by Coastline Bluff/Cliff Instability Hazard on Council's Coastal Risk Planning Map in Pittwater LEP 2014. As such, the Geotechnical Risk Management Policy for Pittwater (Appendix 5, Pittwater 21 DCP) and the relevant B3.4 Coastline (Bluff) Hazard controls in P21 DCP will apply to new development of the site.</p> <p><b>Coastline Bluff Hazard Management</b>  A Geotechnical Investigations Report by White Geotechnical Group dated 14 January 2022 assessing coastline (bluff)/ coastal cliff or slope instability has been submitted with the DA. Further, an impact assessment of the long term coastal processes on the coastline (bluff)/ coastal cliff or slope instability, prepared by Horton Coastal Engineering Pty. Ltd. dated 10 January 2022 has also been submitted. The report assessed that an allowance for recession/weathering of the cliff face of about 7mm to 12mm per year should be considered. Coastal inundation is not a significant risk for the proposed development over a planning period of well over 100 years. Four types of hazards identified and risks assessed. The gentle to moderately graded slope that rises across the property and continues below is a potential hazard (Hazard One, Risk Acceptable). The vibrations from the proposed excavations are a potential hazard (Hazard Two, Risk Unacceptable). A loose boulder, wedge, or similar geological defect toppling onto the work site during the excavation process is a potential hazard (Hazard Three, Risk Unacceptable). The sea cliff face that falls from the top of the property is a potential hazard (Hazard Four, Risk Acceptable). Unacceptable risks can be minimised through adopting the recommendations and site inspections.</p> <p>As such, it is considered that the application does comply, subject to conditions, with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p><b>Development on Foreshore Area</b></p> <p>A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore</p>

Internal Referral Body	Comments
	<p>area.</p> <p>The DA proposes no works on the foreshores area and hence, the DA does not require to satisfy the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p>
NECC (Development Engineering)	<p><b>Information Provided on 16/5/2022 &amp; 3/6/2022</b></p> <p>The amended architectural plans proposes to utilise the exiting vehicular crossing location. The submitted stormwater plan with the discharge to the kerb via an OSD system is satisfactory subject to conditions. No objections to approval subject to conditions as recommended.</p> <p><b>Original Comments:</b></p> <p>The proposal is for a new dwelling and vehicular access. The submitted stormwater plan is unsatisfactory. Only 25% of the rainwater volume provided in excess of the Basix requirements can be credited towards the OSD tank capacity. As the proposed rainwater tank volume is less than the Basix requirement of 64900l the OSD volume cannot be offset. The stormwater plan shall be amended to provide the OSD volume as calculated.</p> <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none"> <li>• <i>Stormwater drainage for the development in accordance with clause 9.3.1 of Council's Water Management for Development Policy.</i></li> </ul>
Parks, reserves, beaches, foreshore	<p>The development application is for demolition works and construction of a dwelling house, secondary dwelling and swimming pool.</p> <p>The property is split zoned, and the dwelling is located downslope of the C2 Environmental Conservation zone. The objectives of this zone are;</p> <ul style="list-style-type: none"> <li>• To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.</li> <li>• To prevent development that could destroy, damage or otherwise have an adverse effect on those values.</li> <li>• To ensure the continued viability of ecological communities and threatened species.</li> <li>• To protect, manage, restore and enhance the ecology, hydrology and scenic values of riparian corridors and waterways, groundwater resources, biodiversity corridors, areas of remnant indigenous vegetation and dependent ecosystems.</li> </ul>

Internal Referral Body	Comments
	No encroachment beyond the land zoning or property boundary is permitted. The proposed development has no impact to visual amenity from the foreshore or the waterway below and therefore Parks Referral raises no concerns.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.
Aboriginal Heritage Office	<p>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.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>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.</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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1268226M dated 17 January 2022). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	50
Thermal Comfort	Pass	Pass
Energy	50	77

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

## SEPP (Infrastructure) 2007

### Ausgrid

Clause 45 of the SEPP 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 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.

## SEPP (Coastal Management) 2018

The site is classified as coastal use area and coastal environment area, in accordance with the State Environmental Planning Policy (Coastal Management) 2018. Accordingly, an assessment under the SEPP has been carried out as follows:

### 13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the proponent has considered whether the proposed development is likely to cause an adverse impact on the*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and coastal environmental values and natural coastal processes,*
  - (b) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2011),*
  - (c) *the cumulative impacts of the proposed development on any of the sensitive coastal lakes, wetlands, estuaries, or*
  - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands, or*
  - (e) *existing public open space and safe access to and along the foreshore, beach, headlands, or*



- public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

Comment:

The proposed development is supported by a geotechnical risk assessment report and a coastal engineering report. This documentation demonstrates that the proposed development is of acceptably low risk in relation to coastal damage, erosion and recession. As such, the proposed development is not anticipated to result in adverse impact to the above matters.

- (2) *Development consent must not be granted to development on land to which this clause applies that:*
  - (a) *the development is designed, sited and will be managed to avoid an adverse impact re*
  - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and w*
  - (c) *if that impact cannot be minimised—the development will be managed to mitigate that i*

Comment:

As demonstrated by the architectural plans and supporting coastal engineering and geotechnical reports, the proposed works are demonstrated to be designed, sited and management so as not to result in any adverse impact.

#### **14 Development on land within the coastal use area**

- (1) (a) *has considered whether the proposed development is likely to cause an adverse impac*
  - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform fc*
  - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshor*
  - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
  - (iv) *Aboriginal cultural heritage, practices and places,*
  - (v) *cultural and built environment heritage, and*
- (b) *is satisfied that:*
  - (i) *the development is designed, sited and will be managed to avoid an adverse impact*
  - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited an*
  - or*
  - (iii) *if that impact cannot be minimised—the development will be managed to mitigate th*
- (c) *has taken into account the surrounding coastal and built environment, and the bulk, sca*

Comment:

The proposed development is supported by a geotechnical risk assessment report and a coastal engineering report. This documentation demonstrates that the proposed development is of acceptably low risk in relation to coastal damage, erosion and recession. As such, the proposed development is designed, sited and will be managed so as not to result in adverse impact to the above matters. The proposed development has been reviewed by Council's Coast & Estuary Officer, who is supportive of the application, subject to conditions of consent. The proposal has been considered in relation to the coastal and built environment, bulk and scale throughout the assessment, as demonstrated within this report.

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

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

Comment:

The proposed development is not anticipated to result in any increased risk of coastal hazards on the subject site and adjoining sites. The proposed development has been reviewed by Council's Coast & Estuary Officer, who is supportive of the application, subject to conditions of consent.

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?	Zone C2 : Yes Zone C4 : Yes
After consideration of the merits of the proposal, is the development consistent with: aims of the LEP?	Yes
zone objectives of the LEP?	Zone C2 : Yes Zone C4 : Yes

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.2m	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.1 Relevant acquisition authority	Yes
5.1A Development on land intended to be acquired for public purpose	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

#### Detailed Assessment

#### **Zone C4 Environmental Living**

The objectives of the C4 Environmental Living zone are addressed as follows:

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

#### Comment:

The proposed development is low-impact in that it generally complies with the relevant built form controls, or is acceptable on merit where a non-compliance occurs. The proposed development is designed and sited with respect to the area's special ecological, scientific or aesthetic values.

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

Comment:

The proposed development is designed and sited so as not to have an adverse impact on the special ecological, scientific or aesthetic values of the subject site and surrounds.

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

Comment:

The proposed development is low density in that it is for a dwelling house and attached secondary dwelling no more than two storeys in height at any one point. The proposed development is integrated with the landform and landscape in that the excavation required is not excessive and does not result in unreasonable impacts, and the resultant landscaped area is compliant with the relevant requirements.

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

Comment:

The proposed development retains the existing state of the foreshore (cliff) and its vegetation. The portion of the site being developed is not classified as a wildlife corridor.

## **5.1 Relevant acquisition authority**

The eastern-most portion of the land (zoned C2 Environmental Conservation) is classified for acquisition for regional open space. No development is proposed on this land.

### **5.1A Development on land intended to be acquired for public purpose**

The eastern-most portion of the land (zoned C2 Environmental Conservation) is classified for acquisition for regional open space. No development is proposed on this land.

## **5.4 Controls relating to miscellaneous permissible uses**

The proposed development includes a secondary dwelling with a gross floor area of 61.7sqm. The principal dwelling has a gross floor area of 322.1sqm. The floor area of the secondary dwelling equates to 19.15% of the floor area of the principal dwelling, and is therefore compliant with Clause 5.4(9)(b).

## **7.1 Acid sulfate soils**

Clause 7.1 Acid Sulfate Soils requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map. The proposed works are not anticipated to result in risk relating to acid sulfate soils.

## **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.

## **7.5 Coastal risk planning**

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

*(a) is not likely to cause detrimental increases in coastal risks to other development or properties, and*  
Comment:

The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is not likely to cause detrimental increases in coastal risks to other development or properties.

*(b) is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and*  
Comment:

The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment.

*(c) incorporates appropriate measures to manage risk to life from coastal risks, and*  
Comment:

The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development incorporates appropriate measures to manage risk to life from coastal risks.

*(d) is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and*  
Comment:

The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards.

*(e) provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards, and*  
Comment:

The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards.

*(f) has regard to the impacts of sea level rise, and*  
Comment:

The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development has regard to the impacts of sea level rise.

*(g) will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.*  
Comment:

The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

## **7.6 Biodiversity protection**

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

*(a) whether the development is likely to have:*

- (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
- (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (iv) any adverse impact on the habitat elements providing connectivity on the land, and*

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

*(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*

*(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*

*(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

## **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, coastal engineering

assessment, architectural plans, waste management plans, 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.

## **7.8 Limited development on foreshore area**

Under Clause 7.8 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The proposed development extends into the foreshore building area for the purpose of a swimming pool. The remainder of the development is set back from the foreshore building line.

Development consent must not be granted under this clause unless the consent authority is satisfied that:

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
  - *pollution or siltation of the waterway, or*
  - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora*

- habitats, or*
  - *an adverse effect on drainage patterns, or*
  - *the removal or disturbance of remnant riparian vegetation, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:

The proposed development is consistent with the objectives of the C2 Environmental Conservation and C4 Environmental Living zones. The appearance of the proposed swimming pool is compatible with the surrounding area. The proposed swimming pool will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed swimming pool will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed swimming pool does not impact upon public access along the foreshore. The proposed swimming pool will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed swimming pool will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed swimming pool will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment:

The proposed swimming pool will retain continuous public access to and along the foreshore. The proposed swimming pool does not impact upon any public access. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

## 7.10 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) *the supply of water,*



- (b) the supply of electricity,  
(c) the disposal and management of sewage,  
(d) stormwater drainage or on-site conservation,  
(e) suitable vehicular access.

Comment:

The subject site is supplied with the above essential services. The proposed development retains and relies upon these services.

## Pittwater 21 Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed		% Variation*	Complies
Front building line	Min. 6.5m	24m		-	Yes
Rear building line	FSBL	>FSBL*		-	Yes
Side building line	N: Min. 1m	Garage Level:	Min. 3.8m	-	Yes
		Lower Level:	Dwelling: Min. 3.8m Stairs: Min. 1.3m	-	Yes
				-	Yes
		Mid Level:	Min. 1.8m	-	Yes
		Upper Level:	Min. 1.5m	-	Yes
	S: Min. 2.5m	Garage Level:	Min. 2.4m	4%	No
		Lower Level:	Dwelling: Min. 2.5m Stairs: Min. 1.4m	-	Yes
				44%	No
		Mid Level:	Green Roof: Min. 2.6m Dwelling: Min. 3.5m	-	Yes
		Upper Level:	Min. 2.5m	-	Yes
Building envelope	3.5m	N: Max. 1.9m outside envelope		38%	No
		S: Within envelope		-	Yes
Landscaped area	Min. 60% (765.5sqm) **	62.2% (793.76sqm, incl. 6% hard area)		-	Yes

\* The proposal includes a minor breach to the Foreshore Building Line (FSBL), but this is for the purpose of the swimming pool, as permitted under Clause 7.8 (2)(b) of the PLEP 2014.

\*\* The subject site has an area of 1,878sqm. A portion of the subject site (602sqm) is zoned C2 Environmental Conservation, which does not have a minimum landscaped area requirement. The landscaped area calculation is based on the portion of the site (1,276sqm) to which a landscaped area control applies, in accordance with the "Split Zones" requirement of Clause D12.10 of the P21 DCP.

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.4 Coastline (Bluff) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	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
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

#### **C1.3 View Sharing**

Objections from Nos. 71, 75, and 77 Marine Parade, Avalon Beach raised concern about view loss as a result of the proposed development. As a result, height poles depicting key points of the development were erected and a view loss analysis was carried out. The development is considered against the underlying outcomes of the control as follows:

*A reasonable sharing of views amongst dwellings.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

**1. Nature of the views affected**

*"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".*

Comment to Principle 1:

The affected views are described as follows:

- No. 71 Marine Parade: The affected views are to the north-west towards Careel Bay. The view does not contain icons. The view contains some partially obscured interface between water and land.
- No. 75 Marine Parade: The affected views are to the south-east towards dense vegetation, and to the south-west towards the ocean, Avalon Beach and Bilgola Headland. The views do not contain icons. The south-west view contains some partially obscured interface between water and land.
- No. 77 Marine Parade: The affected view is towards the south-west towards the ocean, Avalon Beach and Bilgola Headland. The view does not contain icons. The view contains some partially obscured interface between water and land.

**2. What part of the affected property are the views obtained**

*"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".*

Comment to Principle 2:

The affected views are obtained as follows:

- No. 71 Marine Parade: The views are obtained from the lower level rumpus room, upper level deck, and outdoor terrace to the north of the property. The views are obtained from a standing position across the northern side boundary.
- No. 75 Marine Parade: The views to the south-west are obtained from the terrace above the garage, and the first floor western (front) balcony. The view from the terrace above the garage is obtained from a standing position. The view from the first floor balcony is obtained from standing and seated positions. The view to the south-east is obtained from the rear deck, from standing and seated positions. All views are obtained across the southern side boundary.
- No. 77 Marine Parade: The view is obtained from the upper level western (front) balcony, from standing and seated positions, across the southern side boundary.

Below are photographs of the affected views from No. 71, 75 and 77 Marine Parade, with the height poles

highlighted in red and the key points of view surrounded in yellow:



*Above: The view from the lower level rumpus room of No. 71 Marine Parade, to the north-west, from a standing position, across the northern side boundary.*





*Above: The view from the upper level deck of No. 71 Marine Parade, to the north-west, from a standing position, across the northern side boundary.*



*Above: The view from the northern terrace of No. 71 Marine Parade, to the north-west, from a standing position.*



*position, across the northern side boundary.*



*Above: The view from the terrace above the garage of No. 75 Marine Parade, to the south-west, from a standing position, across the southern side boundary.*



*Above: The angle of view from the first floor western (front) balcony of No. 75 Marine Parade.*





*Above: The view from the rear deck of No. 75 Marine Parade, to the south-east, from a standing position, across the southern side boundary.*



*Above: The view from the first floor western (front) balcony of No. 77 Marine Parade, to the south-west, from a standing position, across the southern side boundary.*

### **3. Extent of impact**

*“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.*

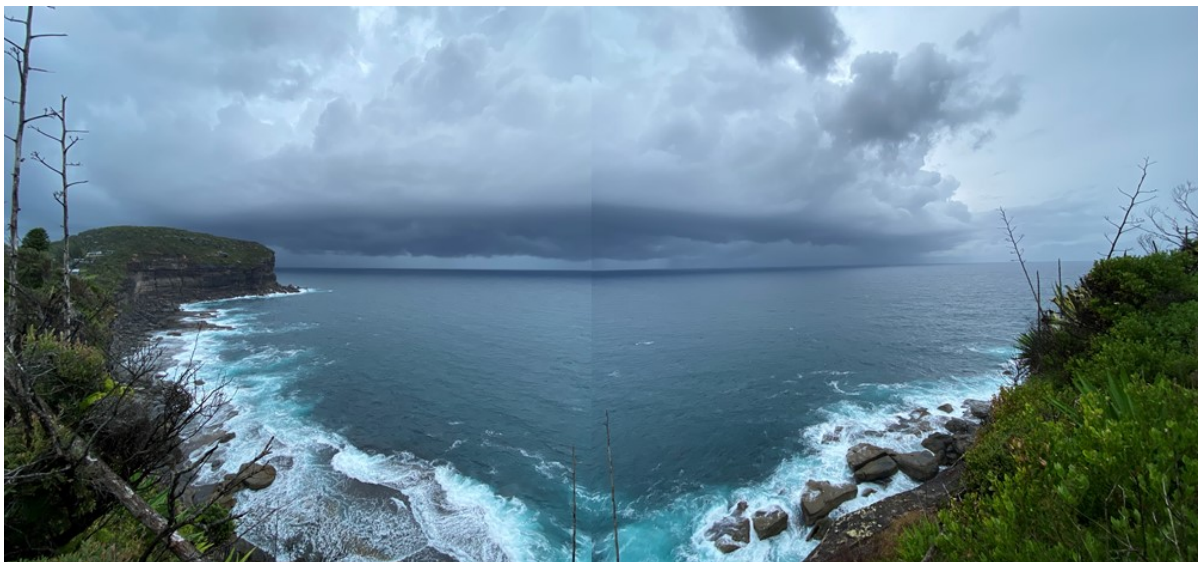
#### Comment to Principle 3:

The extent of impact views is described as follows:

- No. 71 Marine Parade:
  - Rumpus Room: The certified height poles demonstrate that the view to Careel Bay will be largely retained, with the portions anticipated to be lost already being predominantly obstructed by significant vegetation. The extent of view loss from this point is assessed as negligible.
  - Upper Deck: The certified height poles demonstrate that the view to Careel Bay from this point will be wholly retained.
  - Terrace: It is anticipated that the obstructed corridor view to Careel Bay will be lost from this point. Given the obstructed, distant and minor nature of this view, the extent of view loss from this point is considered minor.
- No. 75 Marine Parade:



- South-east: A significant portion of the vegetation (located on the subject site) will be removed for the purpose of construction, and replaced with Heath-leaved Banksia. Given the vegetation will be partially replaced, and the view is not of significance otherwise, the extent of view loss is assessed as minor.
- South-west: The certified height poles demonstrate that the view from the terrace above the garage will be drastically improved by the proposed development. The built form on the subject site will be reduced to the west, and it is anticipated No. 75 Marine Parade will enjoy a greater view corridor towards Avalon Beach and Bilgola Headland from this point. Access to the first floor balcony was not able to be provided at the time of assessment, so assumptions regarding the view are made. It is anticipated that a portion of the view directly south will be lost due to the proposed development, but that the view to Avalon Beach and Bilgola Headland will be retained. The extent of view loss from this point is assessed as minor to moderate.
- No. 77 Marine Parade: The certified height pole demonstrate that the new development will result in loss of view to vegetation and other development, and will not impact on the valuable elements of the view, being the ocean, Avalon Beach, and Bilgola Headland. The extent of view loss to No. 77 Marine Parade is negligible.
- It should also be noted that Nos. 71, 75 and 77 Marine Parade enjoy panoramic views from the north-east to the south-east, towards Bangalley Headland and the ocean that will be entirely unaffected by the proposed development. Further, views to the south-west from the upper deck of No. 71 Marine Parade to Avalon Beach and Bilgola Headland will be entirely unaffected by the proposed development, being in the opposite direction to the subject site.



*Above: Panoramic view from the rear yard of No. 73 Marine Parade (the subject site), to the north-east, east and south-east, from a standing position, across the eastern rear boundary.*



*Above: Panoramic view from the rear deck of No. 75 Marine Parade, to the north-east, east and south-east, from a standing position, across the eastern rear boundary.*

Photographs of the view from the rear yards of Nos. 71 and 77 Marine Parade to the north-east, east and south-east were not taken at the time of assessment, but are very similar and remain unaffected.

#### **4. Reasonableness of the proposal that is causing the impact**

*"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."*

##### Comment to Principle 4:

Given the assessment above, the overall view loss impact resulting from the proposed development is minor. The proposal generously retains views for adjoining and nearby developments. In consideration of the extent of the proposed development's compliance with the applicable built form controls, and that any non-compliant elements do not contribute to view loss, the proposed development is assessed as reasonable in its context, and is therefore acceptable in relation to view sharing.

*Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

##### Comment:

The proposed development equitably allows for view sharing, as demonstrated above.

*Canopy trees take priority over views.*

##### Comment:

The trees proposed to be removed are acceptable, as assessed by Council's Landscape Officer and Biodiversity Officer, and are not removed to take advantage of views.

#### **C1.4 Solar Access**

The objection from No. 71 Marine Parade (being the property to the south-west) raised concern that the proposed development will result in unreasonable overshadowing. The proposed development is compliant with the requirements of this clause, as follows:

This clause requires that the main private open space of each dwelling adjoining a development are to

receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st. The three main private open spaces of No. 71 Marine Parade are located at the upper level, being a deck to the north-west of the dwelling, a terrace to the north, and the rear yard to the east, which contains a pool, lawn, and a small semi-covered sitting area. The submitted shadow diagrams demonstrate the following:

- The north-western deck will receive at least three hours of sun to the majority of the area of the deck;
- The northern terrace will experience overshadowing throughout the day as a result of the dwelling, though it should be noted that the terrace area is undercover and generally already in self-shadow; and
- The rear yard will generally retain significant sunlight throughout the day from before 9am until after 3pm.

This clause requires that windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows). The windows to the principal living area of No. 71 Marine Parade face north-west and south-west, and are unaffected by the proposed development.

This clause requires that solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8am and 4pm during mid winter. The submitted shadow diagrams demonstrate that the solar panels on the roof of No. 71 Marine Parade will receive sunlight between at least 9am and 3pm, totalling a minimum of 6 hours of sunlight.

This clause requires that developments should maximise sunshine to clothes drying areas of adjoining dwellings. No external clothes drying area was visible at No. 71 Marine Parade.

### **C1.5 Visual Privacy**

The objection from Nos. 71 and 75 Marine Parade raised concern that the proposed development will result in unreasonable impact to privacy. The proposed development is compliant with the requirements of this clause, as follows:

This clause requires that private open space areas of adjoining dwellings (including swimming pools and living rooms) are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation. The three main private open spaces of No. 71 Marine Parade are located at the upper level, being a deck to the north-west of the dwelling, a terrace to the north, and the rear yard to the east, which contains a pool, lawn, and a small semi-covered sitting area. The proposed development includes two elevated decks to the front of the dwelling, set below and well forward of the north-west deck at No. 71 Marine Parade, so do not pose a privacy concern. The proposed development includes a rear outdoor area (set to the south-east), adjacent to the terrace area of No. 71 Marine Parade. However, this area is predominantly screened with a 2m high wall to the southern elevation and the pool is designed such that users of the pool are at a height below fence level, so these elements provide suitable visual privacy to No. 71 Marine Parade. The proposed dwelling does not include any design features that would allow overlooking to the rear yard of No. 71 Marine Parade. The main private open space of No. 75 Marine Parade is to the rear of the dwelling, in the form of a covered rear deck, and an open rear yard. The proposed development does not include any decks or balconies located nearby the private open space of No. 75 Marine Parade. The two windows orientated towards the private open space of No. 75 Marine Parade are suitable in relation to privacy, as one is a highlight window with a sill height of 2.8m above finished floor level, and the other window is treated with angled louvre privacy screening, preventing view to the private open space.

This clause requires that elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building. As above, the two elevated decks to the front of the dwelling are set below and well forward of the adjoining properties to the north and south. As such, these decks do not pose a privacy concern to Nos. 71 and 75 Marine Parade. As above, the rear outdoor area is screened with a 2m high wall to the southern elevation and the pool is designed such that users of the pool are at a height below fence level.

This clause requires that direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below. The proposed development is designed such that the upper level will not result in direct viewing to the private open spaces of Nos. 71 and 75 Marine Parade. To the south elevation, there are no windows that are directly aligned with the private open spaces of No. 71 Marine Parade, with the exception of Windows 22 and 36. However, these windows are adjacent to internal stairs, being a point of access, rather than recreation. Beyond the stairs adjacent to Window 22 is a walkway (also a point of access), and a gym orientated away from the south. Beyond the stairs adjacent to Window 36 is a sitting area, though this is separated from the nearest private open space of No. 71 Marine Parade by 9m. To the north elevation, the two windows aligned with the private open space of No. 75 Marine Parade are suitably treated for privacy, as described above.

#### **D1.9 Side and rear building line**

The proposed development includes minor breaches to the southern side boundary, for the purpose of the garage and side access stairs between the garage and lower level. The garage is proposed to be located 2.4m from the southern side boundary, and the stairs are to be located 1.4m from the southern side boundary, where 2.5m is required. The underlying outcomes of the control are addressed as follows:

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

Comment:

The proposed development is compliant with the requirements of Clause A4.1 Avalon Beach Locality of the P21 DCP, which details the desired future character of the site and surrounds.

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

Comment:

The proposed development is generally compliant with the applicable built form controls, including building height. The proposal includes a breach to the building envelope control, which is addressed in the section of this report relating to Clause D1.11 Building Envelope of the P21 DCP. The proposal is generally of a built form, bulk and scale anticipated for the subject site.

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

Comment:

The proposed development is acceptable in relation to view loss for the reasons detailed in the sections of this report relating to Clause C1.3 View Sharing of the P21 DCP.

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

Comment:

As above, the proposed development development allows for suitable view sharing via its design and siting.

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

Comment:



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

Comment:

The proposed development includes a compliant landscaped area, suitably retains vegetation, and is supported by a landscape plan that adequately demonstrates proposed planting.

*Flexibility in the siting of buildings and access.*

Comment:

The proposed development demonstrates flexibility in the siting of the dwelling and attached secondary dwelling, without resulting in any unreasonable impacts to the subject site or adjacent sites.

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

Comment:

The proposed development suitably retains existing vegetation, and is supported by a landscape plan that adequately demonstrates proposed planting to soften and screen the proposed built form.

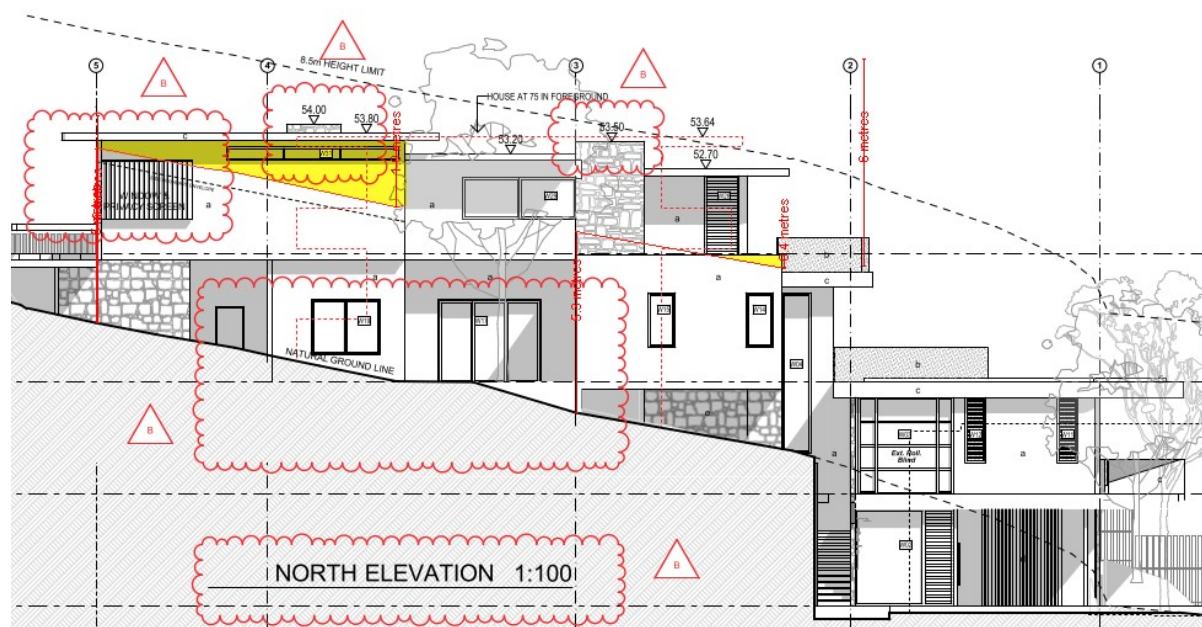
*A landscaped buffer between commercial and residential zones is achieved.*

Comment:

Not applicable. The subject site is within a residential zone and does not adjoin land in a commercial zone.

## D1.11 Building envelope

The proposed development includes breaches to the northern side boundary building envelope, by a maximum of 1.9m. The image below highlights the breaching points in yellow. The areas clouded in red indicate minor amendments to the plans and do not relate to the building envelope control breach.



The underlying outcomes of the control are addressed as follows:

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

Comment:

The proposed development is compliant with the requirements of Clause A4.1 Avalon Beach Locality of the P21 DCP, which details the desired future character of the site and surrounds.

*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 portions of the development that breach the building envelope control are designed and sited so as not to be seen from the street level. In this way, the proposed breaches do not impact upon the visual quality of the streetscape. The proposed development, despite its non-compliance with the building envelope, is of a scale that sits generally below the height of mature trees in the natural environment, and is of a density anticipated for the locality.

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

Comment:

The proposed development involves some excavation, including below the portions of the development that breach the building envelope control. However, the excavation is not excessive, is supported by a geotechnical report, and has been assessed as by Council's Development Engineer. As demonstrated by the figure above, the proposed dwelling house and attached secondary dwelling step down with the topography of the land. The proposed development is wholly compliant with the maximum height of building development standard. As such, the proposed development is designed and sited so as to respond to, reinforce, and sensitively relate to the characteristics of the site and the existing natural environment.

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

Comment:

The proposed development is a maximum of two storeys in any one place, including at the points that breach the building envelope, and is compliant with the height of buildings development standard. The proposal includes floor to ceiling heights consistent with the proposed development type, and specific room uses. The portions of the development that breach the building envelope are compliant with the required setbacks. As such, the development is of a height and scale anticipated for the site, and it can be established that the non-compliance arises due to the topography of the land, which slopes down steeply from the rear to the front. The proposed development is also of consistent scale to adjoining dwelling to the north, employing the same floor levels and roof heights. As such, the proposed development is consistent with the anticipated bulk and scale for the site, and with that of adjoining and nearby developments.

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

Comment:

The proposed development is acceptable in relation to view loss for the reasons detailed in the sections of this report relating to Clause C1.3 View Sharing of the P21 DCP. The portions of the development that breach the building envelope control do not result in any view loss.

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

Comment:

The proposed development is acceptable in relation to overshadowing and privacy, for the reasons detailed in the sections of this report relating to Clauses C1.4 Solar Access, and C1.5 Visual Privacy of the P21 DCP. With reference to the building envelope non-compliance, the proposed breaches are to the northern elevation, so do not result in unreasonable overshadowing impacts, and the windows to the breaching portion are either highlight or treated with privacy screening, so does not result un any unreasonable privacy impacts.

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

Comment:

The proposed development suitably retains existing vegetation, and is supported by a landscape plan that adequately demonstrates proposed planting to soften and screen the proposed built form. In particular, planting intended to achieve a height of 3m is proposed to be planted along the northern side boundary adjacent to the portion of the development that breaches the building envelope control. This will assist in screening the built form from No. 75 Marine Parade.

## **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 \$16,499 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,649,850.

## **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

This proposal, for demolition works and construction of a dwelling house, secondary dwelling and swimming pool has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to Development Determination Panel at the discretion of the Executive Manager, with respect to objections raising concern that cost of works is underestimated.

Other concerns raised in the objections related to character, the zone objectives, excavation and geotechnical hazards, amenity (view loss, overshadowing and privacy), tree removal, built form and colours, and the proposed heater.

Critical assessment issues related to coastal risk planning and geotechnical hazards, view sharing, privacy, solar access, side building line, and building envelope.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval, subject to conditions of consent.

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 DA2022/0084 for Demolition works and construction of a dwelling house, secondary dwelling and swimming pool on land at Lot 114 DP 8394, 73 Marine Parade, AVALON BEACH, 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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
A-01 Site Plan + Site Analysis issue B	5 May 2022	Gartner Trovato Architects
A-02 Garage + Entry Plan Revision B	5 May 2022	Gartner Trovato Architects
A-03 Lower Level Plan Revision B	5 May 2022	Gartner Trovato Architects
A-04 Mid Level Plan Revision B	5 May 2022	Gartner Trovato Architects
A-05 Upper Level Plan Revision B	5 May 2022	Gartner Trovato Architects
A-06 North + South Elevation Revision B	5 May 2022	Gartner Trovato Architects



A-07 East + West Elevation	5 May 2022	Gartner Trovato Architects
A-08 Section A + B	5 May 2022	Gartner Trovato Architects

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
SW1 Site Stormwater Management Plan Issue DA-C	1 June 2022	Barrenjoey Consulting Engineers
SW2 Site Stormwater Management Detailing 1	27 April 2022	Barrenjoey Consulting Engineers

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Arboricultural Impact Assessment & Management Report	June 2022	Aura Tree Services
BASIX Certificate No. 1268226M	17 January 2022	Gartner Trovato Architects
Bushfire Risk Assessment	5 October 2021	Bushfire Planning Services
Coastal Engineering Advice	10 January 2022	Horton Coastal Engineering
Geotechnical Investigation J3808	14 January 2022	White Geotechnical Group

- 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:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Landscape DA Plan Sheet 2 of 3 Issue C	12 May 2022	Banksia Design Group
Landscape DA Plan Sheet 3 of 3 Issue C	12 May 2022	Banksia Design Group

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	17 January 2022	Sean Gartner

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	Received
Ausgrid	Response Ausgrid Referral	9 March 2022

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

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

**3. Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house and secondary dwelling, in accordance with the Dictionary of the Pittwater Local Environmental Plan 2014, as follows:

*Dwelling house means a building containing only one dwelling.*

*Secondary dwelling means a self-contained dwelling that—*

- (a) is established in conjunction with another dwelling (the principal dwelling), and*
- (b) is on the same lot of land as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling.*

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

**4. 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.

## 5. **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

### 6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$16,498.50 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 \$1,649,850.00.

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](http://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.

## **7. Security Bond**

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

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

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

### **8. Amended Landscape Plan**

An Amended Landscape Plan shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:

i) update the planting schedule to capture all proposed plants, and in particular the additional 2 x *Livistona australis* in the front setback.

Certification shall be provided to the Certifying Authority that these amendments have been documented.

Reason: Landscape amenity.

### **9. Tree Protection Plan**

a) A Tree Protection Plan shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate, demonstrating tree protection measures to protect the

following trees identified in the Arboricultural Impact Assessment as:

i) tree 1, tree 5 to tree 15, tree 19, and tree 28.

b) The Tree Protection Plan shall be prepared by an Arborist with minimum AQF Level 5 in arboriculture, incorporating the following:

i) layout of the development, including existing and proposed underground services,

ii) location of all trees identified for retention, including extent of canopy,

iii) access routes throughout the site for construction activity,

iv) plan documentation of tree protection measures including: location of tree protection fencing / barriers for tree 1, tree 5 to tree 15, tree 19, and tree 28, and/or; root protection in the form of mulching or boards proposed within the tree protection zone, as required; and trunk and branch protection within the tree protection zone, as required,

v) location of stockpile areas and materials storage,

vi) inspection hold points,

vii) other general tree protection measures.

c) Tree protection methods are to be in accordance with AS4970-2009 Protection of Trees on Development Sites.

Reason: Tree protection.

#### 10. **On Slab Landscape Works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:

i) 300mm for lawn, native grasses and groundcovers,

ii) 600mm for shrubs.

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

#### 11. **Transplanting Methodology Plan**

A Transplanting Methodology Plan, prepared by an Arborist with AQF minimum Level 5 qualifications in arboriculture, shall be documented to demonstrate the requirement for transplanting the proposed *Livistona australis* (tree 3), including:

i) Preparation of the transplantation site,

ii) Preparation of the trees/palms to be transplanted,

iii) transplanting methodology and installation works,

iv) post-transplanting care and duration,

v) ongoing maintenance program,

vi) replacement strategy if transplanting fails in the long term.

The Transplanting Methodology is to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate

Reason: Tree protection.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 14/1/2022 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.

13. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

14. **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.

15. **Fire separation of garage top dwellings**

Where parts of a Class 1a dwelling are located above a Class 10a private garage that is not associated with the Class 1a dwelling, fire separation works is required to comply with Part 3.7.4 of the Building Code of Australia –'Fire separation of garage top dwellings' and NSW 1.1 Additions. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for fire safety and for building occupant safety.



16. **Construction in Bush Fire Prone Areas**

The recommendations made in the Bush Fire Assessment Report prepared by Bushfire Planning & Design, dated 5/10/21, Report Ref No. 3638 are to be considered as part of the assessment of the Construction Certificate.

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

Reason: To ensure adequate provision is made for the design and construction of the building to reduce the risk of ignition from a bushfire and provide building occupant safety.

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Barrenjoey Consulting Engineers job number 211105, drawing number SW1-DA-C, SW2 -DA, dated 1/6/2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

i. OSD shall be provided in accordance with Clause 9.3.1. of Council's Water Management for Development Policy.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

18. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and

(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

19. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

20. **Coastal Bluff Engineering Assessment Implementation**

The advice and recommendations contained in the approved Coastal Engineering Advice prepared by Horton Coastal Engineering Pty. Ltd, dated 10 January 2022, must be addressed as necessary through the Geotechnical Risk Management Report prepared in support of the development application and must be incorporated as required into construction plans and structural specifications for the development.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

21. **Coastal Bluff Engineering Assessment Implementation**

All development or activities must be designed and constructed such that they will not increase the level of risk from coastal processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect coastal processes; they will not be adversely affected by coastal processes.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

22. **Engineers Certification of Plans**

The structural design shall be prepared by and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

23. **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.

24. **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.

25. **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](http://www.sydneywater.com.au) for:

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

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

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

## **CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

### **26. Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, and the recommendations of the Arboricultural Impact Assessment and Tree Protection Plan.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in the Tree Protection Plan, and in particular:

- i) tree protection measures under section 5.3 Discussion, and Appendix B,
- ii) works under section 5.3 Discussion,
- iii) any recommendations in the Tree Protection Plan,
- iv) additionally, the Project Arborist shall be in attendance and supervise any landscaping works within the TPZ of all existing trees to be retained.

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

All tree protection measures specified must:

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

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

Note:

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

Reason: Tree protection.

### **27. Tree Removal Within the Property**

This consent approves the removal of the following tree(s) within the property (as recommended

and identified by tree number in the Arboricultural Impact Assessment):

- i) tree 4 - *Melaleuca quinquenervia*, tree 18 - *Eucalyptus* spp., tree 23 - *Glochidion ferdinandi*, tree 24 - Unknown spp., tree 25 - *Eucalyptus microcorys*, and tree 27 - *Glochidion ferdinandi*,
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

**28. Tree Removal Within the Road Reserve**

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

- i) tree 2 - *Banksia integrifolia*,
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services business unit prior to removal.

Reason: Public liability.

**29. 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.

**30. 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

**31. Protection of Landscape Features and Sites of Significance**

All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed during demolition, excavation and construction works, except where affected by works detailed on approved plans.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

**32. Protection of Existing Street Trees**

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

All street trees within the road verge 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.

No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

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

Reason: Street tree protection.

33. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site, 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) 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, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Certifying Authority must ensure that:

c) 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.

Reason: Tree and vegetation protection.

34. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from the Project Arborist during the works. In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Project Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

35. **Road Reserve**

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

Reason: Public safety.

36. **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.

37. **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.

38. **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.

39. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 4.0 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ 6MH and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

40. **Geotechnical Issues**

All conditions outlined in Geotechnical Investigations prepared by White Geotechnical Group dated 14 January 2022 are to be complied with and adhered to throughout development.

Reason: To ensure excavation, foundations, footings are undertaken in an appropriate manner and structurally sound.

41. **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.

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

### **42. Landscape Completion**

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

- i) all tree planting shall be a species suitable to the bush fire requirements, capable of achieving at least 6 metre height at maturity, and selected from Northern Beaches Council's Native Plant Species Guide - Pittwater Ward, or Council's Tree Guide,
- ii) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- iii) all trees 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 3.0 metres from buildings, 2.0 metres from structures, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
- iv) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for grasses/groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- v) 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.

### **43. Condition of Retained Vegetation - Project Arborist**

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

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

Reason: Tree protection.

### **44. 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.

45. **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.

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

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf>

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

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf>

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

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

47. **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.

48. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the 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 2008
- (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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite 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. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life.

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

49. **Landscape Maintenance**

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

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

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

Reason: To maintain local environmental amenity.

50. **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.

51. **Noise - Lift and Swimming Pool**

All plant equipment must be installed and operated at times so as not to cause 'offensive noise'. It must be demonstrated that the noise level will not exceed 5dB(A) above background noise when measured from the nearest property boundary, as defined by the Protection of the Environments Operation Act 1997.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.