

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2184
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Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 55 DP 12074, 12 Kevin Avenue AVALON BEACH NSW 2107
Proposed Development:	Partial demolition of an existing dwelling and the construction of a new dwelling
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Melanie Gail Miegel Daniel Charles Miegel
Applicant:	Melanie Gail Miegel

Application Lodged:	18/01/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	24/01/2023 to 07/02/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 7%
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	\$ 976,580.00
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PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the partial demolition of an existing dwelling and the construction of a new dwelling and swimming pool.

The following works are proposed:

Lower Ground Floor:

- Retention of the existing under house storage and part south eastern side walls
- Demolish the remainder of the existing lower ground floor, patio and landscape stairs
- Construction of a new habitable floor comprising of kitchen with walk in pantry, dining & living

with rear deck/alfresco opening into pool area, wash closet and office

Ground Floor:

- Demolish the existing ground floor, pathways and garage
- Construction of a new habitable floor comprising of entry patio, laundry, three bedrooms, bathroom, master bed with walk in robe and ensuite, lounge with rear balcony and double garage, workshop and mudroom

External works:

- New driveway and crossover
- New swimming pool, associated decking, plant room, pergola and cabana in rear yard

AMENDED PLANS

During assessment, Council raised concerns regarding insufficient landscaped area, stormwater management and driveway access. Council requested the applicant submit amended information to address these concerns.

The applicant submitted amended stormwater and driveway plans to address the concerns raised by Council's Development Engineer. Amended architectural plans were also submitted to address the concern regarding insufficient landscaped area. To achieve compliance with the landscaped area requirement, the applicant deleted the swimming pool from the proposal.

As such, this report does not include an assessment of a swimming pool. The development description has been revised accordingly.

In accordance with the provisions of the Northern Beaches Community Participation Plan, re-notification of the application was not required. The amendments are considered to be minor and will result in a lesser environmental impact on nearby properties and the public domain.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers,

State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater 21 Development Control Plan - C1.1 Landscaping
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

Property Description:	Lot 55 DP 12074 , 12 Kevin Avenue AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the north eastern side of Kevin Avenue, Avalon Beach.</p> <p>The site is regular in shape with a frontage of 15.24m along Kevin Avenue and a depth of 60.96m. The site has a surveyed area of 929m².</p> <p>The site is located within the R2 Low Density zone and accommodates a split level single and double storey, brick and clad dwelling house with a tile roof, a detached garage to the front of the site and a concrete driveway.</p> <p>The site slopes to the rear of the site from the street frontage.</p> <p>The site is characterised by small and medium size vegetation mostly as perimeter planting. There are also grassed terrace areas within the front and rear of the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one and two storey dwelling houses with a variety of architectural styles. It is not uncommon for sites within the immediate area to have a swimming pool to the rear of the dwelling.</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:

- Development Application NO378/07 for alterations and additions to a dwelling house was approved by Pittwater Council under manager delegation on the 29 August 2007
- Development Application NO326/01 for alterations and additions to a dwelling house was refused by Pittwater Council under manager delegation on the 19 April 2001

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
	<p><u>Clause 29</u> of the EP&A Regulation 2021 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 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended architectural plans.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made	See discussion on “Notification & Submissions

Section 4.15 Matters for Consideration	Comments
in accordance with the EPA Act or EPA Regs	Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/01/2023 to 07/02/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p>General Comments</p> <p>Environmental Health has been requested to provide comment on this proposal for "Partial demolition of an existing dwelling and the construction of a new dwelling and inground pool" specifically in relation to the installation of a solid fuel heater. It is noted that the proposal does not provide detail as to the make, model or specification of heater proposed to be installed.</p> <p>Despite, the position of the heater and the height of the proposed flue appears to comply with Australian Standards and and is sited to be a reasonable distance away from neighbouring properties.</p> <p>Accordingly, the proposal is supported with a recommendation of appropriate conditions of consent to ensure compliance with Australian Standards.</p> <p>Recommendation</p> <p>SUPPORTED - Subject to conditions</p>
Landscape Officer	<p>The application seeks consent for partial demolition of an existing dwelling and the construction of a new dwelling and inground pool.</p> <p>The Arborist's Report prepared by Tree Survey is noted.</p>

Internal Referral Body	Comments
	<p>The Report indicates removal of 18 assessed trees, all of which are exempt either by height or species. No objections are raised to removal as indicated.</p> <p>Removal includes a hedge planting of <i>Murraya paniculata</i> in the road reserve forward of the property. The hedge appears to block sightlines for exiting vehicles. No objections are raised to removal, subject to replanting of a street tree.</p> <p>No landscape plan was sighted with the application. in view of the volume of vegetation to be removed, replacement tree planting is recommended in conditions.</p> <p>No objections are raised with regard to landscape issues subject to conditions as recommended.</p>
NECC (Development Engineering)	<p>27/06/2023: Amended stormwater plans and driveway profile is provided. No objections to approval subject to conditions as recommended.</p> <p>20/04/2023: Driveway profile on drawing no DA15, doesn't show true existing levels of street gutter, amended plan with correct levels to be provided. An easement grant letter from rear neighbour, 1 Wollstonecraft Avenue AVALON BEACH is provided. But no revised stormwater plans with location of easement and site stormwater disposal are provided. Conceptual stormwater plans showing these details are requested.</p> <p>28/03/2023: The application seeks consent for partial demolition of an existing dwelling and the construction of a new dwelling and inground pool.</p> <p>Access Proposal is to demolish the existing driveway and garage and re-construct a new driveway, garage and patio by filling to a maximum depth of ~1.5m. No longitudinal section of proposed driveway is provided. Longitudinal section of center of driveway from street gutter invert to parking space is to be provided with existing, proposed levels, chainage and grades. Driveway profile to be in compliance with council's standard vehicular crossing profile and AS/NZS 2890:1;2004</p> <p>Stormwater Property is on the low side of the road, an above ground detention basin with level spreader is proposed.</p> <p>But before Council consider these drawings applicant is advised as below:</p>

Internal Referral Body	Comments
	<p>a) The Stormwater drainage for the site shall demonstrate compliance with Council's Water Management for Development Policy, particularly Stormwater Drainage from Low Level Properties Technical Specification Section 5.5. As the subject site falls to the rear, an easement to drain water is to be created in favor of the site over the downstream properties. Evidence of owners consent by the property owners (1 Wollstonecraft Avenue AVALON BEACH & 3 Wollstonecraft Avenue AVALON BEACH)) shall be submitted with the Development Application. The Application shall be supported by a long section of the inter-allotment drainage to the connection with Council's road drainage system.</p> <p>b) Should this method of stormwater disposal not be possible, evidence shall be submitted with the Application.</p> <p>For sample letter refer Appendix 2, Easement Letter of Council's Water Management for Development Policy.</p> <p>Geotech Site is not mapped on Geotechnical Hazard area, but due to proposed excavation to a maximum depth of ~1.3m to install the proposed pool and to construct the proposed plant room, a Geotech report by White Geotechnical Group Pty Ltd, Ref: J4665, Dated 23rd Nov 2022 with Form 1 and 1A is provided. This report is to be implemented at design & construction phase.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1355653S_03, dated 10/07/2023). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0008207326, dated 14/11/2022).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed

Water	40	42
Thermal Comfort	Pass	Pass
Energy	50	50

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.1m	7%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.1m
Percentage variation to requirement:	7%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

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

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) assessment:

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

The proposed development is considered appropriate and reasonable for the following reasons:

- The variation is for a very small portion of the development being the roof ridge
- The proposed variation is generally a result of the existing cut on site and is not apparent to the naked eye from ground level
- The objectives of the zone can be met despite the numerical variation
- It is not considered there will be any unreasonable amenity or environmental impacts as a result of the non compliance
- There is sufficient environmental planning grounds especially given the sloping topography of the site

Council generally agrees with the applicant and considers the proposed development is consistent with the objectives of the act.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The maximum height of the proposed roof ridge is 9.1 metres at the rear where the land falls away. Some of the works will readily comply with the building height. Should the height be considered without consideration of the excavated land, as it appears to the naked eye, the variation is then restricted to the very rear of the dwelling only and is consistent with neighbouring structures.

The dwelling appears as single storey when viewed from the streetscape. In addition sufficient building separation has been provided to minimise perceived height when viewed from surrounding sites.

In addition, the development is expected to sit below the existing tree canopy.

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

Comment:

The subject site is surrounded by detached one, two and partial three storey dwellings, set on large lots with significant landscaping and native vegetation. The proposed development remains compatible with the height and scale of surrounding development. The height variation proposed is due to the fall of the land and existing excavation, and is consistent with the surrounds.

The resulting dwelling is considered to be compatible with the prevailing height of buildings and streetscape character within the locality, despite the non-compliance and will not be visible from Kevin Avenue where only a single storey is visible.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed variation is not expected to result in any unreasonable solar access impacts to adjoining properties. Given that compliant solar access is achieved, despite the height variation sought, it is considered the underlying objective of this clause has been satisfied.

d) to allow for the reasonable sharing of views,

Comment:

The proposed works are expected to maintain reasonable sharing of views.

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

Comment:

The overall existing and proposed breach are the result of the topography and existing excavation. The works have been designed to retain the existing lower FFL and the minor breach is partly a result of working with this existing floor plate.

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

Comment:

The proposed development is compatible with the residential surrounds and is an appropriate redevelopment of the existing dwelling. The design, colours and materials will not impact on the natural environment and the variation to the height control does not affect the natural environment, other than some minor pruning of nearby trees. The subject site is not a heritage item, is not located in a heritage conservation area and is not located in proximity to a heritage item.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- To provide for the housing needs of the community within a low density residential environment
- To enable other land uses that provide facilities or services to meet the day to day needs of residents
- To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses

Comment:

Consistent. The proposal is for a dwelling that will be compatible with the streetscape and site context. The use of the site also remains unchanged.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

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

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

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

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

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

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i)

and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
Front building line	6.5m	6.5m	N/A	Yes
Rear building line	6.5m	10.9m (cabana)	N/A	Yes
Side building line	SE - 1m	1m (ground floor), 2.3m (lower ground floor)	N/A N/A	Yes Yes
	NW - 2.5m	2.1m (ground and lower ground floor)	16%	No
Building envelope	SE - 3.5m	Outside envelope	Nil to 18.6%	No
	NW - 3.5m	Outside envelope	Nil to 18.2%	No
Landscaped area	60% (557.4m ²)	60.6% (563m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.5 Visual Privacy	No	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
C1.14 Separately Accessible Structures	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic protection - General	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

Detailed Assessment

C1.1 Landscaping

The works require the removal of some trees and landscaping. An arborist report was provided as part of the development application.

The application was referred to Council's Landscape Officer. In view of the volume of vegetation to be removed, replacement tree planting has been recommended as a condition. The required tree planting will ensure environmental amenity is maintained.

C1.5 Visual Privacy

Description of non-compliance

The control requires private open space areas and living rooms of proposed and adjoining dwellings to be protected from direct overlooking within 9m.

The proposed development includes windows on the side elevations that are within 9m of the adjacent dwelling and private open space that may cause visual privacy impacts.

Merit consideration

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

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*

Comment:

It is considered the proposed windows on the side elevations of the ground floor may lead to additional visual privacy impacts to the adjacent properties due to their large size, low sill heights (1m) and elevation relative to the adjacent properties. Of the 11 windows on the side elevations, two windows on the southeast elevation are associated with a living rooms and two windows on the northwest elevation is associated with the entry foyer and mudroom. The remainder of the windows are associated with bedrooms and bathrooms. Two forms of windows are proposed, one with a glazed area of 0.8m² and the other with a glazed area of 3m². It is considered that the potential privacy impact from the larger windows is unreasonable.

As such, to reduce unreasonable visual privacy impacts upon adjacent dwellings a condition is recommended to require the larger windows to have a sill level of at least 1.5m above the finished floor level or utilise frosted glazing and be non-operable below this level.

Additionally, to reduce the visual privacy impact from the elevated deck on the southwest side of the dwelling, a condition is recommended to require installation of a privacy screen 1.8m high above the finished floor level along its length.

- *A sense of territory and safety is provided for residents.*

Comment:

Subject to the above condition, it is assumed the sense of territory and safety will be provided for residents.

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

D1.9 Side and rear building line

Description of non-compliance

Clause D1.9 Side and rear building line of Pittwater 21 Development Control Plan, requires development to be setback 2.5m from one side boundary and 1.0m from the other side boundary, and 6.5m to the rear boundary. For this assessment, the 2.5m control is applied to the north-western side boundary, and the 1.0m applied to the south-western side boundary.

The lower ground and ground floor are setback 2.1m from the north-western side boundary and as a result present a variation of 16% or 400mm to the setback control requiring 2.5m. The works comply with the side boundary setback control of 1m along the south-eastern side boundary.

The dwelling and proposed swimming pool and cabana readily comply with the rear boundary setback control.

The proposed variation has been assessed against the outcomes of the control. In this instance, the variation meets the outcomes of the control and is therefore supportable.

Merit consideration

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

- To achieve the desired future character of the Locality.

Comment:

The proposed development is consistent with the low-density residential area and desired future character of Avalon Beach Locality.

The dwelling is setback generously on the south eastern side boundary ensuring a reasonable level of building separation is provided for both the subject site and adjoining sites. The dwelling has been centrally located within the site and is considered to be of a compatible built form.

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

Comment:

The proposed development has minimised the bulk and scale through demonstrating compliance with the height of buildings development standard, and compliance with the building envelope control.

The development appears as single storey when viewed from Kevin Avenue and is generally consistent with the built form within the general vicinity.

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

Comment:

The proposed development will not adversely impact upon any existing views, and vistas to and from public, and private places.

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

Comment:

The proposal will ensure appropriate view sharing is maintained through a responsive design, and retained landscaping.

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

Comment:

The proposal ensures an appropriate level of privacy, amenity, and solar access for the development site and adjoining sites.

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

Comment:

The proposal will continue to appear as a single storey dwelling when viewed from the streetscape. Although the proposal requires the removal of some trees, these are generally limited to within the rear yard. In addition replacement planting has been recommended as a condition to ensure there will be substantial landscaping to assist in ensuring an attractive streetscape.

- Flexibility in the siting of buildings and access.

Comment:

The siting of the dwelling house is considered suitable despite the minor variation to the rear boundary line control. The proposal allows for suitable site access along the side boundaries, and the siting of the building is considered appropriate in this instance.

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

Comment:

The proposal results in retention of vegetation that will assist to visually reduce the built form. In addition, conditions have been recommended requiring replacement planting in view of the volume of vegetation being removed.

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

Comment:

The subject site does not adjoin a commercial zone, therefore this outcome is not relevant.

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

D1.11 Building envelope

Description of Non-Compliance

Clause D1.11 Building Envelope requires development to be sited within a 3.5m building envelope to ensure the bulk and scale of the built form is minimised.

A portion of the dwelling encroaches into the side boundary along the north western and south eastern elevations. The extent of the building envelope encroachment is shown in Figure 1 and 2 below.



Figure 1: Extent of building envelope encroachment along the north western elevation shown in RED



Figure 2: Extent of building envelope encroachment along the south eastern elevation shown in RED

Merit Consideration

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

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

Comment:

The proposed development will positively contribute to the desired future character to the Avalon Beach Locality, by maintaining a low residential dwelling house.

- *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:

Although the works are non compliant with the maximum building height this is a result of the sloping topography and pitch of the roof, which does not exceed the height of the natural environment as it sits below the tree canopy.

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

Comment:

The existing landscaping and conditioned landscaping surrounding the dwelling will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from surrounding properties. The proposal has persevered the surrounding canopy trees where possible to respond to the existing natural environment. The dwelling has also been centrally located on the site to ensure a reasonable level of spatial separation is provided.

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

Comment:

The utilisation of the existing vegetation and siting the works generally below the canopy tree height, will result in the mitigation of the bulk and scale of the dwelling house when viewed from adjoining properties and the public domain.

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

Comment:

The building envelope encroachment is not considered to contribute to unacceptable view loss to the adjoining private properties or public domain.

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

Comment:

An acceptable level of amenity and solar access will be provided to the adjoining properties.

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

Comment:

The dimensions of the landscaped open space area are generally sufficient in providing for any future vegetation planting.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit.

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 \$9,766 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$976,580.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

It is considered that the proposed development satisfies the appropriate controls and that all processes

and assessments have been satisfactorily addressed.

RECOMMENDATION

DEFERRED COMMENCEMENT APPROVAL

A. Council is satisfied that:

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

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

Accordingly Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Clause 76 of the Environmental Planning and Assessment Regulation 2021 to DA2022/2184 for Partial demolition of an existing dwelling and the construction of a new dwelling on land at Lot 55 DP 12074,12 Kevin Avenue, AVALON BEACH, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

DEFERRED COMMENCEMENT CONDITIONS

1. Stormwater Drainage Easement

As the natural fall of the land is towards the rear of the site the disposal of stormwater drainage is to be in accordance with the drainage plan submitted by NB Consulting Engineers, Job No. 2210131, Drawing No. D06, Issue B, dated 05th May 2023. The easement is to be created under Sections 88B and/or 88K of the Conveyancing Act 1919. The applicant must provide Council with evidence of the created easement on title in order to activate the consent.

Stormwater drainage plans are to be submitted to Council for written approval detailing disposal of stormwater from the site in accordance with Council's Water Management Policy.

Reason: To ensure adequate provision is made for stormwater drainage from the site in a proper manner that protects adjoining properties.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Clause 76 of the Environmental Planning and Assessment Regulation 2021. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

GENERAL CONDITIONS

2. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA03 Rev D	10/07/2023	Action Plans
DA04 Rev D	10/07/2023	Action Plans
DA05 Rev D	10/07/2023	Action Plans
DA06 Rev D	10/07/2023	Action Plans
DA07 Rev D	10/07/2023	Action Plans
DA08 Rev D	10/07/2023	Action Plans
DA09 Rev D	10/07/2023	Action Plans
DA10 Rev D	10/07/2023	Action Plans
DA11 Rev D	10/07/2023	Action Plans
DA12 Rev D	10/07/2023	Action Plans
DA13 Rev D	10/07/2023	Action Plans
DA14 Rev D	10/07/2023	Action Plans

Engineering Plans		
Drawing No.	Dated	Prepared By
2210131 D01 Issue B	05/05/2023	NB Consulting Engineers
2210131 D02 Issue B	05/05/2023	NB Consulting Engineers
2210131 D03 Issue A	07/12/2022	NB Consulting Engineers
2210131 D04 Issue A	07/12/2022	NB Consulting Engineers
2210131 D05 Issue A	07/12/2022	NB Consulting Engineers
2210131 D06 Issue B	05/05/2023	NB Consulting Engineers
2210131 D07 Issue B	05/05/2023	NB Consulting Engineers
2210131 D08 Issue B	05/05/2023	NB Consulting Engineers
2210131 D09 Issue A	05/05/2023	NB Consulting Engineers
2210131 D09 Issue B	05/05/2023	NB Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1355653S_03	10/07/2023	Frys Energywise
NatHERS Certificate No. 0008207326	14/11/2022	Frys Energywise
Arboricultural Impact Assessment & Tree Protection Plan	31/10/2022	Tree Survey
Geotechnical Investigation (Ref: J4665)	23/11/2022	White Geotechnical Group

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	14/12/2022	Melanie Miegall

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.

3. **Approved Land Use**

Nothing in this consent shall authorise the use of the site beyond the definition of a *dwelling house*, in accordance with the Dictionary of the Pittwater Local Environmental Plan 2014.

Any variation to the approved land use 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 Certifier 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 Certifier 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 Certifier 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 an 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 \$250,000. The Long Service Levy is calculated on 0.25% 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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or 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 Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,765.80 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 (as

amended).

The monetary contribution is based on a development cost of \$976,580.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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 \$2,000 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 Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. 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 Pty Ltd, Ref: J4665, Dated 23rd Nov 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 Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Standard Normal Low vehicle crossing profile and in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

10. **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 NB Consulting Engineers, Job No. 2210131, Drawing No. D01, D02, D06-D10, Issue B, dated 05th May 2023 and Drawing No. D03 to D05, Issue A, Dated 07/12/2022 . 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 to be provided in accordance with Clause 9.0 of Council's Water Management for Development Policy.
- ii. Final stormwater discharge to be disposed of to Wollstonecraft Avenue, via an easement through 1 Wollstonecraft Avenue AVALON BEACH
- iii. 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.

11. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- Windows on the northwest and southeast elevations of the upper floor (excluding W01, W07, W08, W13 and W14) are to have a sill height of at least 1.5m above the finished floor level or incorporate inoperable frosted or obscured glazing below this level.
- A 1.8m high privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost southeastern edge of the deck located off the laundry as shown on the approved plans. The privacy screen shall be of fixed panels or louvre style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

12. **Boundary Identification Survey**

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

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

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

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

13. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

14. **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 Certifier prior to the issue of the Construction Certificate.

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

15. **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. Light colours such as off white, cream, silver or light grey colours are not permitted.

Details demonstrating compliance are to be submitted to the Certifier 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.

16. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. Tree Removal Within the Road Reserve

This consent approves the removal of the following tree(s) within the road reserve (as indicated in the Arboricultural Impact Assessment dated 31 October 2022 prepared by Tree Survey :

Trees 2 - 8; *Murraya paniculata*

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 Section prior to removal.

Reason: Public liability.

DURING BUILDING WORK

18. 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), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture

shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,

- viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier 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.

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

Reason: Tree and vegetation protection.

19. **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.

20. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and

- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

21. Geotechnical Requirements

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

22. 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 Certifier.

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

23. 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.

24. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

25. Installation and certification of solid/fuel burning heater

The solid fuel heater must be certified to comply with Australian Standards 4012 and 4013.

Provide to the Principal Certifier certification that the solid fuel heater has been installed by an

appropriately experienced and qualified person, in accordance with the relevant provisions of AS2918 – Domestic Solid Fuel Burning Appliances – Installation.

Reason: To ensure the installation is completed in a legislatively compliant manner.

26. **Required Tree Planting**

Trees shall be planted in accordance with the following:

3 trees capable of attaining a minimum height of 5m at maturity; located within the group

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

Native tree planting species may be selected from Council's list:

www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide.

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

Reason: To maintain environmental amenity.

27. **Street Tree Planting**

Street trees shall be planted in accordance with the following:

1 x *Banksia integrifolia*; located in the Kevin Avenue road reserve forward of the property

All street trees shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees.

All street 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 including a four post and top and mid rail timber tree guard and watered until established and shall be located at least 2 metres from any structures including driveways, kerbs and paths and shall generally be centralised within the road verge.

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

Reason: To maintain environmental amenity.

28. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

29. **Positive Covenant and Restriction as to User for On-site Stormwater Detention System**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in

respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures 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 for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

30. **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 Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

31. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

32. **Maintenance of solid fuel heaters**

The owner/occupier shall ensure servicing of the heater is maintained according to the manufacturer's specifications.

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

33. **Operation of solid fuel burning heaters**

The owner/operator must take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures must include:

- Using dry seasoned hardwood
- Storing wood in a dry well-ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke
- Maintenance according to the manufacturer's specifications

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

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

Signed



Nick Keeler, Planner

The application is determined on 14/07/2023, under the delegated authority of:



Steven Findlay, Manager Development Assessments