

STATEMENT OF ENVIRONMENTAL EFFECTS

FOR

**SECTION 4.55 MODIFICATION TO
DEVELOPMENT CONSENT**

FOR

**NEW SINGLE DWELLING THAT INCORPORATES
PARTIAL RETENTION OF EXISTING STRUCTURE**

UNDER DEVELOPMENT CONSENT

NUMBER NO356/08.

AT PROPERTY

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1.0 INTRODUCTION

This Statement of Environmental Effects (SEE) has been prepared in support of a Section 4.55 Modification for the proposed modifications to the approved development on the subject site comprising redevelopment of the property for the purposes of a new single dwelling that incorporates partial retention of existing structure under development consent number NO356/08.

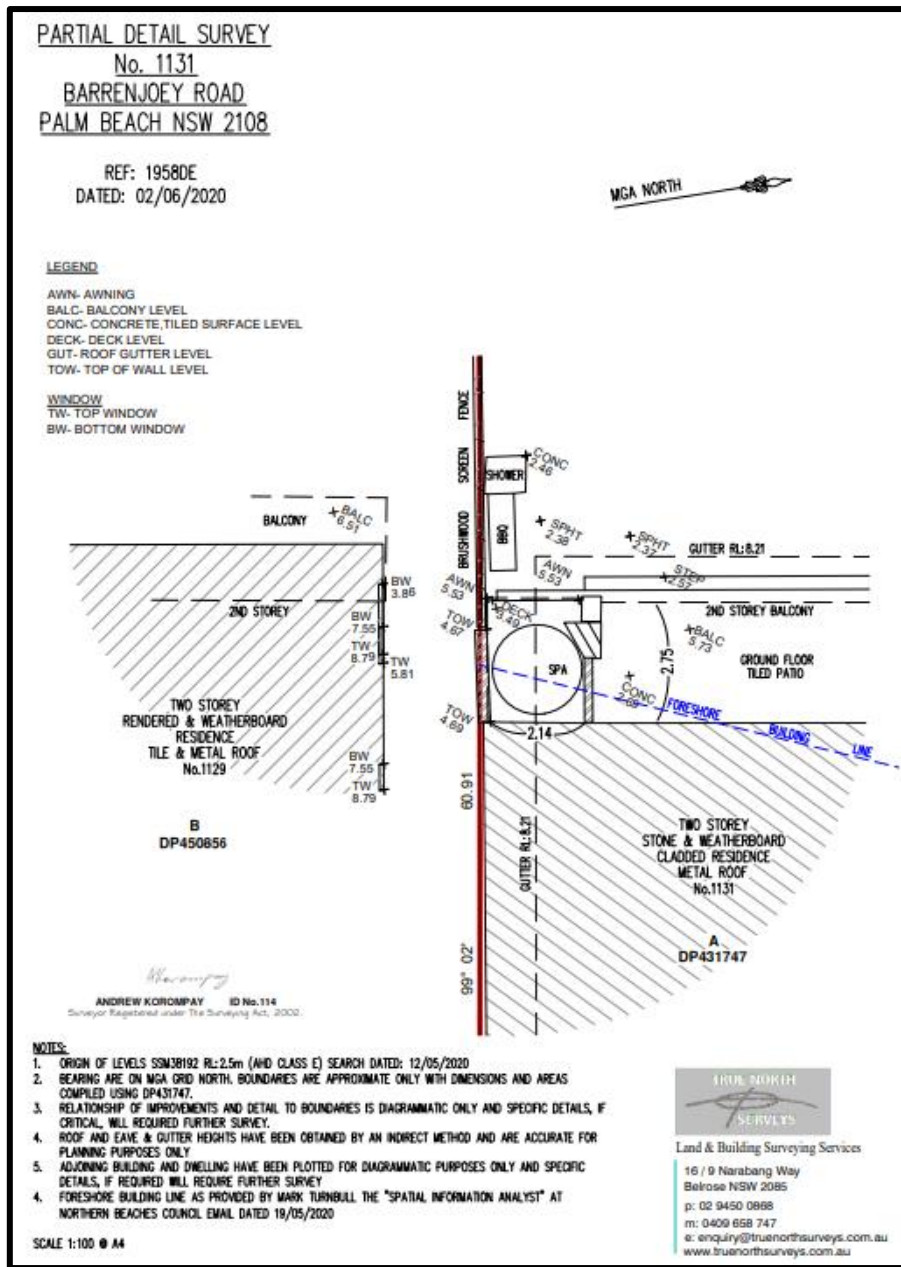
The requested modification seeks consent for an amended floor plan for the approved and constructed ground floor level for the purposes of a spa pool and stone surround located on the existing concrete slab/patio on the western elevation of the existing dwelling.

This Statement of Environmental Effects encompasses the use of retrospective works being the subject of a Building Information Certificate to be submitted if required. In terms of the works carried out, the Environmental Planning and Assessment Act provides alternatives for when works have been carried out that are unauthorised. Properly understood, there can be no doubt, that the Environmental Planning and Assessment Act permits the regularisation of unauthorised works. That regularisation is carried out in the manner presently being embarked upon.

I have inspected the subject site and surrounding locality and assessed the plans and supporting documents for the proposed modified development. I consider that the proposed modified development is reasonable and is worthy of approval by Northern Beaches Council (Council) in conjunction with consideration of a Building Information Certificate Application containing requisite information including survey, structural certification and similar documentation, if required.

It is my professional view that the proposed modifications should be assessed as "modifications involving minimal environmental impact" pursuant to Division 4.55 of the Environmental Planning and Assessment Act, 1979, due to the fact that there will be no unreasonable adverse amenity impacts on adjoining properties or the public

domain.



SURVEY OF SPA AND ASSOCIATED WALLS

Background

The parent Development Application N0356/08 for the redevelopment of the property for the purposes of a new single dwelling that incorporates partial retention of existing structure (Submitted: 31/07/2008) included a number of approved plans and associated documentation for significant alterations and additions to an existing dwelling house.

The subject works namely a spa and supporting structures surrounding the spa namely timber stairs and surround and masonry block perimeter walls were erected without the requisite approvals being obtained beforehand. The subject application seeks to amend the approved plans by incorporating the attached plans indicating the location of the subject works.

The Requested Modification

This modification application is submitted to Northern Beaches Council under the provisions of Division 4.55 – modification of consents– generally, **Part 1(A) modifications involving minimal environmental impact.**

The proposed modification incorporating the provision of an aboveground spa pool with timber steps and surrounds along with a stone surrounding wall have been identified as being in accordance with Council's provisions of a reasonable use of areas of private open space.

The modification requests supplementing the list of approved DA plans with the following documents to allow modifications to the approved elevations and floor plans as follows-

Partial Detailed Survey by True North Surveys dated 12 June 2020

Elevations of Spa Area by True North Surveys dated 11 June 2020

Identification Survey Sketch by True North Surveys dated 2 June 2020

It should be noted that the spa area has been provided with privacy screens in order to afford reasonable degrees of privacy between the subject site and adjacent properties. The privacy screens are required to minimise overlooking from the elevated deck and outdoor dining area located on the adjacent property to

the south of the subject site.

The subject works being located on the water side area of the Foreshore Building Line are a permissible use as the works comprise a *recreation facility (outdoor)* as defined under the following extract from Pittwater Local Environmental Plan 2014 – **recreation facility (outdoor)** means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major)



Extract From Northern Beaches Council Maps Showing Foreshore Building Line Across Subject Site

The following extract is relevant to the assessment of the permissible works within the Foreshore area as prescribed under the following provisions of the Pittwater Local Environmental Plan 2014 –

7.8 Limited development on foreshore area

1. *The objectives of this clause are as follows:*

1. *to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*

RESPONSE

The subject works, being contained wholly within the site and well removed from any area of natural foreshore processes will not impact upon these processes nor affect the significance and amenity of the area due to the location of the works being well removed from public areas in the locality.

2. *to ensure continuous public access along the foreshore area and to the waterway.*

RESPONSE

As can be seen from the submitted documentation, the subject site extends well into the Pittwater waterway however the location of the sandy beach between the existing seawall and the western boundary of the subject site allows unfettered public access across the subject site. The proposal does nothing to materially impact upon this access.

2. *Development consent must not be granted for development on land in the foreshore area except for the following purposes:*

1. *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,*

RESPONSE

The subject works, as confirmed by the accompanying survey report do not extend, alter or rebuild an existing building either wholly or partly in the foreshore area as the works have been carried out entirely within the existing footprint of the approved development on the subject site.

2. *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors)*

RESPONSE

The proposal being for an outdoor recreation facility namely a spa pool satisfies the definition of recreation facility (outdoor) contained within the Dictionary section of the Pittwater Local Environmental Plan 2014 and as such is a use contemplated by the relevant planning controls.

3. *Development consent must not be granted under this clause unless the consent authority is satisfied that:*
 1. *the development will contribute to achieving the objectives for the zone in which the land is located, and*

RESPONSE

The subject site, being zoned E4 Environmental Living under the relevant provisions of the Pittwater LEP 2014, is bound by the following zone objectives –

Zone E4 Environmental Living

1 Objectives of zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian*

and foreshore vegetation and wildlife corridors.

The subject works being contained within the existing building footprint with no impact upon any area of special ecological, scientific or aesthetic value whilst maintaining a low density and scale of residential development integrated with the landform as no excavation or filling is required and with no impact upon riparian, foreshore vegetation or wildlife corridors is entirely consistent with the above quoted objectives of the zone.

- 2. the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*

RESPONSE

The subject structure is located behind an area of landscaped open space and is barely discernible from the waterway and is entirely compatible with the adjacent foreshore and the surrounding areas.



Western Elevation of Subject Spa Pool Enclosure

3. *the development will not cause environmental harm such as:*
 1. *pollution or siltation of the waterway, or*
 2. *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 3. *an adverse effect on drainage patterns, or*
 4. *the removal or disturbance of remnant riparian vegetation, and*

RESPONSE

The subject structure has been sensitively located to ensure there will be no environmental harm through pollution or siltation of the waterway, no adverse effects on surrounding uses or marine habitat will not have an adverse effect on drainage patterns and has not resulted in the removal of any remnant riparian vegetation as the subject structure is located upon an existing reinforced concrete slab.

4. *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*

RESPONSE

No congestion nor conflict will be generated between persons using the open space areas or the waterway as a consequence of the use of the subject structure.

5. *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*

RESPONSE

The existing public access across the beach frontage of the subject site although part of the subject site will be unimpeded by the location or use of the subject structure.

6. *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

RESPONSE

As the subject works were carried out within the approved footprint of the parent DA and are located within the subject site and not visually prominent the works therefore accord with the above objective.

7. *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*

RESPONSE

The works carried out are not readily discernible from any areas available to the public, particularly the foreshore and Pittwater waterway and therefore do not have any material impact upon the amenity or appearance of the foreshore.

8. *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

RESPONSE

The subject works have been carried out on a slab constructed in accordance with the approved RL's of the constructed works. These works would have given accounts to sea level rise, coastal erosion and recession as well as flooding patterns and as such will accord with the above objective.

4. *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:*
 1. *continuous public access to and along the foreshore through or adjacent to the proposed development,*
 2. *public access to link with existing or proposed open space,*

3. *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
4. *public access to be located above mean high water mark,*
5. *the reinforcing of the foreshore character and respect for existing environmental conditions.*

RESPONSE

The subject works do not impede public access and do not erode the foreshore character and are located on the part of the site that respects existing environmental conditions.



View of beachfront of subject site showing unimpeded public access across the subject site

5. In this clause:

foreshore area means the land between the foreshore building line and the mean high water mark of the nearest natural waterbody shown on the Foreshore Building Line Map.

foreshore building line means the line shown as the foreshore building line on the Foreshore Building Line Map.

RESPONSE

The submitted survey report indicates the location of the Foreshore Building Line and confirms the location of the subject works as being between the Foreshore Building Line and the waterway. The subject works within this area of land satisfy the definition of recreation facilities (outdoor).



View of spa showing timber surrounds, masonry wall and retractable privacy screens

Division 4.55 of the Environmental Planning and Assessment Act 1979 No. 203.

The relevant provisions of Division 4.55 (1A) are as follows –

A consent authority must, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if;

- a) It is satisfied that the proposed modification is of minimal environmental impact and,*

RESPONSE

The proposal is considered to be of minimal environmental impact due to the general configuration of the approved construction being consistent and the amended layout having no impact on the completed development on the subject site.

- b) It is satisfied that the development to which the consent has modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

RESPONSE

The development as proposed to be modified will be the same development for which development consent was granted.

- c) It has notified the application in accordance with;*
 - i. The regulations, if the regulations so require, or*
 - ii. A development control plan, if the consent authority in the Council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

RESPONSE

The requested modification will be notified to likely affected parties by Northern Beaches Council if deemed necessary.

- d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan*

RESPONSE

Submissions made in response to the notification of the requested modification will

be considered by the consent authority as part of the assessment process.

Reasons for the Proposed Modification

The reasons for the support of the proposed Division 4.55 Modification are due to the fact that the subject spa and surrounds was erected without the requisite consent being obtained prior to the construction of the works.

2.0 DIVISION 4.15 EVALUATION

4.15 Evaluation

7.6 Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument, and

(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

RESPONSE

The relevant provisions of the PLEP and relevant DCP have been addressed in the body of this Statement.

(iii) any development control plan,

RESPONSE

The relevant provisions of the Pittwater DCP have been considered in the body of this Statement.

(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4,

RESPONSE

The amended proposal will not impact upon any planning agreement.

and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

RESPONSE

The relevant regulations have been given due regard in the construction of this Statement.

and

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

RESPONSE

The body of this Statement describes the potential impacts upon the natural and built environments and the mechanisms to be incorporated to reduce or prevent these impacts upon the locality.

(c) the suitability of the site for the development,

RESPONSE

The subject site, by virtue of its existing layout, topography and locality is suitable for the modified proposal.

(d) any submissions made in accordance with this Act or the regulations,

RESPONSE

Any submissions received in response to Councils notification of the proposal will be considered as part of Councils assessment of the proposal.

(e) the public interest.

RESPONSE

The proposal endorses the public interest by limiting the impact of the proposal to the existing developed area of the subject site, with subsequent limited disturbance to the natural and built environment.

(2) Compliance with non-discretionary development standards—development other than complying development

If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

(a) is not entitled to take those standards into further consideration in determining the development application, and

(b) must not refuse the application on the ground that the development does not comply with those standards, and

(c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards, and the discretion of the consent authority under this section and section 4.16 is limited accordingly.

(3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:

(a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and

(b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard. Note. The application of non-discretionary development standards to complying development is dealt with in section 4.28 (3) and (4).

(3A) Development control plans

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

(a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and

(b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and

(c) may consider those provisions only in connection with the assessment of that development application. In this subsection, standards include performance criteria.

(4) Consent where an accreditation is in force

A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.

(5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).

(6) Definitions

In this section: (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and (b) non-discretionary development standards means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

Environmental Planning Instruments

The proposal as approved and as modified remains a permissible development under the provisions of the Pittwater Local Environmental Plan.

Development Control Plans

The proposal is bound by the provisions of Pittwater Development Control Plan. The proposed modification to the Development Consent is mindful of Council's Controls.

Impact on the Natural Environment.

The proposed modification will not impact upon flora and fauna, soil or water quality, air quality or the conservation of natural resources

Impact on the Built Environment.

Scenic qualities – The proposed modification is consistent with the current and future character of the locality.

Compatibility with adjacent land uses –The proposed modification will not materially alter the compatibility with the adjacent land uses.

Bulk and scale – The proposed amendments will not materially impact upon bulk and scale of the approved development of the carpark and associated works.

Overshadowing – The proposed modification will not impact upon the solar access to nearby sites.

Views and vistas – There will be no impacts upon views and vistas across or around the subject site.

Site design – The refinements to the approved works are considered reasonable for the subject site.

Public domain – There are no works proposed in the public domain.

Amenity Impacts – I consider that there will be no unreasonable amenity impacts from the proposed modification.

Impact on the Social and Economic Environment.

The proposal is unlikely to result in any negative social or economic impacts.

Suitability of the Site.

The subject site, by virtue of its existing development, zoning, topography and locality is suitable for the proposal.

3.0 PLANNING ASSESSMENT

A compliance table has been provided at **Section 5.0** of this document.

3.1 Pittwater Local Environmental Plan 2014

1.2 Aims of Plan

- (1) This Plan aims to make local environmental planning provisions for land in Pittwater in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*
- (2) The particular aims of this Plan are as follows:*
 - (a) to promote development in Pittwater that is economically, environmentally and socially sustainable,*
 - (b) to ensure development is consistent with the desired character of Pittwater's localities,*
 - (c) to support a range of mixed-use centres that adequately provide for the needs of the Pittwater community,*
 - (d) to retain and enhance land used for employment purposes that is needed to meet the economic and employment needs of the community both now and in the future,*
 - (e) to improve access throughout Pittwater, facilitate the use of public transport and encourage walking and cycling,*
 - (f) to encourage a range of housing in appropriate locations that provides for the needs of the community both now and in the future,*
 - (g) to protect and enhance Pittwater's natural environment and recreation areas,*
 - (h) to conserve Pittwater's European and Aboriginal heritage,*
 - (i) to minimise risks to the community in areas subject to environmental hazards including climate change,*

- (j) *to protect and promote the health and well-being of current and future residents of Pittwater.*

Comment:

The completed development as amended remains consistent with the aims of the PLEP 2014.

Zone E4 Environmental Living

2 Objectives of zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

3 Permitted without consent

Home businesses; Home occupations

4 Permitted with consent

Bed and breakfast accommodation; Boat sheds; Building identification signs; Business identification signs; Child care centres; Community facilities; Dwelling houses; Environmental protection works; Group homes; Health consulting rooms; Home-based child care; Home industries; Jetties; Places of public worship; Respite day care centres; Roads; Secondary dwellings; Water recreation structures

5 Prohibited

Industries; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

Comment:

This application seeks no change in the use of the site from the use as a dwelling house. Dwelling houses are permissible within the E4 Environmental Living zone, with development consent.

4.3 Height of Buildings

(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,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

(2A) *Despite subclause (2), development on land:*

- (a) at or below the flood planning level or identified as "Coastal Erosion/Wave Inundation" on the Coastal Risk Planning Map, and*
- (b) that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map, may exceed a height of 8.5 metres, but not be more than 8.0 metres above the flood planning level.*

(2D) *Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if:*

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and*
- (b) the objectives of this clause are achieved, and*
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and*
- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.*

Comment:

The subject works are at ground level and comply with the 8.5m maximum height

limit applying to the site.

5.9 Preservation of trees or vegetation

- (1) The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.*
- (2) This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council.*

Note. A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.

- (3) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:
 - (a) development consent, or*
 - (b) a permit granted by the Council.**
- (4) The refusal by the Council to grant a permit to a person who has duly applied for the grant of the permit is taken for the purposes of the Act to be a refusal by the Council to grant consent for the carrying out of the activity for which a permit was sought.*
- (5) This clause does not apply to a tree or other vegetation that the Council is satisfied is dying or dead and is not required as the habitat of native fauna.*
- (6) This clause does not apply to a tree or other vegetation that the Council is satisfied is a risk to human life or property.*
- (7) A permit under this clause cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation:
 - (a) that is or forms part of a heritage item or that is within a heritage conservation area, or*
 - (b) that is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance, unless the Council is satisfied that the proposed activity:*
 - (c) is of a minor nature or is for the maintenance of the**

heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area, and

(d) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.

Note. As a consequence of this subclause, the activities concerned will require development consent. The heritage provisions of clause 5.10 will be applicable to any such consent.

(8) This clause does not apply to or in respect of:

(a) the clearing of native vegetation:

(i) that is authorised by a development consent or property vegetation plan under the Native Vegetation Act 2003, or

(ii) that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or

(b) the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the Native Vegetation Act 2003) that is authorised by a development consent under the provisions of the Native Vegetation Conservation Act 1997 as continued in force by that clause, or

(c) trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the Forestry Act 1916, or

(d) action required or authorised to be done by or under the Electricity Supply Act 1995, the Roads Act 1993 or the Surveying and Spatial Information Act 2002, or

(e) plants declared to be noxious weeds under the Noxious Weeds Act 1993. Note. Permissibility may be a matter that is

determined by or under any of these Acts.

(9) *[Not adopted]*

Comment:

The subject works do not require the removal or modification of any vegetation on the subject site.

7.1 Acid Sulfate Soils

- (1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.*
- (2) Development consent is required for the carrying out of works described in the table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.*

Class of land Works 5

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

- (3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.*
- (4) Despite subclause (2), development consent is not required under this clause for the carrying out of works if:
 - (a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and*
 - (b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.**
- (5) Despite subclause (2), development consent is not required under this clause for the carrying out of any of the following works by a public authority (including*

ancillary work such as excavation, construction of access ways or the supply of power):

- (a) emergency work, being the repair or replacement of the works of the public authority, required to be carried out urgently because the works have been damaged, have ceased to function or pose a risk to the environment or to public health and safety,
 - (b) routine maintenance work, being the periodic inspection, cleaning, repair or replacement of the works of the public authority (other than work that involves the disturbance of more than 1 tonne of soil),
 - (c) minor work, being work that costs less than \$20,000 (other than drainage work).
- (6) Despite subclause (2), development consent is not required under this clause to carry out any works if:
- (a) the works involve the disturbance of less than 1 tonne of soil, and
 - (b) the works are not likely to lower the watertable.

Comment:

The site is located on Class 5 Acid Sulfate Soils. No works are proposed that are likely to generate acid sulphate due to excavation of the substratum.

7.2 Earthworks

- (1) The objective of this clause is 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.
- (2) Development consent is required for earthworks unless:
- (a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or
 - (b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.
- (3) In deciding whether to grant development consent for earthworks (or for

development involving ancillary earthworks), the consent authority must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) the effect of the development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate 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:

No earthworks are proposed.

7.6 Biodiversity

(1) The objective of this clause is to maintain terrestrial, riparian and aquatic biodiversity by:

- (a) protecting native fauna and flora, and*
- (b) protecting the ecological processes necessary for their continued existence, and*
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats.*

(2) This clause applies to land identified as "Biodiversity" on the Biodiversity Map.

(3) Before determining a development application for development on land to which this clause applies, the consent authority must 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

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

(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is 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 proposed development is not considered to be likely to have an adverse impact on surrounding biodiversity, and incorporates the provision of landscaping across the site, which assists in mitigating any impact arising from the works.

7.7 Geotechnical Hazards

(1) The objectives of this clause are to ensure that development on land susceptible to geotechnical hazards:

(a) matches the underlying geotechnical conditions of the land, and

- (b) is restricted on unsuitable land, and*
 - (c) does not endanger life or property.*
- (2) This clause applies to land identified as "Geotechnical Hazard H1" and "Geotechnical Hazard H2" on the Geotechnical Hazard Map.*
- (3) 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.*
- (4) 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*
 - (b) the consent authority is satisfied that:*
 - (i) the development is designed, sited and will be managed to avoid any geotechnical risk or 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 site is not identified as being subject to geotechnical hazards.

3.2 Pittwater 21 Development Control Plan

B3.6 Contaminated Land and Potentially Contaminated Land

Objectives

Protection of public health.

Protection of the natural environment. Successful remediation of contaminated land.

Comment:

The site has a long history of residential uses and is not considered to be at risk of contamination.

B4.17 Littoral Rainforest – Endangered Ecological Community

Objectives

The conservation of littoral rainforest vegetation in Pittwater.

The regeneration and /or restoration of littoral rainforest.

The preservation of littoral rainforest as habitat for fauna.

Comment:

The proposed development will retain, where possible, areas of Littoral Rainforest on the site. The subject works do not result in any loss of canopy cover on the site.

B4.22 Preservation of Trees or Bushland Vegetation

Objectives

To protect and enhance the amenity that trees and/or bushland vegetation provide.

To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.

To protect, enhance and account for the contribution trees and/or bushland vegetation provide to the ecological value and biodiversity of Pittwater, including habitat for locally native plant and animal species, threatened species populations

and endangered ecological communities.

To promote the benefits that corridors of trees and/or bushland vegetation provide for the movement of flora and fauna.

Comment:

The subject works did not result in the modification or removal of any vegetation.

B5.2 Wastewater Disposal

Objectives

Effective management of sewage and wastewater systems and disposal to central reticulation system.

Effective management of on-site sewage and effluent systems to ensure environmental and public health protection.

Comment:

The existing dwelling on the site is connected to the Sydney Water reticulated sewerage disposal system.

B5.3 Greywater Reuse

Objectives

Effective management of grey water treatment systems which maintain disposal to Sydney Water central reticulation system (for disposal in cases of emergency breakdown/malfunction).

Effective management of on-site sewage and effluent systems to ensure environmental and public health protection.

Water Conservation

Comment:

Wastewater is connected to the Sydney Water centralised sewerage waste disposal system.

B5.7 Stormwater Management – On-site Stormwater Detention

Objectives

Rates of stormwater discharged into receiving environment maintained or reduced.

Requirements for size and allowable discharge from on-site detention systems

<i>Additional Hard (Impervious) Surface Area (square metres)</i>	<i>Minimum Capacity of On-Site Detention Tank (Litres)</i>	<i>Discharge Rate Litres / Sec</i>
0-50	Nil	Nil
>50 • 75	4,500	2
>75 • 100	6,000	3
>100 • 150	9,000	4

>150 • 200	12,000	6
>200 • 250	15,000	7
>250 • 300	18,000	9
>300-400	24,000	12
>400-500	30,000	15
>500-600	36,000	18
>600-700	42,000	21
>700-800	48,000	24
>800-900	54,000	27
>900-1000	60,000	30
>1000	A minimum storage capacity of 60 litres per m ² of additional hard (impervious) surface area, and a discharge rate which replicates the discharge from the site were it to be undeveloped.	

Comment:

The subject works have been carried out on an existing concrete slab as approved

under the parent development consent and as such do not result in any additional run-off.

B8.1 Construction and Demolition – Excavation and Landfill

Objectives

Site disturbance is minimised.

Excavation, landfill and construction not to have an adverse impact.

Excavation and landfill operations not to cause damage on the development or adjoining property.

Comment:

The subject works have been completed without the necessity for any excavation or landfill being carried out on the subject site.

B8.2 Construction and Demolition – Erosion and Sediment Management

Objectives

Waterways, coastal areas, watercourses, drainage systems and the public domain are protected from the transportation of sedimentation from development sites.

Reduction of waste throughout all phases of development.

Public safety is ensured.

Protection of the public domain.

Comment:

Works on the subject site have been completed and as such there is no necessity for sediment or erosion control measures to be put in place.

B8.3 Construction and Demolition - Waste Minimisation

Objectives

Reduction management of demolition, excavation and construction works is to be minimised by reuse on-site, recycling, or disposal at an appropriate waste facility.

Comment:

The subject works have been completed and therefore no waste will be generated as part of this application.

C1.1 Landscaping

Objectives

A built form softened and complemented by landscaping. Landscaping reflects the scale and form of development.

Retention of canopy trees by encouraging the use of pier and beam footings.

Development results in retention of existing native vegetation.

Landscaping results in the long-term retention of Pittwater's locally native tree canopy.

Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species

Landscaping enhances habitat and amenity value.

Landscaping results in reduced risk of landslip.

Landscaping results in low watering requirement.

Comment:

The landscaping regime approved on the subject site remains unaltered as a consequence of the subject works being contained within an existing approved building footprint.

C1.2 Safety and Security

Objectives

Ongoing safety and security of the Pittwater community. Opportunities for vandalism are minimised.

Inform applicants of Council's requirements for crime and safety management for new developments

Improve community awareness in relation to Crime Prevention through Environmental Design (CPTED), its principle strategies and legislative requirements

Identify crime and safety priority areas in Pittwater LGA

*Improve community safety and reduce the fear of crime in the Pittwater LGA
Develop and sustain partnerships with key stakeholders in the local area who are in
involved in community safety.*

Comment:

The proposed development meets the four principles of CPTED, due to the following:

- Surveillance: the location of the subject spa is such that it facilitates ready visual access from the rearmost living areas of the subject dwelling.
- Access Control: The rear of the subject site is elevated and is only accessed by a gated set of stairs fronting the water.
- Territorial Reinforcement: The subject spa is located in a well-defined area at the rear of the subject site.
- Space Management: The subject site is regularly maintained.

C1.3 View Sharing

Objectives

A reasonable sharing of views amongst dwellings.

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.

Canopy trees take priority over views.

Comment:

The site is located in the context of a series of dwellings with views to the Pittwater waterway and to a lesser extent towards the north-west namely Lion Island. The subject works have no material impact upon views available from surrounding dwellings and public areas of open space.

C1.4 Solar Access

Objectives

Residential development is sited and designed to maximise solar access during mid - winter.

A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development.

Reduce usage and/dependence for artificial lighting.

Comment:

The subject spa and surrounds maintain a reasonable level of solar access to adjoining properties, as well as the site due to its low height and orientation.

C1.5 Visual Privacy

Objectives

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

A sense of territory and safety is provided for residents.



View of subject spa enclosure showing privacy enclosure between spa and southern boundary

Comment:

The rear yard area of the subject site is currently overlooked to a significant degree by the outdoor dining area deck and windows of the adjacent property to the south however the subject spa does not allow occupants to overlook any components of the adjacent site due to the setback and surrounding privacy screens.

It is important to note however that localities such as this, where views are paramount, that a level of total privacy is generally unattainable.

C1.6 Acoustic Privacy

Objectives

Noise is substantially contained within each dwelling and noise from any communal or private open space areas are limited.

Noise is not to be offensive as defined by the Protection of the Environment Operations Act 1997, including noise from plant, equipment and communal or private open space areas

Comment:

The subject spa does not incorporate any significant noise generating equipment whilst the use of the spa by occupants and visitors to the subject site is at a level contemplated by the use of the principal area of private open space.

D12.1 Character as Viewed from a Public Place

Objectives

To achieve the desired future character of the Locality.

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

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

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

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

Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two storey maximum. To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.

To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component. To ensure that development adjacent to public domain elements such as waterways,

streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land.

Comment:

The subject spa is entirely compatible with the surrounding character of the locality when viewed from the public domain.

D12.2 Scenic Protection - General

Objectives

Achieve the desired future character of the Locality.

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

Comment:

The minor nature of the subject works mean that the scenic protection values of the locality will not be eroded as a consequence of the constructed works.

D12.3 Building Colours and Materials

Objectives

Achieve the desired future character of the Locality.

The development enhances the visual quality and identity of the streetscape. To provide attractive building facades which establish identity and contribute to the streetscape.

To ensure building colours and materials compliments and enhances the visual character its location with the natural landscapes of Pittwater.

The colours and materials of the development harmonise with the natural environment.

The visual prominence of the development is minimised. Damage to existing native vegetation and habitat is minimised.

Comment:

As will be demonstrated by a site visit, the development uses largely darker colours which are well suited to the surrounding locality.

D12.5 Front Building Line

Objectives

Achieve the desired future character of the Locality.

Equitable preservation of views and vistas to and/or from public/private places. The amenity of residential development adjoining a main road is maintained.

Vegetation is retained and enhanced to visually reduce the built form. Vehicle manoeuvring in a forward direction is facilitated.

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

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

To encourage attractive street frontages and improve pedestrian amenity.

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

Comment:

There is no change to the existing front setback.

D12.6 Side and Rear Building Line

Objectives

To achieve the desired future character of the Locality. The bulk and scale of the built form is minimised.

Equitable preservation of views and vistas to and/or from public/private places. To encourage view sharing through complimentary siting of buildings, responsive design and well positioned landscaping.

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

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

Flexibility in the siting of buildings and access.

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

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

Comment:

The subject works do not impinge upon the approved setback to the southern boundary and have no impact upon the setback to the northern boundary.

D12.8 Building Envelope

Objectives

To achieve the desired future character of the Locality.

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

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

The bulk and scale of the built form is minimised.

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

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

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

Comment:

The subject works do not impinge upon the approved building envelope.

D12.9 Landscaped Area - General

Objectives

Achieve the desired future character of the Locality. The bulk and scale of the built form is minimised.

A reasonable level of amenity and solar access is provided and maintained.

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

Conservation of natural vegetation and biodiversity.

Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.

To preserve and enhance the rural and bushland character of the area.

Soft surface is maximised to provide for infiltration of water to the water table, minimise runoff and assist with stormwater management.

Comment:

The subject works have not reduce the quantum of landscaping below that

approved under the parent development consent.

C1.7 Private Open Space

Objectives

To achieve the desired future character of the Locality.

To ensure fences compliment and conserve the visual character of the street and neighbourhood

To define the boundaries and edges between public and private land and between areas of different function.

To contribute positively to the public domain.

An open streetscape that allows casual surveillance of the street.

Fences, where provided, are suitably screened from view from a public place. Safe sight distances and clear view of the street (including to and from driveways) for motorists and pedestrians.

To ensure the heritage significance is protected and enhanced. To ensure an open view to and from the waterway is maintained.

An area of private open space is provided for properties that front the Pittwater Waterway.

Comment:

The subject works embellish the area of open space available to the residents of the subject dwelling and do not offend the objectives sought by this control.

4.0 SECTION 4.15 MERIT ASSESSMENT

7.6 Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
 - (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

RESPONSE

(iii) any development control plan,

RESPONSE

and

(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4,

RESPONSE

No planning agreements apply to the proposal

and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

RESPONSE

The relevant regulations have been given due regard in the construction of this Statement.

and

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

RESPONSE

The body of this Statement describes the potential impacts upon the natural and built environments and the mechanisms to be incorporated to reduce or prevent these impacts upon the locality.

(c) the suitability of the site for the development,

RESPONSE

The subject site, by virtue of its existing layout, topography and locality is suitable for the proposal

(d) any submissions made in accordance with this Act or the regulations,

RESPONSE

Any submissions received in response to Councils notification of the proposal will be considered as part of Councils assessment of the proposal.

(e) the public interest.

RESPONSE

The proposal endorses the public interest by limiting the impact of the proposal to the existing approved footprint, with subsequent limited disturbance to the natural and built environment.

(2) Compliance with non-discretionary development standards—development other than complying development

(a) If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

(b) is not entitled to take those standards into further consideration in determining the development application, and

(c) must not refuse the application on the ground that the development does not comply with those standards, and

(d) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards, and the discretion of the consent authority under this section and section 4.16 is limited accordingly.

(3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:

(a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and

(b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard. Note. The application of non-discretionary development standards to complying development is dealt with in section 4.28 (3) and (4).

(3A) Development control plans

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

(a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and

(b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and

(c) may consider those provisions only in connection with the assessment of that development application. In this subsection, standards include performance criteria.

(4) Consent where an accreditation is in force

A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system

is accredited in respect of that requirement in accordance with the regulations.

(5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).

(6) Definitions

In this section: (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and (b) non-discretionary development standards means development standards that are identified in an environmental planning instrument or a regulation as non- discretionary development standards.

Environmental Planning Instruments

The proposal is a permissible use in the E4 Environmental Living Zone.

Development Control Plans

This is addressed in the body of this SEE.

Impact on the Natural Environment.

The proposal is unlikely to unreasonably impact upon heritage values, flora and fauna, soil or water quality, air quality or the conservation of natural resources due to the sensitive location of the works within the existing disturbed footprint.

Impact on the Built Environment.

Scenic qualities – the proposal is consistent with the current and future character of the locality as expressed within the provisions of Councils planning controls.

Compatibility with adjacent land uses – The proposal is for a residential use, compatible with surrounding residential uses.

5.0 COMPLIANCE TABLE

Pittwater Local Environmental Plan 2014			
Development Standard	Control	Proposed	Compliance
R2 – Low Density Residential	Dwelling Houses	Ancillary to Dwelling Houses	YES
Maximum Building Height	8.5 m	< 8.5 m	YES
Acid Sulfate Soils	Class 5 Acid Sulfate Soils on the site		Proposal will not affect nearby Acid Sulfate Soils or lower the water table.
Pittwater Development Control Plan 21			
Building Front Setback	10 m or prevailing setback	In excess of 10 m	YES
Building Side Setback	Minimum 2.5 m one side	NIL	AS APPROVED
Landscaped Area	Minimum 1 m other boundary	NIL to 1 m	YES
Maximum height pitch	45° above 3.5 m	< 45° above 3.5 m	N/A
Front Fence Height	1 m high	Existing	N/A
Side and Rear Fence Height	1.8 m high behind front setback	1.8 high behind front setback	YES
Solar Access			YES
Private Open Space	One area of 85 m ² at the ground level with direct access to internal living areas	Private open spaces in excess of provided	YES
No. of Parking	Minimum of 1 car	4 parking spaces	YES

Spaces	parking space per dwelling house	provided	
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6.0 SUMMARY

The necessity for the submission of this application has occurred as a consequence of an issue raised by a nearby neighbour over the installation of a spa within the existing footprint of the dwelling on the subject site.

Whilst it is acknowledged that the works have been performed without the requisite consents being obtained beforehand, the test for the assessment of unauthorised works is – **Would the consent authority be likely to favourably consider the works if the requisite application was submitted to the consent authority beforehand?**

The assessment of the subject works (if submitted beforehand) would consider impacts in terms of visual amenity, privacy, view loss and the overarching objectives of the E4 Environmental Living zone and in this respect, the lack of material impacts by the proposal would be sufficient for the proposal to be favourably considered.

It is therefore reasonable for Council to favourably consider this submission and endorse the requested modifications due to the reasonableness of the proposal and lack of material impacts.

LANCE DOYLE

B.App.Sc, M.Plan

Dated: JULY 2020