

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1463
----------------------------	-------------

Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 3 DP 13449, 6 Warringulla Avenue ELVINA BAY NSW 2105
Proposed Development:	Construction of a inclined lift and retaining walls
Zoning:	E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Terrence James Longhurst Louise Mary Longhurst
Applicant:	Stephen Crosby & Associates

Application Lodged:	18/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	30/11/2020 to 14/12/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 98,715.00
---------------------------------	--------------

PROPOSED DEVELOPMENT IN DETAIL

Incline passenger lift:

"The proposal includes an incline lift from the foreshore above the MHWL behind the existing seawall and reclamation to the existing dwelling to supplement the access stair leading from the jetty to the top of the steep foreshore bank and on up to the house.

The lower access landing shall be built in stone, with access onto the existing decks at the upper end of the track.

The lift track and car shall be Monument."

Landscape works

The landscape works are minor relocation of the steps and trail and small retaining walls.

A proposed boatshed was removed from the application and it was considered that renotification was not required.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways
Pittwater 21 Development Control Plan - D8.6 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot 3 DP 13449 , 6 Warringulla Avenue ELVINA BAY NSW 2105
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Warringulla Avenue.</p> <p>The site is irregular in shape with a frontage of 18.29m along Warringulla Avenue and a depth of 43.28m. The site has a surveyed area of 570m².</p> <p>The site is located within the E3 Environmental Management zone and accommodates a two storey dwelling house with a water tank, jetty and a number of small retaining walls with landscaped gardens.</p> <p>The site is steep with a slope of grade over 40%.</p>

The site has a number of native and exotic species of plants, shrubs and trees.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by single and double storey dwellings with jetties and landscaped gardens.

Map:



SITE HISTORY

0221/91 - Seawall, jetty and pontoon approved 19 June 1991

T0586/15 - Tree/Bushland Works approved 28 January 2016

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential

Section 4.15 Matters for Consideration'	Comments
	purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to a Estuarine Risk Management Report given the location of the proposed boat shed below the <i>estuarine planning level (EPL)</i>. A revised set of plans and information were submitted by the applicant on 13 January 2021 addressing these issues.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
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	The site is considered suitable for the proposed development.

Section 4.15 Matters for Consideration'	Comments
of the site for the development	
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Ron Coffey of Planning for Bushfire Protection dated 18 October 2020) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 30/11/2020 to 14/12/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p>General Comments</p> <p>No acoustic report or details has been provided for the Incline lift. Conditions have been recommended</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Landscape Officer	<p>The development application is for the addition to the boat shed, a incline passenger lift, and associated landscape works.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local</p>

Internal Referral Body	Comments
	<p>Environment Plan clause E3 Environmental Management zone, and the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • C1.19 Incline Passenger Lifts and Stairways • D12 Palm Beach Locality <p>The site is located in the E3 Environmental Management zone that requires development to be of low density and scale integrated with the landform and landscape, not visually prominent, retain and enhance foreshore vegetation and wildlife corridors. The site contains existing remnant canopy trees characteristic of the Pittwater Spotted Gum Forest, including numerous semi-mature and mature Spotted Gums.</p> <p>The proposed development is considered to satisfy the objectives of E3 through the integration of the proposed works into the landscape and the retention of existing trees not impacted by development. Two existing trees are impacted by the development works and proposed for removal as recommended in the Tree Assessment report, including one semi-mature Spotted Gum and a semi-mature Pink Euodia, with a proposal to provide three (3) replacement trees within the property.</p> <p>Subject to conditions of consent, Landscape Referral raise no objections to the proposal.</p>
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against the objectives and requirements of PLEP 2014 cl.7.6 Biodiversity, P21 DCP B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community and State Environmental Planning Policy (Coastal Management) 2018 cl.13 Development on land within the coastal environment area.</p> <p>The development requires the removal of one spotted gum tree, however it is proposed to plant three replacement trees of the same species. Other vegetation to be removed is generally planted native and exotic landscaping. The development shall ensure that at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Pittwater Spotted Gum Endangered Ecological Community).</p> <p>It is concluded that for the impact to the PSGF vegetation community that cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>

Internal Referral Body	Comments
	<p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Stephen Crosby & Associates Pty. Ltd. dated 6 November 2020, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Estuarine Risk Management</p> <p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>The applicant has submitted amended plan deleting the originally proposed boatshed from the application (letter from Stephen Crosby & Associates Pty. Ltd. dated 6 January 2021). Further, the applicant has justified measures that will protect base of the Incline Lift from wave inundation.</p> <p>The proposed development is therefore not required to satisfy the relevant estuarine risk management requirements of P21 DCP.</p>

Internal Referral Body	Comments
	<p>required</p> <p>Development on Foreshore Area</p> <p>However, a section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The DA proposes works that are consistent with Clause 7.8(2)(b).</p> <p>On internal assessment, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p>

External Referral Body	Comments
Aboriginal Heritage Office	<p><i>"Reference is made to the proposed development at the above area and Aboriginal heritage.</i></p> <p><i>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</i></p> <p><i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i></p> <p><i>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted."</i></p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment,

many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP 55 - Remediation of Land

Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

The site is located within the Coastal Use Area and Coastal Environment Area as identified by State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) and the provisions of this policy are applicable in relation to the proposal. Following detailed assessment of the proposed development, the consent authority can be satisfied of the following:

- The proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP
- The proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP
- The proposal has been designed, sited and will be managed to avoid adverse impacts on

- the matters listed in clause 14(1) of the CM SEPP
- The proposal is not likely to cause increased risk of coastal hazards on the site or other land as listed in clause 15 of the CM SEPP

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

Coastal Management Act 2016

The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development.

The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.

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	4.3m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
1.9A Suspension of covenants, agreements and instruments	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	Yes
Part 5 Miscellaneous provisions	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
Part 7 Additional local provisions	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	18m	-	Yes
Rear building line	6.5m	Inclinor: Nil	100%	No
Side building line	East - 1.0m	(Clause. C.1.19) Inclinor platform: 0.3m	70%	No
	West - 2.5m	11.4m	-	Yes
Building envelope	3.5m	No encroachment	-	Yes
	3.5m	No encroachment	-	Yes
Landscaped area	60% (342sqm)	70% (399sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Section A Shaping Development in Pittwater	Yes	Yes
A1 Introduction	Yes	Yes
A1.7 Considerations before consent is granted	Yes	Yes
A4 Localities	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
Section B General Controls	Yes	Yes
B1 Heritage Controls	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3 Hazard Controls	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.8 Estuarine Hazard - Medium Density Residential	Yes	Yes
B4 Controls Relating to the Natural Environment	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5 Water Management	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8 Site Works 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
Section C Development Type Controls	Yes	Yes
C1 Design Criteria for Residential Development	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	No	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
Section D Locality Specific Development Controls	Yes	Yes
D8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
D8.1 Character as viewed from a public place	Yes	Yes
D8.2 Scenic protection - General	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D8.5 Front building line	Yes	Yes
D8.6 Side and rear building line	No	Yes
D8.8 Building envelope	Yes	Yes
D8.9 Landscaped Area	Yes	Yes
D8.11 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D8.12 Companion animals	Yes	Yes
D8.14 Parking management	Yes	Yes
D8.15 Site disturbance	Yes	Yes
D15 Waterways Locality	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	Yes	Yes

Detailed Assessment

C1.19 Incline Passenger Lifts and Stairways

Description of non-compliance

Part C1.19 of the PDCP prescribes the following controls to inclinators:

- i. *be designed and located so they do not involve excessive excavation, or the removal of natural rock or trees, and*
- ii. *be erected as near as possible to the ground level (existing) of the site, and shall not involve the erection of high piers or visible retaining structures, and*
- iii. *be located and designed to minimise the effects of noise from the motor and overlooking of adjoining dwellings, and*
- iv. *be painted to blend in with surrounding vegetation and screened by landscaping and*
- v. *be set back two (2) metres from the side boundary to the outer face of the carriage*
- vi. *be located wholly on private land, and*
- vii. *have a privacy screen where there is a direct view within 4.5m to a window of a habitable room of another dwelling.*

Further to the above, Part D8.6 prescribes a side boundary setback of at least 1.0m for all structures to the eastern side boundary. As the inclinator and its platform are the only structures encroaching within the setback area, it is relevant to assess the non-compliant setback against the C1.19 controls.

The inclinator platform at the front of the site is setback 0.5m from the side boundary. The inclinator track itself is setback 1m from the side boundary.

Merit-Assessment

The subject site is extremely steep and the house is setback as far away as possible from the water's edge. Subsequent of this, occupants are required to traverse a series of steps and a trail from the jetty to the front door which run for a distance of over 40 metres and 35 degree grade up the hill. The necessity for an inclinator on this site is therefore warranted.

The location of the inclinator is considered to be the most suitable on the site with regards to minimising excavation and the removal of vegetation.

A condition is to be imposed which limits the maximum noise level associated with the inclinator to not exceed 5dB(A) when measured from the nearest residential receiver.

Subject to the imposition of this condition, the inclinator is considered to have an acceptable impact upon the natural environment and neighbours, and will significantly improve the quality of life for occupants of the site. The proposal is therefore found to comply with the objectives of the control.

D8.6 Side and rear building line

Description of non-compliance

The proposed development provides a 0.2m setback from the eastern side boundary and nil setback to the rear northern boundary to the inclinator landing deck.

The control requires a 1m to the eastern side boundary.

Merit Consideration

Further consideration of the non-compliance will be given in accordance with the outcomes of the control, as below.

- To achieve the desired future character of the Locality. (S)

Comment

The proposed development is consistent with the desired future character of the Lower Western Foreshores & Scotland Island Locality.

- The bulk and scale of the built form is minimised. (En, S)

Comment

As the proposed landing is small in size and is elevated only just above the ground level and the inclinators and carriage will be minor structures, the bulk and scale of the built form is considered to be minimised.

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

Comment

The proposed development ensures the equitable preservation of views and vistas to and/or from both public and private places.

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

Comment

The proposed development encourages view sharing by attaching the deck and inclinators to the eastern portion of the dwelling house, which is located at the lower end of the site, to respond to the views attainable from street level over parts of the roof of the dwelling house. The existing landscaping has been well-positioned which is also located at the lower end of the site.

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

Comment

The proposed deck and inclinators ensure that a reasonable level of privacy, amenity and solar access is provided within the subject site.

- Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)

Comment

The vegetation within the site is to be retained, including the significant trees, to provide substantial landscaping and to retain the mature tree canopy across the site.

- Flexibility in the siting of buildings and access. (En, S)

Comment

The proposed development demonstrates flexibility in the siting of buildings and access by providing alternative access via the incline passenger lift on the eastern side of the dwelling house, and by maintaining the steps and pathway the central portion of the site for pedestrian access.

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

Comment

The existing vegetation is sufficient in visually reducing the built form, it is not necessary to further enhance vegetation on the site.

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

Comment

The subject site is located within, and is surrounded by, land zoned for environment protection, therefore, this outcome is not applicable.

Based on the above, the proposed development is consistent with the outcomes of the control and the non-compliance 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 2019

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

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/1463 for Construction of a inclined lift and retaining walls on land at Lot 3 DP 13449, 6 Warringulla Avenue, ELVINA BAY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 01	August 2020	Stephen Crosby & Assoc. Pty. Ltd.
DA 02A	January 2021	Stephen Crosby & Assoc. Pty. Ltd.
DA 03A	January 2021	Stephen Crosby & Assoc. Pty. Ltd.

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Risk Assessment Report	18 October 2020	Ronald Coffey - Planning for Bushfire Protection
Tree Assessment	October 2020	Julia Stanton - Syncarpia Vegetation Management
Geotechnical Assessment	28 October 2020	Ascent Geotechnical Consulting

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

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

3. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths,

roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

5. Estuarine Planning Level Requirements

An Estuarine Planning Level (EPL) of 2.65m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level (base of the Incline) as follows:

- All structural elements below 2.65m AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.65 m AHD or waterproofed to this level; and
- All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.65m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.65m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure aspect of the development are built at the appropriate level

6. Landscaping

A minimum of 80% of all plants used in the landscaping for this development must be local native species as per the species list for the endangered ecological community Pittwater Spotted Gum Forest.

No Grevillea or Banksia hybrids are to be used in the landscaping for this development. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Biodiversity conservation and management

7. Provision of Landscape Working Drawings

Detailed landscape working drawings and specification, which comply in all respects with the conditions of development consent, are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Each plan/sheet is to be certified by a qualified landscape architect, landscape designer/environmental designer or horticulturist, confirming that the plans/details for the works to be carried out will achieve the relevant conditions of the development consent. In particular, the landscape working drawing is to provide full details of the following:

- a) The usage of the dominant native species growing in the area or locally indigenous species for understorey planting and with provision of at least two (2) trees in the front yard and one (1) tree to the rear yard which will meet a minimum mature height of 8.5m;
- b) Clear indication of the location of all existing trees and vegetation to be retained, removed and/or proposed. This should incorporate the TPZ and SRZ as stated within the associated arborist report if applicable;
- c) A planting schedule including stratum, species/common names, species quantities, pot sizes and staking details;
- d) The proposed finished treatment of garden areas, including soil depth and retaining walls and the location of underground services.

Reason: To ensure adequate and appropriate landscaping is carried out to retain the Urban Forest/Natural Environment.

8. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

9. Tree removal within the property

This consent approves the removal of the following trees within the property (as recommended in the Tree Assessment):

- tree 1 - *Corymbia maculata* (Spotted Gum)
- tree 6 - *Melicope elleryana* (Pink Euodia)

Reason: to enable authorised building works

Note: Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

10. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing

Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. Survey Certificate

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To demonstrate the proposal complies with the approved plans.

12. 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.

13. Tree and vegetation protection

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining land.

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 Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) 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.
- c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Tree Assessment, and in particular section 6.0 Tree and Vegetation Protection and Management Recommendations.

The Certifying Authority must ensure that:

- d) 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.

14. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

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

15. **Landscape completion**

Landscaping is to be implemented in accordance with DA01, DA02 and DA03, inclusive of the following conditions:

- i) three (3) *Corymbia maculata* (Spotted Gum) species shall be planted within the property,

planted at a minimum 75 litre container size, located within a 9m² deep soil area and be located a minimum of 5 metres from existing and proposed buildings,

- ii) 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,
- iii) at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Pittwater Spotted Gum Endangered Ecological Community).

Prior to the issue of an Occupation Certificate, details shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: environmental amenity.

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

16. **Incline lift hours of operation**

Use of the Incline lift is restricted to between the hours of:-

- 7am to 10pm Monday to Saturday
- 8am to 10pm Sunday

The inclinator must only be used between the hours of 10pm and 7am in an emergency.

Reason: To protect the amenity of adjacent residences during night hours.

17. **Incline lift noise**

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

The assessment shall include all mechanical features of the incline lift.

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

18. **Landscape maintenance**

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

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

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

Reason: to maintain local environmental amenity.

19. **Control of Weeds**

Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are

to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). All environmental weeds are to be removed and controlled. Refer to Council website
http://www.pittwater.nsw.gov.au/environment/noxious_weeds

Reason: Weed management.

20. **No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

21. **Works to cease if item found**

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

Reason: To protect Aboriginal Heritage.

22. **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

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

Signed



Phil Lane, Principal Planner

The application is determined on 17/02/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments