

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0083
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Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 9 DP 17704, 24 Cabarita Road AVALON BEACH NSW 2107 Lot LIC 396153, 24 Cabarita Road AVALON BEACH NSW 2107 Lot LIC 631604, 24 Cabarita Road AVALON BEACH NSW 2107
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool and boatshed
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Elizabeth Mary Macdiarmid Bruce Ian Macdiarmid
Applicant:	Elizabeth Mary Macdiarmid Bruce Ian Macdiarmid

Application Lodged:	09/02/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	15/02/2023 to 01/03/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	7.8 Limited development on foreshore area
Recommendation:	Approval

Estimated Cost of Works:	\$ 3,324,702.00
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### EXECUTIVE SUMMARY

The application involves demolition of the existing dwelling and construction of a part two/part three storey dwelling-house with a boatshed, swimming pool and landscaping.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the proposal involves a non-numerical variation to a development standard in relation to the Foreshore Area under the PLEP 2014 (Clause 7.8). The proposal seeks to include retaining walls, storage, and a replacement inclinor within the Foreshore Area.

Despite the variations to the development standard, there is a significant improvement to the visual amenity and presentation of the development when viewed from the foreshore and waterway, with the introduction of planting and the removal of a large sandstone retaining wall, so as to provide opportunity for a more natural appearance and integrated/stepped retaining walls to predominate the visual presentation from the foreshore.

The 4.6 request for the non-compliance with Foreshore Area arises from the smaller retaining walls required to replace the existing 4.5m wall, the replacement inclinor, and the storage area. These features are to replace the existing, highly modified form, with a form that provides a greater natural character to meet the desired future character. As further detailed in the body of the report detailed within the body of the report, it is considered that the applicant's written Clause 4.6 request to vary the foreshore Building area standard is justified given the improvement to the presentation of the boatshed and retaining walls, and the suitability of the proposal for the amenity and natural character of the area.

The resident submissions have been addressed in this report, with a number of special conditions imposed to address the concerns. A concern particularly prevalent in the submissions is the size and scale of the proposed development, and the impact on neighbour amenity. This is partly addressed through amended plans, which provided for a reduction in the building bulk, however it is noted that the design responds well to the planning controls, through stepping with the topography of the site, and provides a built form that is well articulated, and is provided with suitable separation and screening to neighbouring properties. The relatively large foreshore setback to the dwelling also allows a large open corridor to assist with neighbouring amenity (particularly views and sola access). This provides a built form and amenity outcome that is consistent with desired future character.

Accordingly, the application is referred to the NBLPP with a recommendation for **APPROVAL**.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal is for the demolition of an existing dwelling and the construction of a new dwelling and ancillary development.

In detail, the proposed development involves the following:

### **Ground Floor**

- Four Bedrooms
- Bunk room
- Gym
- Laundry
- Bathroom
- Ensuite
- Terrace

### **First Floor**

- Open Plan Living
- Terrace
- Study

- Cellar
- Pantry

### **Entry Level**

- Garage
- Bedroom
- Entry area
- Ensuite
- Dressing room

### **External**

- Boatshed
- Swimming pool
- Retaining walls
- Store
- Upgrade to access stairs
- Upgrade to existing inclinator

### **Amended plans**

Amended plans were provided on 28 June 2023. These plans included the following changes:

- Reduction in the extent of excavation toward the front of the property including greater setback of wall from front boundary
- Setback of terrace behind Foreshore building line
- Removal of rain water tank and AC plant from foreshore area
- Greater setback to southern wall to be in line with garage (reducing envelope non-compliance)
- Additional Landscaped area (69sqm)

Further amended plans were provided on 15 November. The plans included the following changes to the foreshore area:

- Deletion of bathroom from boatshed
- Deletion of pergola above boatshed
- Deletion of Pool plant, RWT, and Building Plant
- Lowering of pool structure down slope
- Reduction in extent and amount of retaining walls

The proposal did not require re-notification as the amendments were of a lesser environmental impact, which is in accordance with the provisions of the Community Participation Plan.

### **ASSESSMENT INTRODUCTION**

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

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

## SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area

Pittwater 21 Development Control Plan - C1.3 View Sharing

Pittwater 21 Development Control Plan - D1.11 Building envelope

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

## SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot 9 DP 17704 , 24 Cabarita Road AVALON BEACH NSW 2107</p> <p>Lot LIC 396153 , 24 Cabarita Road AVALON BEACH NSW 2107</p> <p>Lot LIC 631604 , 24 Cabarita Road AVALON BEACH NSW 2107</p>
<b>Detailed Site Description:</b>	<p>The subject site consists of an allotment located on the eastern side of Cabarita Road.</p> <p>The site is irregular in shape with a frontage of 12.19m along Cabarita Road and a depth of 42m-43.4m. The site has a surveyed area of 619.7m<sup>2</sup>.</p> <p>The site is located within the C4 Environmental Living zone and accommodates dwelling house.</p> <p>The site has a crossfall from Cabarita Road down to the foreshore, with a crossfall of approximately 25m. IN sections to the rear of the property, the gradient of this slope is significant.</p>

### Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential development.

Map:



### SITE HISTORY

The land has been used for residential purposes for an extended period of time.

A search of Council's records has revealed the following relevant history:

- **N0520/07** - A swimming pool, deck, boatshed and landscaping works approved on 13/02/2008. This consent included the existing large wall to the rear of the property, adjacent to the boatshed.

No prelodgement meeting was held in relation to the current proposed development.

### 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 Matters for Consideration	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in	See discussion on "Notification & Submissions Received" in this report.

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

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 15/02/2023 to 01/03/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Bill Tulloch	Po Box 440 MONA VALE NSW 1660
Mr Kim John William Marsh	22 Cabarita Road AVALON BEACH NSW 2107

The above issues are addressed as follows:

- **View impacts**

*The submissions raised concerns with the impact on views.*

*Concern is also raised with the impact of landscaping/trees on views.*

Comment:

A condition is imposed to require amendment of tree species to be no greater than 6.0m (mature height).

An assessment of views is carried out in this report, in accordance with the Land and Environment Court established Planning Principle, which found that the proposed built form will provide for reasonable view sharing by maintaining large view corridors from the rear of neighbouring properties toward Pittwater, and a minor extent of impact on the water view over side boundaries.

- **Impact on Solar access**

*The submissions raised concerns with the impact on solar access.*

Comment:

The proposal complies with the requirements for Solar Access under the Pittwater 21 DCP. Further, amended plans were provided to reduce the extent of building envelope non-compliance by providing greater setbacks at the southern elevation to the Upper Level. This ensures that a substantial corridor for sunlight access at the rear is maintained.

- **Impact on Privacy**

*The submissions raised concerns with the impact on privacy.*

Comment:

The proposal provides a reasonable design in relation to privacy, including windows of an appropriate size, orientation and separation from neighbours. The proposed rear upper level terrace is also provided with privacy screening, and a further condition is imposed to ensure appropriate louvers are installed.

Amended plans have also been provided to reposition the proposed swimming pool toward the rear of the site, away from neighbouring living spaces. This is in a location that complies with the controls for physical separation under the privacy clause.

Overall, the design is appropriate for privacy, subject to conditions.

- **Visual impact; Bulk and scale**

*The submissions raised concerns that the bulk, scale and visual impact of the built form (including garage and dwelling) is inappropriate.*

Comment:

The proposal provides a design that is well articulated, and steps well with the steep slope of the site. Further, the proposal provides appropriate landscaping, and provides a one to two storey presentation from the street. As such, the proposal provides a reasonable visual outcome in relation to the desired future character, and a reasonable level of bulk and scale.

- **Non-compliance with planning controls and development standards**

*The submissions raised concerns that the proposal does not comply with certain planning controls and development standards.*

Comment:

An assessment of compliance with the numerical controls and development standards under PLEP and PDCP has been made in this report. Where the proposal does not comply with the controls, a merit assessment has been made against the objectives and requirements of the clause.



- **Works in the foreshore area**

*The submissions raised concerns with the proposed works in the foreshore area.*

Comment:

Through the submission of amended plans, the amount and extent of built form has been reduced. This includes deletion of the bathroom from the boatshed, deletion of the pergola above boatshed, deletion of the pool plant, RWT, and building plant from the Foreshore Area. An amended design also lowers the swimming pool to better relate to the slope of the site, and reducing the height and number of retaining walls.

Further, despite the remaining variations to the development standard (which are further discussed in this report), there is a significant improvement to the amenity and presentation of the development when viewed from the foreshore and waterway, with the introduction of planting and the removal of a large wall which is out of character with the foreshore, so as to provide greater opportunity for new and additional planting, so that a natural appearance is the main visual presentation in the foreshore area.

- **Excessive excavation; concerns with Geotechnical Report**

*The submissions raised concerns with the Geotechnical report and with the amount of excavation. A request is also made for a Vibration monitoring condition.*

Comment:

The application is supported by a Geotechnical Report, and conditions are imposed to require that the recommendations within this report are satisfied.

The Geotechnical Investigation provides a risk profile to determine whether the site is suitable for the proposed development and the concept design (as per the DCP and LEP). The report sufficiently identifies that the proposal does not pose an unacceptable risk, and meets the requirements of the LEP (as later discussed in this report). Conditions are imposed to require further investigation and consideration prior to CC, and the structural design is required at the latter detailed design stage.

The Geotechnical report also provides suitable recommendations for excavation works and control of vibration.

Conditions also require Dilapidation Reports to be provided prior to and post development for both adjoining properties.

- **Request for amendments**

*A submission makes a request for amendments to the proposal.*

Comment:

Amendments to the application have been made, where required. These are summarised under the Development Description section.

- **Request for conditions**

*A submission has recommended a number of conditions.*

Comment:

Where relevant and appropriate, the suggested conditions or alternatives to these conditions have been imposed.

- **Location of pool plant (close to bedroom)**

*The submissions raised concerns with the amenity impacts of pool plant.*

Comment:

The pool plant room has been deleted in the amended plans.

- **Removal of Trees**

*Concern is raised with the removal of trees.*

Comment:

Council's Landscape officer is satisfied with the proposed removal and proposed new plantings, and has provided suitable conditions for imposition on the consent. Further, despite the removals, the proposal provides significant opportunity for new and additional planting across the site.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><b>Supported with Conditions</b></p> <p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"><li>• B4.22 Preservation of Trees and Bushland Vegetation</li><li>• C1.1 Landscaping</li><li>• D1 Avalon Beach Locality</li></ul> <p>The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone.</p> <p>Visual impact from the proposed filling around the pool, and in particular along the southern boundary, shall be assessed and determined on merit consideration by the Assessing Planning Officer.</p>

Internal Referral Body	Comments
	<p>It is noted no vegetative screening is possible on the low side of the wall as the proposed walls are located on the boundary.</p> <p>Should the development application be approved, an amended Landscape Plan will be required prior to issuing a Construction Certificate to include species of greater height inbetween the pool and the foreshore, which will help reduce the bulk and scale of the proposed walls. All proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent and all <i>Rhaphiolepis</i> species shall be substituted with a suitable alternative as Council deems this species an environmental threat.</p> <p>All trees and vegetation shown to be retained shall be protected in accordance with the requirements outlined in the Arboricultural Impact Assessment (AIA) and the imposed conditions. A Project Arborist shall be engaged, as recommended in the AIA, to supervise all work in the tree protection zone of the neighbouring trees (trees 4-10). No concerns are raised with the removal of trees 1, 2, and 3 as these trees are exempt by species or height and as such do not require consent for removal.</p>
NECC (Bushland and Biodiversity)	<p><b>Supported with Conditions</b></p> <p>The proposal seeks approval for demolition works and construction of a dwelling house including swimming pool and boatshed.</p> <p>The comments on this referral relate to the following controls and provisions:</p> <ul style="list-style-type: none"> <li>• SEPP (Resilience and Hazards) - Chapter 2 Development within the coastal environment</li> <li>• Pittwater LEP 2014 - Clause 7.6 Biodiversity Protection</li> <li>• Pittwater 21 DCP - Clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community</li> </ul> <p>The proposal has been submitted with an accompanying Arborist Impact Assessment (AIA) that has recommended the removal of trees 1 (<i>Portulacaria afra</i>), 2 (<i>Grevillea robusta</i>) and 3 (<i>Olea europaea</i> sbsp. <i>cuspidata</i>) which are exempt under current Northern Beaches Council tree preservation orders.</p> <p>The AIA has also recommended a range of protection measures to be in place to allow retention of trees 4-10 which are located outside of the site. Request for consent might have to be sought and the decision will lie with the assessing officer.</p> <p>The proposal has also been submitted with a Landscape proposal with a planting schedule that will need to be amended in order to comply with PDGP B4.7 as it includes a range of exotic species that are non-compliant as well as species identified as weeds in the Northern Beaches Council Local Priority Weeds Management Plan.</p>

Internal Referral Body	Comments
	<p>As per PDCP B.47 "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>
NECC (Coast and Catchments)	<p><b>Supported with Conditions</b>  This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Coastal Management Act 2016;</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10 &amp; 2.12);</li> <li>• Relevant LEP and DCP clauses.</li> </ul> <p><b>State Environmental Planning Policy (Resilience &amp; Hazards) 2021</b>  The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience &amp; Hazards) 2021 (SEPP R &amp; H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R &amp; H) 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 BBF Town Planners dated December 2022, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&amp;H.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience &amp; Hazards) 2021.</p> <p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b></p> <p><b>Estuarine Risk Management</b></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>In accordance with the Estuarine Risk Management Report prepared by Salients dated December 2022 and the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.46m AHD is appropriate at a distance of 9m landward of the foreshore.</p> <p><b>Chapter D of the Pittwater 21 DCP: D15.15: Waterfront Development - Boatshed</b></p>

Internal Referral Body	Comments
	<p><i>iv) Boatsheds cannot be used for any other purpose than the storage of small boats and/or boating equipment. The incorporation [sic] any internal kitchen facilities, habitable rooms, shower or toilet facilities shall not be permitted. Roof areas of boatsheds shall not be used for recreational or observational purposes.</i></p> <p>The proposed boat shed is non-habitable and will be used primarily for storage of a boat. An elevated bathroom and storage area (floor level 2.46m AHD) are accessible (internally) from the boat shed. Alternative external access from these two rooms is also available to proposed elevated ground (at 2.46m AHD). This elevated section has sits 9m landward of the seawall, and its elevation was set based on advice regarding the EPL, as provided in this report.</p> <p>The floor of the boat shed is below the recommended EPL sitting at (1.75AHD) although recommendations have been made in the report; "The floor of the shed should enable draining, and a gap of 6mm between decking planks, or similar, is recommended to enable rapid draining, drying and ventilation after an inundation event. If electrical fixtures are to be provided to the boat shed, these should be kept above The Estuarine Planning Level as outlined in this report. If situated below the EPL fixtures should be of submersible grade. Any power outlets located below the maximum wave runup height (3.4m AHD) should also be of submersible grade.</p> <p>On internal assessment and as assessed in the submitted Estuarine Risk Management Report prepared by Salients dated December 2022 , the proposed development is therefore able to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p><b>Development on Foreshore Area</b>  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.  The swimming pool, waterway access stairs and the boatshed are anticipated within the foreshore under the provisions of clause 7.8(2) (b) of PLEP 2014. A clause 4.6 request accompanies this application with respect to the remainder of the works proposed within the foreshore area.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners dated December 2022, the DA satisfies objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p>
NECC (Development Engineering)	<p><b>Supported with Conditions</b>  Site stormwater to be discharged to Pittwater as conditioned.</p> <p>The vehicular crossing shall be reconstructed to comply with current</p>

Internal Referral Body	Comments
	<p>policy.</p> <p>No objections to approval subject to conditions as recommended.</p> <p>Note to Planner: It is noted the construction of the dwelling is over two Lots. A condition to consolidate the lots is to be considered by Planning.</p>
NECC (Riparian Lands and Creeks)	<p><b>Supported with Conditions</b></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>- Supplied plans and reports;</li> <li>- Coastal Management Act 2016;</li> <li>- State Environmental Planning Policy (Resilience and Hazards) 2021;</li> <li>- Relevant LEP and DCP clauses; and</li> <li>- Northern Beaches Council Water management for development policy.</li> </ul> <p><b>Riparian</b></p> <p>The site is nearby to Pittwater Estuary and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of Pittwater, or the quantity and quality of surface and ground water flows that it receives.</p> <p><b>Sediment Management</b></p> <p>Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</p> <p><b>Ongoing stormwater management</b></p> <p>Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs),

Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 1338087S\_02).

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

<b>Commitment</b>	<b>Required Target</b>	<b>Proposed</b>
<b>Water</b>	40	40
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	50	54

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

### **SEPP (Transport and Infrastructure) 2021**

#### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

#### Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

### **SEPP (Resilience and Hazards) 2021**

#### **Chapter 2 – Coastal Management**

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

### **Division 1 Coastal Wetlands and littoral rainforest area**

#### **2.7 Development on certain land within coastal wetlands and littoral rainforests area**

- 1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
  - a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
  - b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
  - c) the carrying out of any of the following:
    - i) earthworks (including the depositing of material on land),
    - ii) constructing a levee,
    - iii) draining the land,
    - iv) environmental protection works,
  - d) any other development

#### Comment:

The proposed works are seeking development consent.

#### **2.8 Development on land in proximity to coastal wetlands or littoral rainforest**

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

#### Comment:

The proposed dwelling is well separated from Pittwater and provides significant areas for landscaping within the foreshore area of the dwelling. The existing site is highly modified, including a large retaining wall to the rear of the site. The proposal introduces new, lower height retaining walls and does not involve excavation that would have a detrimental impact to groundwater, subject to recommendations in the Geotechnical Report.

As such, the proposal will not significantly impact on the above.

### **Division 2 Coastal Vulnerability Area**

#### **2.9 Development on land within the coastal vulnerability area**

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:



- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
  - i) is not likely to alter coastal processes to the detriment of the natural environment or
  - ii) other land, and
  - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

The separation of the dwelling from the coastline, the minimisation of excavation in the foreshore area and the reasonable bulk and scale ensures that the proposal is consistent with the above.

**Division 3 Coastal environment area**

**2.10 Development on land within the coastal environment area**

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
  - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
  - b) coastal environmental values and natural coastal processes,
  - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
  - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
  - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
  - f) Aboriginal cultural heritage, practices and places,
  - g) the use of the surf zone.
- 2) 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 an adverse impact referred to in subsection (1), or
  - b) if that impact cannot be reasonably avoided—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 satisfactory bulk and scale, minimisation of ground disturbance, and separation of the dwelling from the foreshore will ensure consistency with the above.

## **Division 4 Coastal use area**

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

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
  - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
    - i) existing, safe access to and along the foreshore, beach, headland or rock
    - ii) platform for members of the public, including persons with a disability,
    - iii) overshadowing, wind funnelling and the loss of views from public places to
    - iv) foreshores,
    - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
  - b) is satisfied that:
    - i) the development is designed, sited and will be managed to avoid an
    - ii) adverse impact referred to in paragraph (a), or
    - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
  - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

#### Comment:

The satisfactory bulk and scale, minimisation of ground disturbance, and separation of the dwelling from the foreshore will ensure consistency with the above.

## **Division 5 General**

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

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

#### Comment:

For the reasons above, the the proposed development is not likely to cause increased risk of coastal hazards.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

## **Chapter 4 – Remediation of Land**

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

#### **Pittwater Local Environmental Plan 2014**

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	10m (under 2D)	9.4m	N/A	Yes (under 2D)

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	No
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	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	No
7.10 Essential services	Yes

#### Detailed Assessment

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

An assessment of the proposal has been made against the objectives of the C4 Environmental Living zone as follows:

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

Comment:

The proposal involves a new dwelling house and ancillary development that responds well to the topography of the land, provides significant areas of landscaping, and provides a significant improvement to the amenity of the foreshore. This is achieved by removing a large retaining wall, and providing smaller and lower scale retaining walls to allow for integrated planting and natural features to be more prominently featured in the visual presentation of the site (as opposed to being dominated by a 4.5 metre wall). As such, the proposal development is considered to be sufficiently low impact and improves the existing situation when viewed from the waterway

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

Comment:

Along with the introduction of new planting in the foreshore area, the proposed dwelling is well separated from the foreshore, and is also well articulated and stepped on the site. This ensures the development will not have adverse impact on the above values.

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

Comment:

The proposal complies with the development standard for building height, steps well with the topography of the site, and is well articulated. As such, the proposal is of an appropriate density and scale.

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

Comment:

As above, the proposal provides new opportunities for enhanced and improved foreshore planting and native vegetation, by replacing a highly modified foreshore area (including a vertical 4.5m wall) with lower height and scale retaining walls, which will provide the opportunity for more natural form to visually predominate.

#### **4.3 Height of buildings**

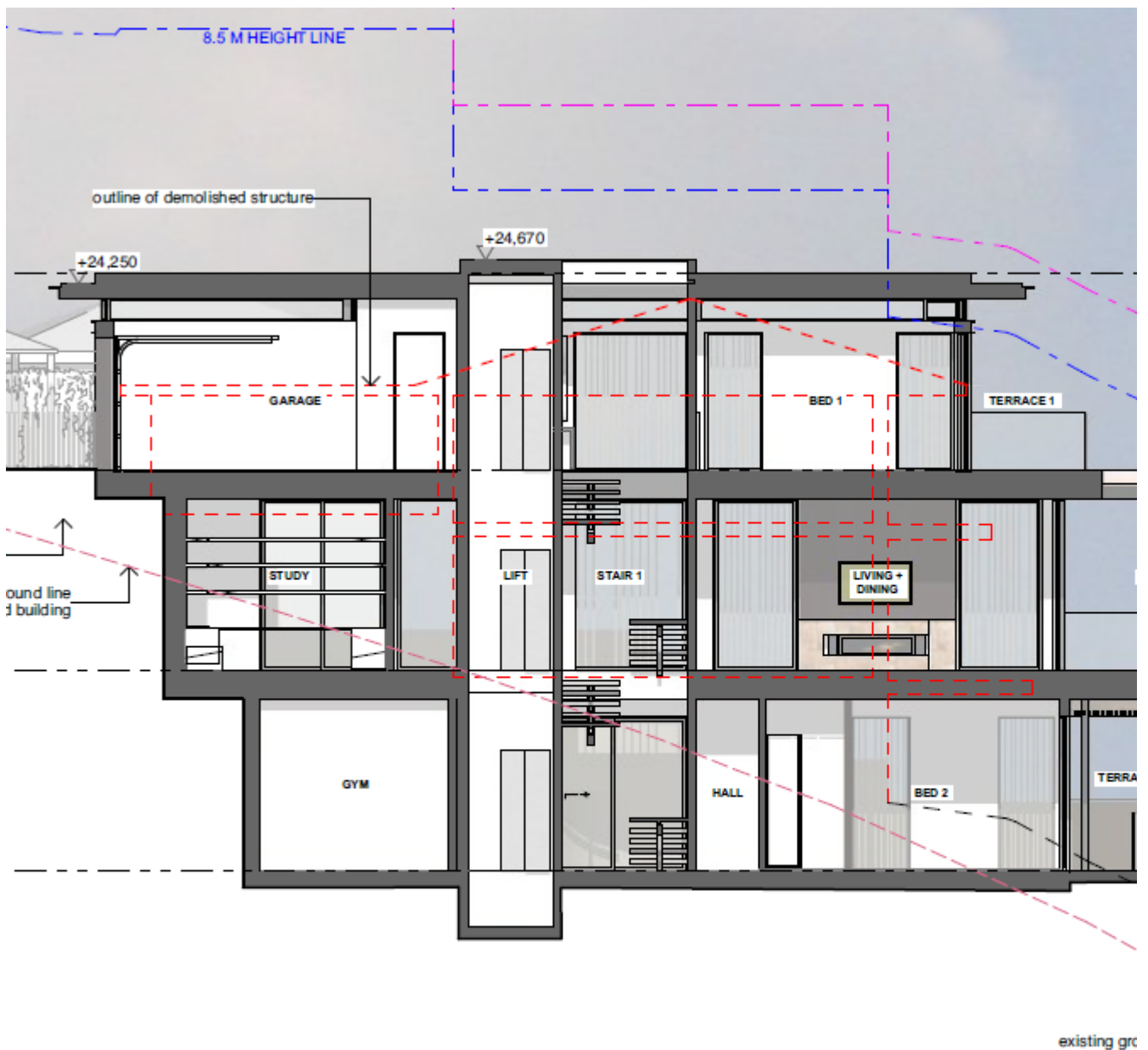
##### **Consideration of Special Height Provisions - Clause 4.3(2D) of PLEP 2014**

Clause 4.3(2D) of PLEP 2014 stipulates that development on steeply sloping land that has a maximum building height of 8.5m applying to it, may exceed a height of 8.5m, but not be more than 10.0m 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.*

Comment:

The proposed variation is limited to a minor portion of the building, being the roof overhang above the blue dotted line as shown below:



**Figure 1. Section showing height above 8.5m as prepared by applicant**

*(b) the objectives of the clause are achieved.*

The Objectives of the Clause are addressed as follows:

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

The proposed dwelling provides significant stepping, articulation, and compliance with front and side setback controls. The proposal will not substantially alter the presentation of the dwelling as viewed

within the streetscape and will provide an improvement in the presentation from the foreshore and waterway. This will maintain the desired character of the locality. Accordingly, the proposal is found to be consistent with Objective (a).

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

The height of the proposed building is comparable in height and scale with adjoining and nearby developments, including that the development steps well with the steep slope that exists in this area. Accordingly, the proposal is found to be consistent with Objective (b).

*(c) to minimise any overshadowing of neighbouring properties.*

The proposed dwelling maintains a significant open corridor through the rear of the site to allow for solar access that complies with the control under the DCP. Accordingly, the proposal is found to be consistent with Objective (c).

*(d) to allow for the reasonable sharing of views.*

An assessment of views is provided in this report, in accordance with the Land and Environment Court established Planning Principle, which has found that the proposed built form will provide for reasonable view sharing by maintaining large view corridors from the rear of neighbouring properties toward Pittwater, and a minor extent of impact on the water view over side boundaries. Accordingly, the proposal is found to be consistent with Objective (d).

*(e) to encourage buildings that are designed to respond sensitively to the natural topography.*

The proposed dwelling steps well with the steep slope of the land. Further excavation is generally limited to one storey and extends across a small proportion of the length of the site. As such, the proposed development responds appropriately to the topography. Accordingly, the proposal is found to be consistent with Objective (e).

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

The site is not within close proximity of a heritage item, and minimises visual impact through a suitable well articulated design with significant opportunity for planting to the rear of the site.. Accordingly, the proposal is found to be consistent with Objective (f).

*(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%).*

Comment:

The slope of the building footprint exceeds 16.7 degrees, as indicated by the architectural drawings and confirmed by an independent assessment by the author of this report.

*(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:

As above, the proposed works suitably minimise cut or fill and are designed to account for the slope of the land.

## Conclusion

Given the above assessment, it is considered that the proposal achieves consistency with the requirements Clause 4.3(2D), and therefore the 10m building height control applies.

The proposed works have a maximum height of 9.4m and comply with the requirements of the control.

## 4.6 Exceptions to development standards

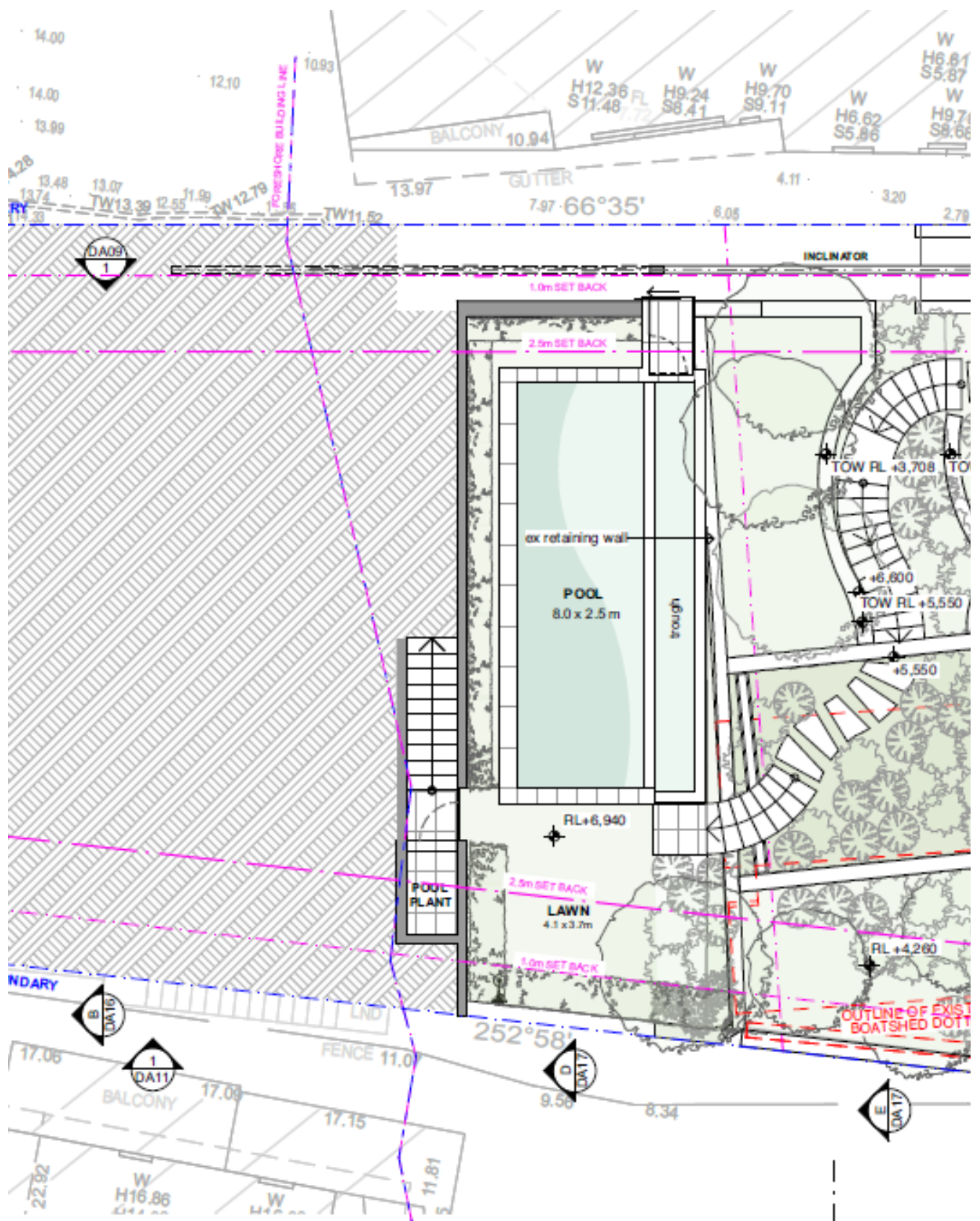
### Description of Non-compliance

Development standard:	Limited Development on Foreshore Area
Requirement:	No works within Foreshore Area [unless permitted by Clause 7.8(2)]
Proposed:	Works within the Foreshore Area
Percentage variation to requirement:	Non-numerical standard

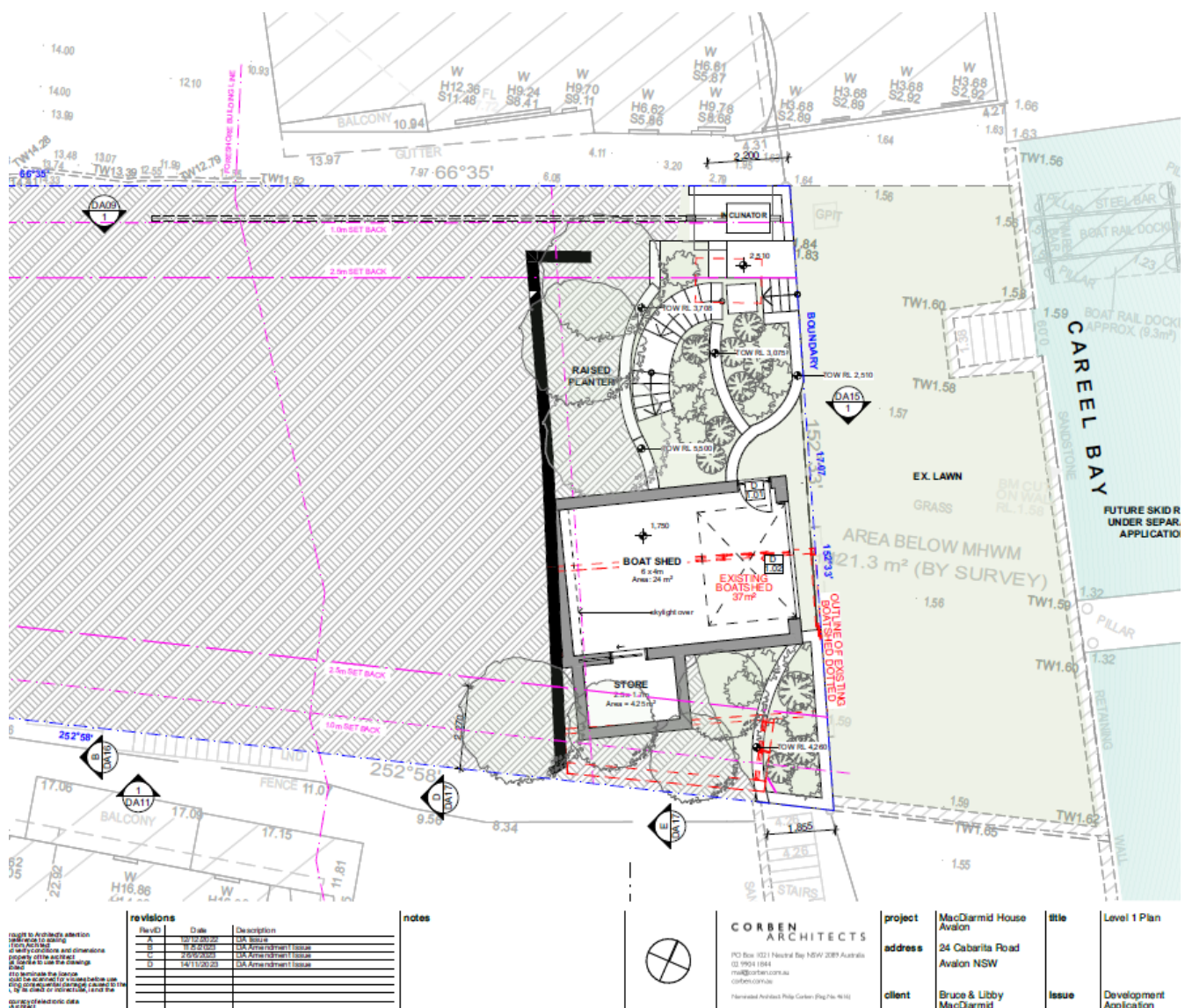
The proposed development seeks consent for works within the Foreshore Area that are not explicitly listed as being permitted under Clause 7.8(2) of the P21DCP.

The proposed works that necessitate a Clause 4.6 written request include; retaining walls, a store and the replacement of the existing inclinator.

The images below show the works within the Foreshore Area (noting the Foreshore Building Line is the purple dotted line with the notation at the top of the image):







## Assessment of Request to Vary a Development Standard

The following assessment of the variation to clause 7.8 Limited development on foreshore area development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

### Clause 4.6 Exceptions to development standards:

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

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

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental

*planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

7.8 Limited development on foreshore area development standard is not expressly excluded from the operation of this clause.

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

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

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

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

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

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

*(b) the concurrence of the Secretary has been obtained.*

**Clause 4.6 (4)(a)(i) (Justification) Assessment**

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

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

Comment:

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

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

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

Comment:

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

grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

**1.3 Objects of Act(cf previous s 5)**

*The objects of this Act are as follows:*

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

**Applicants Written Request**

The applicants written request argues, in part:

*The presence of retaining walls and terracing is characteristic of this area, and reflective of the significant slope on the land.*

*The replacement of the inclinator is in the same location as the existing inclinator (providing an upgrade), and is reasonable given the slope of the land.*

It is agreed that the proposed works are characteristic of the area, a product of the steep slope and that the inclinator provides an upgrade to access that already exists. Further, the removal of the large retaining walls at the rear and the replacement with lower level retaining walls, will reduce visual impact and also provide a design that is more characteristic of the existing and desired form in the area.

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

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

(3)(b).

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

#### **Clause 4.6 (4)(a)(ii) (Public Interest) Assessment**

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

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

#### **Comment:**

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Foreshore building area development standard and the objectives of the C4 Environmental Living zone. An assessment against these objectives is provided below.

#### **Objectives of Development Standard**

The underlying objectives of the standard, pursuant to Clause 7.8 – 'Limited Foreshore Building area' of the PLEP 2014 are:

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

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

#### **Comment:**

The proposal provides a significant improvement to the amenity of the foreshore area by removing a large wall (pictured below), and replacing it with smaller terracing to allow a greater opportunity for natural features to predominate. The existing presentation is highly modified, and does not involve any planting to surround the boatshed, with the exception of flat highly modified lawn area. The proposal will provide significant opportunity for planting to surround the boatshed, reinstating a visual perspective that is reminiscent of a natural and less-modified slope to the foreshore.

The proposal also provides a replacement inclinator in the same location. This is appropriate as a replacement as the presentation will be upgraded to a newer form of inclinator which provides access, without adding a new element of built form to the foreshore that does not already exist.









The proposal is also supported by an Estuarine Risk Management Report which confirms that the foreshore works are appropriate. This has been reviewed by Council's Coastal officer who has confirmed the suitability of the proposal, subject to conditions.

*(b) to ensure continuous public access along the foreshore area and to the waterway.*

Comment:

There is no change to the public access area beyond the private lot. As such, there is no impact to any potential for continuous public access.

## Zone Objectives

The underlying objectives of the C4 Environmental Living zone are:

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

### Comment:

The proposal involves a new dwelling house that responds well to the topography of the land, provides significant areas of landscaping, and provides a significant improvement to the amenity of the foreshore. This is achieved by removing a large retaining wall, and providing smaller retaining walls to allow for planting and natural features to be more prominent in presentation (as opposed to being a 4.5m vertical wall). As such, the proposal development is low impact.

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

### Comment:

Along with the introduction of new planting in to the foreshore area, the proposed dwelling is well separated from the foreshore, and is also well articulated and stepped. This ensures the development will not have adverse impact on the above values.

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

### Comment:

The proposal complies with the development standard for building height, steps well with the topography of the site, and is well articulated. As such, the proposal is of an appropriate density and scale.

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

### Comment:

As above, the proposal provides new opportunity for foreshore planting and vegetation, by replacing a highly modified foreshore area (including 4.5m wall) with lower retaining walls which provide opportunity for natural form to visually predominate.

## Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C4 Environmental Living zone.

## **Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment**

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Foreshore building area Development Standard is assumed by the Local Planning Panel.

## **7.2 Earthworks**

The objective of Clause 7.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

*(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

*(b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

*(c) the quality of the fill or the soil to be excavated, or both*

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

*(d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment:

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

*(e) the source of any fill material and the destination of any excavated material*

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

*(f) the likelihood of disturbing relics*



Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **7.7 Geotechnical hazards**

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

*(a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

*(b) the consent authority is satisfied that:*

*(i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*

*(ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*

*(iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.*

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

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

The application seeks consent for a swimming pool, boatshed and waterway access stairs which are permitted under this clause. The objectives of this clause are as follows:-

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

(a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,

(b) to ensure continuous public access along the foreshore area and to the waterway.

The proposed swimming pool is to be located within an existing benched platform above the boatshed and will not be visually dominant or affect the amenity of the area. Similar the new boatshed will be visually less prominent, removing large areas of glazing and a pitched roof that is within the existing structure. The works will maintain public access along the foreshore. In this regard the works which are accepted under the clause within the foreshore building area meet the objectives.

The proposal seeks variations to the development standard with regards to the replacement inclinor, retaining walls, and storage.

The proposal satisfies the objectives of this clause, see comments under Clause 4.6 variation in this regard.

## **Pittwater 21 Development Control Plan**

### Built Form Controls

<b>Built Form Control</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
Front building line	6.5m	6.5m	N/A	Yes
Rear building line	FBL	Within	N/A	<b>No (see comments under FBL)</b>
Side building line	2.5m (north)	2.5m (north)	N/A	Yes
	1.0m (south)	1.0m (south)	N/A	Yes
Building envelope	3.5m	Outside envelope	N/A	<b>No (see comments)</b>
Landscaped area	60%	55% (342sqm)	N/A	<b>No (see comments)</b>

#### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	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
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.16 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes
D1.21 Masterplan - Careel Bay	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	Yes	Yes

#### Detailed Assessment

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

#### **Merit Consideration**

The development is considered against the underlying Outcomes of the Control as follows:

- *A reasonable sharing of views amongst dwellings.*

Comment:

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

## **26 Cabarita Road**

### **1. Nature of the views affected**

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

#### **Comment to Principle 1:**

The property at 26 Cabarita Road is situated to the immediate south of the subject site and has extensive views of Pittwater over its rear boundary. The view which will be affected is a relatively small corridor in the location of the existing privacy screen, and the tree to the right of the privacy screen in the photo below. The water view to be affected is made somewhat partial by this tree.



**Photo 1: View from living area over side boundary**

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

*“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing*

*or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".*

#### Comment to Principle 2:

Views in the location of the proposed development are obtained over a side boundary from multiple levels including living areas and bedrooms. The main living area and attached deck has an extensive view toward the rear of the property.

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

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

#### Comment to Principle 3:

Along with the extensive view over the rear boundary, a large view corridor is maintained over the side boundary of the subject site, due to the proposed dwelling being well setback from the foreshore. As such, the extent of impact is deemed to be **minor**.

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

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

#### Comment to Principle 4:

The proposal complies with the development standard for building height, and also complies with the rear setback to the dwelling (being the foreshore building line). This provides a significant opportunity for retention of a view corridor over a side boundary. As such, the design is an acceptable view sharing outcome and is reasonable.

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

#### Comment:

The proposal provides reasonable setbacks, and complies with the development standard for building height. This provides a situation in which reasonable views and vistas are maintained.



- Canopy trees take priority over views.

Comment:

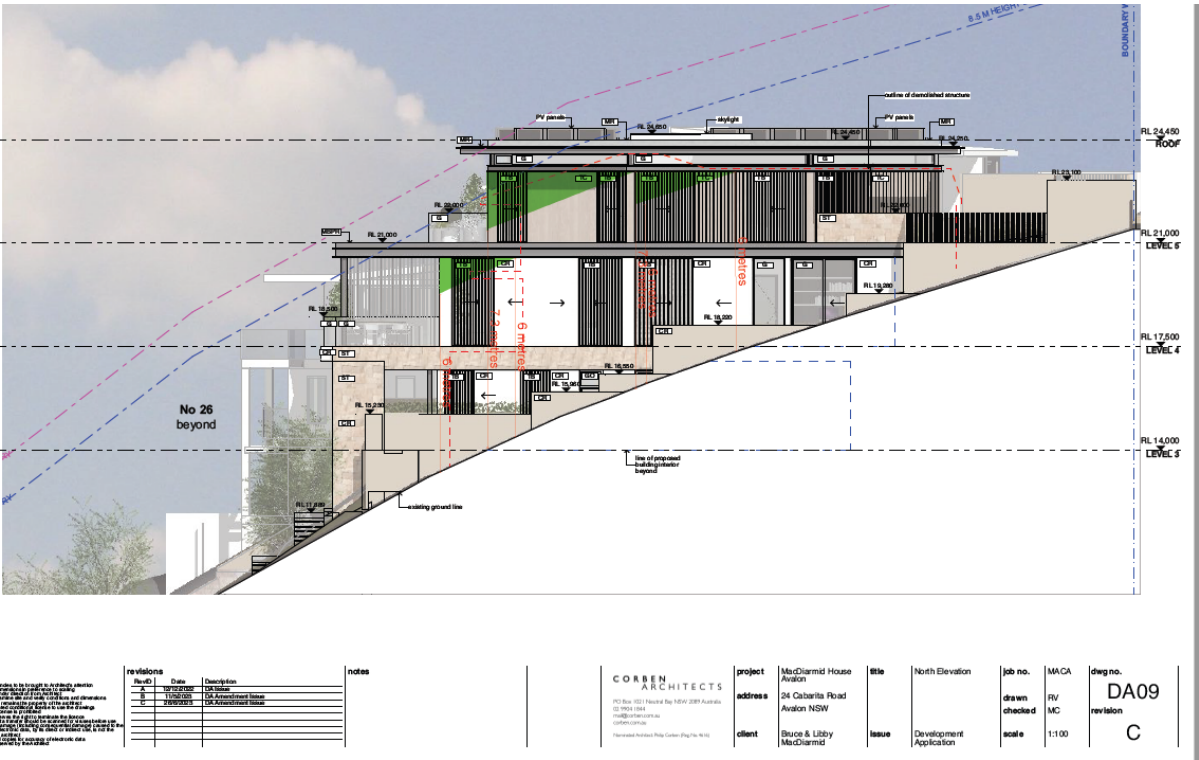
The proposal steps with the topography of the land, and provides trees on the landscape plans. This ensures that surrounding trees will take priority over views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

**D1.11 Building envelope**

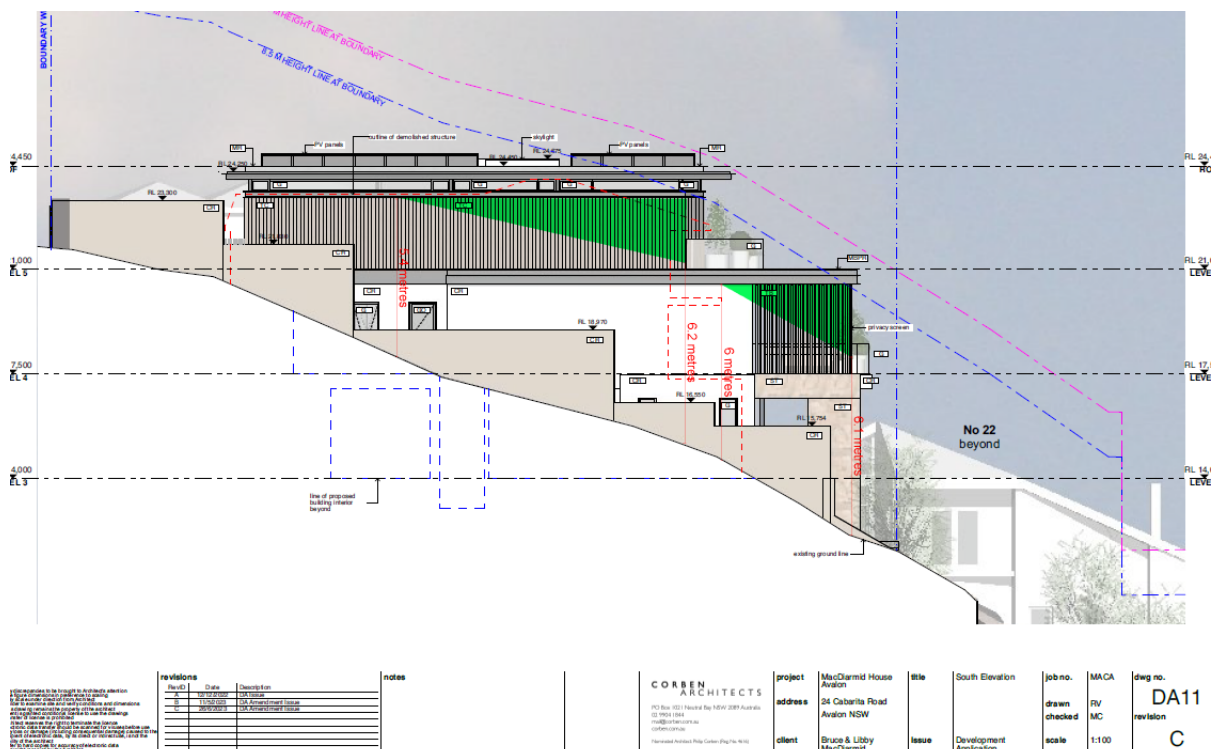
**Description of Non-compliance**

The proposal does not comply with the side boundary envelope control as demonstrated in the images below:



**Figure 1: Representation of Side boundary envelope non-compliance at North Elevation**





**Figure 2: Representation of Side boundary envelope non-compliance at South Elevation**

## Merit Consideration

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

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

### Comment:

The proposed development is complementary with existing development in that the upper level is well stepped-in from the lower levels. The proposal also responds well to the significant slope of the site by also providing significant stepping-in of the built form. Landscaping also surrounds the site and screens the built form also contribute to achieving the desired future character.

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

### Comment:

The proposal complies with the development standard for building height, and in so the proposal will be generally below the height of surrounding trees.

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

### Comment:

The proposal is well stepped, articulated and introduces extensive and new opportunities for planting to the rear of the site. As such, the proposal will sensitively relate to spatial characteristics of the

existing natural environment.

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

Comment:

The proposed development is of a bulk and scale that is consistent with existing developments in the locality. The proposed dwelling complies with the front and side boundary setback controls, and the building bulk is sufficiently distributed across the site. Along with articulation and stepping, this provides an appropriate minimisation of building bulk.

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

Comment:

The proposed development is adequately articulated and sited toward the front of the site so as to preserve views and vistas. An assessment of view sharing in accordance with the Land and Environment court established planning principle has also been made in this report.

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

Comment:

The proposal is sufficiently screened and separated from neighbouring living spaces and private open space. Along with narrow style windows, this provides a situation in which the proposal will not have any unreasonable impact on surrounding amenity. Further, the proposal complies with the requirements for solar access under the Pittwater DCP.

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

Comment:

The proposal maintains landscaping and vegetation to the front and rear of the site. As such, there is sufficient landscaping and vegetation on site to enhance the site and visually reduce the presentation of building bulk.

The proposal is consistent with the outcomes of this clause.

#### **D1.14 Landscaped Area - Environmentally Sensitive Land**

##### **Description of Non-compliance**

Clause D.1.14 requires that development provides 60% (i.e. 371.8sqm) of the site as landscaped area. The proposal involves a landscaped area of 55% (342sqm).

##### **Merit Consideration**

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

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

Comment:

The proposal involves demolition of an existing dwelling and the construction of a new dwelling. The landscaping which surrounds the new dwelling, and the substantial stepping and articulation provides a situation in which the proposal will not be visually dominant. As such, the proposal will meet the desired character of the locality.

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

Comment:

The proposed development is sufficiently articulated and the two-three storey built form is well setback from the street which, together with the aforementioned landscaping, reduces the bulk and scale of the proposal.

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

Comment:

The proposed dwelling is sufficiently separated from neighbouring living spaces and living areas. Furthermore, the large rear setback (compliant with the control for foreshore building line to the dwelling) provides a large open corridor for sunlight access. The proposal also complies with all requirements under the clause for Solar Access under the DCP.

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

Comment:

The proposal maintains vegetation in the surrounds of the dwelling to visually reduce the presentation of the built form. In particular, areas of vegetation are introduced to the foreshore area, including the surround of the boatshed.

*Conservation of natural vegetation and biodiversity.*

Comment:

The landscaping which surrounds the site provides sufficient opportunity for the provision of natural vegetation. Conditions are imposed to ensure protection of trees, and for completion of landscaping in accordance with the submitted Landscape Plan.

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

Comment:

The proposed planting and permeable surfaces on the site are suitable for the site and will sufficiently prevent soil erosion and minimise stormwater runoff. Council's Development Engineer has also provided suitable conditions for Stormwater.

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

Comment:

Council's Landscape Officer has confirmed that the proposed development provides a suitable

preservation of trees, subject to conditions.

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

Comment:

The proposed dwelling is surrounded by soft surface to maximise the opportunity for water infiltration and to minimise stormwater runoff. Conditions have also been imposed to minimise stormwater impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$33,247 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,324,702.

## **CONCLUSION**

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 7.8 Limited Development on Foreshore Area has adequately addressed and demonstrated that:

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

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

## **Planning Conclusion**

The proposed development (as amended) generally complies with applicable planning controls, with the exception of the non-compliances with Foreshore Building Line, building envelope and landscaped area. However, these variations do not give rise to any unreasonable environmental or amenity impacts and are supported.

Furthermore, there is a significant improvement to the amenity and presentation of the development when viewed from the foreshore and waterway, with the introduction of new planting, and the removal of a large vertical sandstone wall which has a negative visual impact. The request to vary the development standard under Clause 4.6 is supported, being justified by the improvement to foreshore amenity, including removal of built form dominance.

The proposal involves a design which provides sufficient minimisation of building height, bulk and scale, positively relates to the topography of the site and incorporates adequate spatial separation from the street and neighbours to minimise amenity and environmental impacts.

An amended design has also provided for a significantly improved response to the building envelope control at the southern elevation, and also minimised the built form within the foreshore area. The amended design is compliant with the control for setbacks to each boundary and sections of the development that are well in excess of the numerical control for side setbacks.

The amended design, coupled with the recommended conditions provides for a design that is consistent with the built form controls and desired future character under the P21DCP.

The issues raised in the submissions have been addressed by way of conditions were appropriate.

The Clause 4.6 Variation for Foreshore Building Line is assessed as being well founded and is

supported.

It is recommended that the NBLPP approves the application.

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

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0083 for Demolition works and construction of a dwelling house including swimming pool and boatshed on land at Lot 9 DP 17704, 24 Cabarita Road, AVALON BEACH, Lot LIC 396153, 24 Cabarita Road, AVALON BEACH, Lot LIC 631604, 24 Cabarita Road, AVALON BEACH, subject to the conditions printed below:

### Terms and Reasons for Conditions

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

## GENERAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA02	C	Excavation and Fill Plan	Corben Architects	14/11/2023
DA03	D	Roof & Site Plan	Corben Architects	14/11/2023
DA04	D	Level 1 Plan	Corben Architects	14/11/2023
DA05	D	Level 2 Plan	Corben Architects	14/11/2023
DA06	C	Level 3 Plan	Corben Architects	14/11/2023
DA07	C	Level 4 Plan	Corben Architects	14/11/2023
DA08	C	Level 5 Plan	Corben Architects	14/11/2023
DA09	C	North Elevation	Corben Architects	14/11/2023
DA10	D	East Elevation	Corben Architects	14/11/2023
DA11	C	South Elevation	Corben Architects	14/11/2023
DA12	D	West, North (Boatshed) & South (Boatshed) Elevations	Corben Architects	14/11/2023
DA13	C	Section AA	Corben Architects	14/11/2023
DA14	D	Section AA Boatshed	Corben Architects	14/11/2023
DA15	D	Section BB Boatshed	Corben Architects	14/11/2023
DA16	C	Section BB & CC	Corben Architects	14/11/2023
DA17	D	Section DD and EE	Corben Architects	14/11/2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management Plan	-	Applicant	08/03/2023
Geotechnical Investigation	A	Green Geotechnics	6 February 2023
Estuarine Risk Management Report	Final	Salients	15/12/2022
Arboricultural Impact Assessment	-	Treerepairs	21 November 2022

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

## 2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response documents	20/02/2023

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

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

## 3. No Approval for Land Use

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

Level 5 is not to be adapted to allow opportunity for separate occupation.

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

## 4. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon



- plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifier for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

## 5. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically

approved in this consent including for the erection of any fences, hoardings or other temporary works.

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

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

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

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

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

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

## **FEES / CHARGES / CONTRIBUTIONS**

### **6. Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$33,247.02 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$3,324,702.00.

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

### **7. Security Bond**

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

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

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

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

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

## **BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

**8. Amended Landscape Plan**

An amended landscape plan shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

- a) the landscaped area between the southern boundary and the boat shed, and between the stone walls ToW 2.51 and ToW 4.70 shall have the proposed *Westringia fruticosa* planted at 1 metre spacings along the base of the stone wall ToW 4.70,
- b) the on slab landscaped area above the boatshed, to the east of the lawn area, shall include additional species capable of achieving a mature height of 1 metre, with plant spacings of 1.5 metres (or less) for the full length of the roof garden planter,
- c) the on slab landscaped area above the boatshed, to the west of the lawn area, shall include additional species capable of achieving a mature height of 2 metres, with plant spacings of 1.5 metres (or less) for the full length of this area,
- d) the landscaped area between the two stone walls behind the boatshed, ToW 7.35 and ToW 9.756, shall include additional species capable of achieving a mature height of 3 metres, with plant spacings of 2 metres (or less) for the full length of this area,
- e) the landscaped area between the stone wall ToW 9.756 and the pool lawn area, shall include one additional shrub capable of achieving a mature height of 3 metres, to be located centrally between the southern boundary and the proposed stair,
- f) substitute all *Rhaphiolepis indica* with a suitable alternative (although a cultivar is proposed, Council deems this species an environmental threat).

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

Reason: Landscape amenity.

**9. On Slab Landscape Works**

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

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

The following soil depths are required to support landscaping: 300mm for groundcovers, perennials, grasses and lawn; and 600mm for shrubs.

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

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

**10. Landscape Plan**

A Landscape Plan is to be prepared which includes a minimum of 80% locally native species as a proportion of the total number of plants. Locally native species are to be consistent with Pittwater Spotted Gum Forest Endangered Ecological Community the relevant section of the Native Gardening Booklet available on Council's website.

The Landscape Plan is to be prepared by a suitably qualified landscape architect and provided to the Certifier prior to issue of the Construction Certificate.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

11. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

12. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, in accordance with Council's Water Management for Development Policy, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to Pittwater.

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Green Geotechnics dated 6/2/2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

14. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)

- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

#### 15. **Water Quality Management**

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

#### 16. **Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

#### 17. **Amendments to the approved plans**

The following amendments are to be made to the architectural plans and landscape plans:

- a) The proposed species are to be amended to ensure there are no species that have a mature height of more than 6m. The species are also to be endemic.
- b) The proposed privacy screen at the southern elevation (of terrace 2) is to have fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement

the design of the approved development.

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

**19. Boundary Identification Survey**

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

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

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

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

**20. Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

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 ensure no substance other than rainwater enters the stormwater system and



waterways.

**21. Structural Adequacy and Excavation Work**

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

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

Reason: To provide public and private safety.

**22. Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

**23. Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Salients, dated December 2022 and these recommendations are to be incorporated into construction plans.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

**24. Swimming Pools**

The backwash of Swimming Pool water must be discharged to Sydney Water's sewer in accordance with Australian/New Zealand Standard AS/NZS 3500. Detailed plans and specification must be submitted prior to the issue of the Construction Certificate. The drawings must show the location of Sydney Water's sewer, the yard gully or any new connection to the sewer system including a detailed cross section of the connection complying with Australian/New Zealand Standard AS/NZS 3500.

Reason: To ensure compliance with legislation and Australian Standards and to protect public health, amenity and to ensure the protection and preservation of receiving waters.

**25. External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

**26. Construction and Traffic Management Plan**

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
  - Evidence of the legal right and terms to use the access route or provide owners consent from the owners/strata/community association.
  - Demonstrate that direct access from a public space/road is not viable for each stage of works.
  - An assessment to be carried out of the physical constraints of the Right of Carriageway to determine the maximum size of vehicle that may access the site via the Right of Carriageway during construction.
  - Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP.
  - No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.
  - How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
  - If trees are located within or overhang the access route, a tree protection plan prepared by an Arborist with minimum AQF Level 5 in arboriculture demonstrating how any trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner's consent must be obtained.
  - A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets (including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
  - A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
    - Compare the post-construction report with the pre-construction report,

- Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
  - Should any damage have occurred, identify remediation actions taken.
  - Be submitted to Council with the Occupation Certificate.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- Specify that the public roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- Proposed protection for Council and adjoining properties.
- The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

A copy of the approved CTMP must be kept on-site at all times while work is being carried out.

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

**27. Sydney Water "Tap In"**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

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

**28. Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

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

a) tree protection requirements under section 8 Conclusions, and Appendix 15 Tree Protection Plan.

All tree protection measures specified must:

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

The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

**29. Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must

be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties: 22 Cabarita and 26 Cabarita Road, Avalon Beach.

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

**30. Installation and Maintenance of Sediment and Erosion Control**

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

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

## **DURING BUILDING WORK**

**31. Tree and Vegetation Protection**

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

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project 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/Project 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/Project 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/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 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 AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

### 32. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

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

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

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

Reason: Protection of trees.

**33. Wildlife Protection**

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

Reason: To protect native wildlife.

**34. Road Reserve**

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

Reason: Public safety.

**35. Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by a suitably qualified consultant prior to commencement of any other works on site.

Erosion and sediment controls 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 vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

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

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

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

**37. Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

**38. Implementation of Construction Traffic Management Plan (CTMP)**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent

**39. Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

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

**40. Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

**41. Vehicle Crossings**

The Applicant is to construct one vehicle crossing 4.5 metres wide in accordance with Northern Beaches Council Drawing Normal and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Certifier.

Reason: To facilitate suitable vehicular access to private property.

**42. Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with



RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business/industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

## BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

### 43. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing L102B by Spirit Level Designs dated 22/12/23), and inclusive of the amended Landscape Plan conditions, plus the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) the 6 x *Banksia integrifolia* and 3 x *Elaeocarpus eumundii* shall be a minimum pre-ordered planting size of 75 litres; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.2 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- c) all trees shall meet the requirements of Natspec - Specifying Trees,
- d) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan(s),
- d) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- e) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

Prior to the issue of an Occupation Certificate, details from a landscape architect, landscape designer or qualified horticulturalist shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

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

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

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

Reason: Tree and vegetation protection.

### 45. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

**46. Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

**47. Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

Reason: To maintain proper records in relation to the proposed development.

**48. Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

**49. Waste Management Confirmation**

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

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

**50. Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

**51. Swimming Pool Requirements**

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

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 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

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

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

### **52. Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved amended Landscape Plan(s) and any conditions of consent.

A maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

The approved landscape area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

53. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

54. **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

55. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Salients, dated December 2022 and these recommendations are to be maintained over the life of the development.

Evidence demonstrating compliance must be submitted to the certifying authority prior to inquiring the construction certificate.

Reason: To ensure preservation of the development and the estuarine environment