

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1591
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Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 1 DP 827733, 316 Hudson Parade CLAREVILLE NSW 2107 Lot 2 DP 827733, 316 Hudson Parade CLAREVILLE NSW 2107 Lot LIC 559856, 316 Hudson Parade CLAREVILLE NSW 2107
Proposed Development:	Alterations and additions to a dwelling house and garage
Zoning:	E2 Environmental Conservation E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Northern Beaches Council Tony Brian Walls
Applicant:	Baxter & Jacobson Architects Pty Ltd

Application Lodged:	16/12/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/01/2021 to 25/01/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 9.88%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,005,146.00
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PROPOSED DEVELOPMENT IN DETAIL

The development seeks consent for alterations and additions to an existing dwelling and an extension of the existing detached double garage and workshop and use as a gym / studio.

In detail the proposal includes:

Dwelling

- Demolition of lower ground, ground and level 1 internal walls and construction of new walls and kitchen fitout;
- Extension of integrated garage;
- New level 1 addition to accommodate a masterbedroom walk in robe and ensuite with west facing deck. The masterbedroom will be accessed via a stair and lift, and
- New windows, doors and a copper roof.

Detached garage

- Demolition of internal walls and construction of new internal walls including upper level wet area / WC;
An extension to the east of the existing detached garage to be used as a store at ground level and as part of the wet area / WC at level 1;
- Enclosure of the existing west facing deck and installation of sliding doors and a balustrade, and
- Use of the upper floor as a gym / studio.

External

- Demolition of retaining walls and construction of new retaining walls and stairs;
- Outdoor pavilion and pond feature.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation

Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
 Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
 Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
 Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
 Pittwater 21 Development Control Plan - D3.7 Side and rear building line
 Pittwater 21 Development Control Plan - D3.9 Building envelope
 Pittwater 21 Development Control Plan - D3.11 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	<p>Lot 1 DP 827733 , 316 Hudson Parade CLAREVILLE NSW 2107</p> <p>Lot 2 DP 827733 , 316 Hudson Parade CLAREVILLE NSW 2107</p> <p>Lot LIC 559856 , 316 Hudson Parade CLAREVILLE NSW 2107</p>
Detailed Site Description:	<p>The subject site consists of a large, irregular shaped allotment located on the western side of Hudson Parade, adjoining the Pittwater Waterway to the west.</p> <p>The site has a deep setback and a wide frontage of 20.6m along Hudson Parade with a depth of 49.68m. The site has a surveyed area of 1902m².</p> <p>The site is located within the E4 Environmental Living zone under PLEP 2014 and accommodates a large split level, brick dwelling, detached double garage, and in-ground swimming pool. The site benefits from pedestrian access from the land to the waterway to the west.</p> <p>The site falls away steeply to the west away from Hudson Parade and towards the Pittwater Waterway with a fall of approximately 17m and slope of 34.2%.</p> <p>The site is characterised by a densely vegetated front setback to Hudson Parade with a mix of vegetation types, including native, canopy trees, while the remaining site is characterised by predominantly established garden beds and lawn areas.</p> <p>Adjoining and surrounding development is characterised by large dwellings set within a low-density residential, landscaped setting.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- 2 April 1984 BA 924/84: approved an upper floor extension to the existing garage for use as a workshop. Conditions restricted the use / adaption of the upper floor to habitable accommodation.
- 17 August 2016: Development Application (Tree removal application) T0348/16 approved.
- 15 November 2016: Development Application (Tree removal application) T0481/16 approved.
- 25 November 2016: Complying Development Certificate No. CDC0202/16 approved for repairs and restorations of existing marine structures. **Note:** This consent (twice modified since its original approval) was surrendered on 26 April 2020.
- 16 December 2020: Subject development application lodged.
- 29 December 2020: Development Application No. DA2020/1762 submitted for the construction of a boatshed, ramp and slipway. It is noted that there is an extensive history of compliance issues relating to the construction of a boatshed on the site.

History of subject development application

- 10 February 2021, a letter was sent to the applicant raising issues with the building height, the principle of the secondary dwelling, building envelope and landscape open space.
- On 18 March 2021, amended plans were submitted which included:
 - Extent of retained detached garage structure increased.
 - Offset of detached garage from southern boundary increased to 900mm for
 - All new walls (existing wall at 815mm setback retained).
 - Rooms over detached garage changed from secondary dwelling to gym / studio.
 - Roof pitch of detached garage lowered from 20° to 19°.
 - Ridge of detached garage lowered by 575mm.
 - An increase in the soft landscape area by 34.5sqm.

The amended plans were notified to the neighbour who made a submission on the original DA.

On 3 May 2011, the applicant submitted additional drawings and information to address concerns regarding privacy impacts from the proposed upper floor studio / gym to the neighbouring site. The plans included the addition of a screen projecting 1m to the side of the garage / studio structure. The plans were notified to the neighbour for comment.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Amended plans and additional shadow analysis has been submitted.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration'	Comments
	<p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 08/01/2021 to 25/01/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Samuel Nicholas Wallrock	318 Hudson Parade CLAREVILLE NSW 2107

The following issues were raised in the submission and each have been addressed below:

- Bulk and scale impacts associated with the secondary dwelling (now studio/gym) built above a detached garage;
- Reduced soft landscaping;
- Changes to natural ground level on the subject site and the impacts created by the proposed secondary dwelling (now studio/gym) on 318 Hudson Parade;
- Overshadowing and privacy impacts;
- Setbacks;
- Limited opportunity for landscaping;
- Impact of construction vehicles using the shared driveway; and
- Location of air-conditioning equipment or similar.

The objector was notified of the amended plans and reiterated the comments raised in the original submission.

The matters raised within the submissions are addressed as follows:

- **Bulk and scale impacts associated with the secondary dwelling (now studio/gym) built above a detached garage**

Comment:

The concerns raised with respect to the bulk and scale impacts associated with the "studio/gym" structure above the garage have been observed and noted by Council and the Applicant. In response to these concerns, several amendments have been made to the design to reduce the bulk and scale. These include:

- Lowering of the height of the building by 575mm. The level of the proposed roof ridge now matches the level of the existing roof ridge (RL 25.510) and is approximately 1m below the highest point of the existing building (being the existing rooftop feature).
- Reduction of the roof pitch from 20 to 19 degrees.
- Increasing the minimum side setback of the structure from the southern side boundary to 900mm.
- Reducing the width of the garage (by retaining the existing western wall of the garage).

It is also noted that the upper floor extension to the garage was approved in 1984. The subject DA seeks for a minor extension to the rear of the structure and a change from a hipped roof to a copper pitched roof which is consistent with the design of the roof proposed to the dwelling. In order to minimise the visual impact of the amended structure from the neighbouring property to the south a condition requires the roof to be reduced in length by 1m to the west where it extends over the existing balcony. The applicants suggestion of a projecting screen to address privacy issues is not supported as it will add to the bulk of the structure.

In light of these changes, and subject to conditions, the alterations to the existing garage struc

- **Reduced soft landscaping**

Comment:

While the development results in the reduction in soft landscaping, the development has been amended to provide an additional 34.5m² of soft landscaping. While the development proposes the removal of some existing native vegetation on site, majority of vegetation is retained with additional planting required as part of a recommended condition of consent. The development is considered to provide for a reasonable level of landscaping within the context of the site and surrounding area and Council's Landscape Officer has no objections to the proposal.

- **Changes to natural ground level on the subject site and the impacts created by the proposed secondary dwelling (now studio/gym) on 318 Hudson Parade**

Comment:

The concerns relating to changes to natural ground level on the subject site and associated impacts on the neighbour's property to the south are noted. In order to mitigate against the bulk and scale impacts created by the level changes between both sites, the design of the alterations to the existing two storey garage structure has been revised (refer to above). The proposed changes will help to reduce the impacts associated with the studio on the neighbour's property. Notwithstanding the level changes, the site currently contains a "workshop" structure of similar scale above the garage, and as such, the proposed structure will generate no further unreasonable impact beyond the existing structure.

- **Overshadowing and privacy impacts**

Comment:

Additional shadow diagrams have been prepared and submitted by the Applicant. The diagrams demonstrate reasonable levels of solar access being provided to the neighbour's northern courtyard between 9am and 3pm in accordance with P21 DCP.

Amended plans have been received removing the external balcony from the western elevation and proposing a balustrade and sliding doors. In order to further address privacy concerns a condition requires the sliding doors and balustrade to be replaced with windows with a fixed angled privacy screen. As noted above, the applicant's suggestion to have a projecting privacy screen is not considered as an acceptable alternative as it raises issues with regards to visual privacy as a result of additional bulk and scale.

- **Setbacks**

Comment:

The concerns raised from the neighbouring property with regard to reduced setbacks along the southern boundary are noted and have been addressed. The revised design retains the setback of 810mm of the existing "workshop", while proposed walls have been setback further beyond the existing wall in order to provide increased separation and relief from the southern boundary. The setback, although marginally non-compliant with the minimum side setback control of 1m is considered acceptable on merit (refer to D3.7 for further discussion).

- **Limited opportunity for landscaping**

Comment:

Notwithstanding the shortfall in soft landscaping, there is ample opportunity for landscaping to be provided in addition to the extensive existing landscaping already provided for on-site.

- **Impact of construction vehicles using the shared driveway**

Comment:

In order to address this concern, a Construction Traffic Management Plan is required to be prepared and submitted prior to issuing of a construction certificate. The CTMP is required to provide details in relation to management of the driveway, parking of trades and service people, size, weight, dimensions and frequency of truck movements along the driveway. The CTMP is to be provided to all property owners who benefit from the driveway for their records.

- **Location of air conditioning equipment or similar**

Comment:

The submitted plans do not detail the location of any air-conditioning equipment or similar. Should the property owner wish to provide an A/C unit at later date, they will be required to comply with the requirements under Part 2, subdivision 3 of SEPP (Exempt and Complying Development).

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate stage.</p> <p><u>Planners Comments</u></p> <p>The application has been amended to exclude the use of the upper floor above the garage as a secondary dwellings. As such, Council's Building Officer has confirmed that the original conditions recommended are no longer required.</p>
Landscape Officer	The development application is for alterations and additions to an

Internal Referral Body	Comments
	<p>existing dwelling and the construction of a secondary dwelling.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 zone Environmental Living, and the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • C11.1 Secondary Dwellings and Rural Workers Dwellings • D1 Avalon Locality <p>The site is located in the E4 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, and including the provision of appropriate landscape area.</p> <p>The site contains existing native trees and other vegetation within the front setback of Hudson Parade, and a managed landscape setting within the rear setback containing paving, pool and lawn. No Landscape Plan is provided with the application whilst a Arboricultural Impact Assessment is provided with the application.</p> <p>The proposal requires the removal of two high retention value trees identified as tree numbers 17 and 18, and an additional two trees of low retention value recommended for removal and identified as tree numbers 11 and 14. Four Exempt Species under the DCP and not requiring Council consent are recommended for removal including tree numbers 4, 5, 12 and 13.</p> <p>Nine existing trees within the property of moderate and high retention value are retained and not impacted by the development as the proposed works remain predominately outside of the tree protection zone of these trees, including tree numbers 6, 8, 9, 10, 15, 17, 18, 19 and 20, and thus the landscape character as required under clause E4 Environmental Living zone, B4.22 and C1.1 are maintained. All existing trees within adjoining property within 5 metres of development are protected and not impacted by development works including tree numbers 1, 2, 3, 7 and 16. Tree root mapping is recommended for tree 1 prior to Construction Certificate to determine the tree sensitive measures required to minimise root impacts.</p> <p>To protect existing trees in close proximity to the development works, a Project Arborist shall be engaged to attend and monitor works near existing tree numbers 1, 10, 19 and 20 with tree protection measures as recommended by the Arboricultural Impact Assessment report to be implemented.</p> <p>Should the proposal be approved, Landscape Referral do not raise any objection subject to the protection of existing trees.</p>
NECC (Bushland and Biodiversity)	Council's Bushland and Biodiversity referral team have reviewed the application for consistency against the relevant environmental

Internal Referral Body	Comments
	<p>legislation and controls, including:</p> <p>Biodiversity Conservation Act 2016 (BC Act) State Environmental Planning Policy (Coastal Management) Pittwater Local Environmental Plan (PLEP)</p> <ul style="list-style-type: none"> - 7.6 Biodiversity Protection <p>Pittwater Development Control Plan (PDCP)</p> <ul style="list-style-type: none"> - B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor - B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community <p>The application seeks to remove five (5) exempt trees, and three (3) prescribed trees (<i>Eucalyptus punctata</i>).</p> <p>No Landscape Plan was sited within the documented provided. To ensure consistency with Clause B4.7 of the Pittwater DCP, a Landscape Plan must be submitted that demonstrates at least 80% of any new plantings incorporates native vegetation (as per species found on the site or listed in the Pittwater Spotted Gum Endangered Ecological Community). Found here: https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/1996-1999/pittwater-spotted-gum-forest-endangered-ecological-community-listing#:~:text=The%20Scientific%20Committee%2C%20established%20by,Schedule%201%20of%20the%20Act.</p> <p>The Landscape Plan would also need to demonstrate no significant onsite loss of canopy cover or a net loss of canopy trees in accordance with Clause B4.4 and Clause B4.7 of the DCP. This includes replacement of all <i>Eucalyptus punctata</i> removed for the proposal.</p> <p>Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
NECC (Development Engineering)	<p>The submitted Geotechnical report certifies that an acceptable risk is achievable for the development.</p> <p>No objection to approval, subject to conditions.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation for the protection of waterways.</p> <p>An Erosion and Sediment Control Plan must be prepared and implemented prior to any demolition or disturbance of soil on site, so that no sediment leaves the site. It must be maintained until all work is complete and groundcover re-established.</p> <p>With the application of this condition it is considered unlikely that the proposal will have an adverse impact on the integrity and resilience of</p>

Internal Referral Body	Comments
	the biophysical, ecological or hydrological environment of Pittwater. It is therefore recommended for approval subject to conditions.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A398970 dated 25 November 2020).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was not referred to Ausgrid as the site does not fall within the referral categories listed above.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the 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.*

Comment:

In the event of approval, provided that recommended conditions are satisfied with regard to management of erosion and sediment runoff, the proposed development will not have foreseeable adverse impacts on the coastal environment.

- (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 subclause (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 proposed development is to be sited within parts of the site that are already largely developed.

The siting of the proposed works are therefore unlikely to affect natural coastal processes, the coastal environment nor access to/use of the foreshore area.

14 Development on land within the coastal use area

(1)

- (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 platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) 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 layout of the proposed development will not adversely affect access to foreshore areas. The development will also not adversely affect visual amenity, overshadowing nor a loss of views to/from such areas. There are no identified heritage items within the surrounding area, and while items of indigenous heritage are unlikely to be discovered during works, this can be addressed via conditions in the event of approval.

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.31m	9.88%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.31m
Percentage variation to requirement:	9.88%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) 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).

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written

request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.’

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The building generally complies with the building height control, with the variation relating only to a small part of the roof ridge.*
- *The variation to the building height control is located centrally within a relatively large site. As a result, the distance of the roof ridge from the neighbouring properties, the street and the foreshore mitigate potential impacts such as impacts on views, overshadowing, streetscape, and impacts related to the bulk and scale of buildings.*
- *The proposed variation occurs because the building has been designed to maintain the existing gabled roof form so as to maintain the character of the building and its contribution to the character of the area. A different roof form could be adopted that would comply with the control (eg: a hipped or flat roof form) but this would have no identifiable environmental benefit and would be to the detriment of the character of the area and the architectural consistency of the building.*

The development and resulting height variation is isolated in the middle of the site, being in the form of a small part of the roof ridge, therefore being significantly setback from adjoining properties to the north and south. Due to the location of the building height variation in relation to neighbouring properties and Hudson Parade, the visual impact of the built form has been considered and mitigated with existing views from adjoining properties being properly managed. Any overshadowing as a result of the height variation is considered minimal with all impacts relating to the bulk and scale of the building minimised. The proposed variation is not inconsistent with the character of the Bilgola Locality, maintaining a low-density residential development within a predominately landscaped setting.

In this regard, the applicant’s written request has demonstrated that the proposed development is an

orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The resulting building height variation will have no discernible impact on the desired character of the Bilgola Locality with the development continuing to provide for a building that aligns with the character of the locality with extensive landscaping being retained and the built form, being predominantly a two (2) dwelling with a minor area comprising a three (3) storey element that will be positioned below street level further reducing the impact from the development.

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

Comment:

The overall height and scale of the development is not inconsistent with the surrounding and nearby development with the proposed development providing for a building that appropriately responds to the height and scale of surrounding development.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The development has demonstrated through additional shadow diagrams that the overshadowing to the neighbouring property to the south is reasonable and provides sufficient solar access to the this dwelling and courtyard area. Further, the building height variation is significantly setback to the southern side boundary, reducing any impact on overshadowing from additional building height. It is considered that the siting and design of the master bedroom addition has duly considered overshadowing of the southern property by locating the addition as far away as reasonably possible.

d) to allow for the reasonable sharing of views,

Comment:

The addition and resulting building height variation is not considered to unreasonably impact on the sharing of views from adjoining properties, as well as from the public domain (i.e. Hudson Parade) with all views of Pittwater waterway continuing to be preserved.

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

Comment:

The development has responded to the natural topography by incorporating a stepped design that responds to the slope of the site which falls away from Hudson Parade to the Pittwater waterway,

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

Comment:

The proposed development retains extensive landscaping, including established canopy trees within the front setback area which will minimise the adverse visual impact of development on the natural environment.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

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

Comment:

The proposal provides for a low-impact residential development.

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

Comment:

The development has duly considered the ecological, scientific and aesthetic values of the site.

- *To ensure that development, by way of its character, design, location and materials of construction, is integrated into the site and natural surroundings, complements and enhances the natural environment and has minimal visual impact.*

Comment:

The site is relatively large at 1,903m² and the proposed development represents low-density development, while the scale of development is appropriate for the site. The building steps down with the slope of the land and site landscape ensures that the building is integrated into the landscape.

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

Comment:

The proposal has no impact on riparian and foreshore vegetation or on wildlife corridors.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 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 PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

5.10 Heritage conservation

The site does not include a heritage item, is not within a heritage conservation area nor is it in close proximity to a heritage item. Given high levels of disturbance, the development area is unlikely to contain items of indigenous heritage, however undiscovered finds can be addressed by conditions in the event of approval.

7.1 Acid sulfate soils

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Proposed works will be within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum, however the watertable is unlikely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land. An Acid Sulphate Soils Management Plan is therefore not required.

7.6 Biodiversity protection

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

(a) whether the development is likely to have:

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

Comment:

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

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

Comment:

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

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

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

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

7.8 Limited development on foreshore area

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

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

Comment:

The proposed additions to the primary dwelling will not extend the building footprint further into the foreshore area. The erection of the swimming pool barrier is considered to form part of a swimming pool and its encroachment into the foreshore area is therefore acceptable.

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

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
 - *pollution or siltation of the waterway, or*
 - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - *an adverse effect on drainage patterns, or*
 - *the removal or disturbance of remnant riparian vegetation, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:

The proposed development is consistent with the objectives of the E4 Environmental Living zone. The appearance of the proposed development is compatible with the surrounding area. Subject to conditions, the proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development retains public access along the foreshore. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

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

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

Comment:

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m or the established building line, whichever is greater	11.5m	N/A	Yes
Rear building line	N/A - FBL applies	N/A	N/A	N/A
Side building line	N: 2.5m	2.16m	13.6%	No
	S: 1m	0.9m	10%	No
Building envelope	N: 3.5m	Within envelope	N/A	Yes
	S: 3.5m	Outside envelope The breaching element relates primarily to the wall of the existing two storey garage structure. There is a minor breach of 0.3m to 0m in height for a length of 1.5m of the relating to the extended portion of the structure.	N/A	No

Landscaped area	60% (1,141.2m ²)	46.7% (888.9m ²)	22.17%	No
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	Yes	Yes
B1.3 Heritage Conservation - General	N/A	N/A
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	N/A	N/A
B3.8 Estuarine Hazard - Medium Density Residential	N/A	N/A
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	N/A	N/A
B4.16 Seagrass Conservation	N/A	N/A
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	N/A	N/A
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	N/A	N/A
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	N/A	N/A
B6.7 Transport and Traffic Management	N/A	N/A
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	N/A	N/A
B8.6 Construction and Demolition - Traffic Management Plan	N/A	N/A
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	N/A	N/A
C1.12 Waste and Recycling Facilities	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	N/A	N/A
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	N/A	N/A
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D3.1 Character as viewed from a public place	Yes	Yes
D3.2 Scenic protection - General	Yes	Yes
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	Yes	Yes
D3.7 Side and rear building line	No	Yes
D3.9 Building envelope	No	Yes
D3.11 Landscaped Area - Environmentally Sensitive Land	No	Yes
D3.13 Fences - Flora and Fauna Conservation Areas	N/A	N/A
D3.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D3.15 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.14 Separately Accessible Structures

Clause C1.14 allows for

A separately accessible structure may be permitted for use as a studio, home office, workshop area, rumpus room and the like, provided that:

it is ancillary to a dwelling;

it is not designed for separate habitation and does not contain any cooking facilities.

Variations

Where the purpose of the structure or its distance from the nearest bathroom facility dictates, bathroom/toilet facilities may be allowed.

Comment

The proposal has been amended to change the use of the upper floor above the detached garage from a secondary dwelling to a studio / gym. The floor plan shows a 16sqm change / wet area including bath, shower and WC. In accordance with the variation of the control a bathroom and toilet facility may be included where the structure is at a distance from the nearest bathroom facility. The structure sits directly adjacent to the dwelling and the large change / wet area with bath and shower is considered excessive. In order to meet the variation of the control a condition requires the floor plan to be amended to have a WC and shower with no bath.

It is also noted that the bar / wet bar is annotated on the floor plan. Concern has been expressed from

the neighbour regarding the use of the space and impacts on neighbouring amenity in terms of acoustic and visual privacy. The neighbours note that the space has been used as an unauthorised secondary dwelling in the past and the current layout allows the use of the space as habitable accommodation in the future. In order to address potential amenity concerns and ensure that the space is used as a non-habitable studio / gym in compliance with the control conditions are recommended to ensure that a kitchen or wet bar is not installed. Standard noise conditions are also included to ensure that the use of the gym will not give rise to acoustic impacts.

D3.7 Side and rear building line

The development fails to provide a minimum 2.5m to one side and 1m to the other side.

Proposed side setbacks:

- North - 2.16m
- South - 810mm (existing) and 915mm (proposed)

Clause D3.7 stipulates that where alterations and additions to existing buildings are proposed, maintenance of existing setbacks less than as specified may be considered where it is shown that the outcomes of this clause are achieved.

In this instance, the proposal seeks to maintain existing setbacks less than the minimum required by clause D3.7.

Notwithstanding the above, the proposal is considered reasonable, subject to the following merit assessment.

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

The development and its design has made due consideration for the desired future character of the Bilgola Locality by preserving the low-density residential setting with a structure that does not exceed two storeys in any one place. Further, the development demonstrates compatibility with the landform and landscaped by retaining and preserving the landscaped setting.

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

The bulk and scale of the built form has been able to be minimised through an overall lowering of the building height from the existing 'workshop' with landscaping being retained to further minimise the bulk and scale of the built form. Due to concerns raised through a submission received during the notification period, the height of the building has been lowered by a further 575mm with the proposed roof ridge matching the level of the existing building and is approximately 1m below the highest point of the existing building, being a rooftop feature. The pitch of the roof has been reduced marginally to help minimise the perceived bulk and scale of the built form.

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

The properties to the north and south enjoy primary water views to the west of the Pittwater Waterway, which will remain unaffected by the development, including setback non-compliance, while the adjoining properties on the eastern side of Hudson Parade will continue to enjoy uninterrupted water views to the west.

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

View sharing has been duly considered through complimentary siting and responsive design of the building with the overall height being further reduced by 575mm, as discussed above.

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

Privacy has been considered with the design not incorporating any windows into the southern elevation, thereby maintaining privacy to the principal outdoor space and courtyard on the adjoining property. Solar access to the neighbour's northern terrace area in addition to the neighbour's north-facing living windows will continue to achieve reasonable solar access, as demonstrated by additional shadow diagrams prepared by the applicant due concerns raised by the neighbour.

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

The proposed studio will be provided within largely the existing footprint of the garage, therefore not requiring the removal of any mature tree canopy, and maintaining an attractive streetscape to Hudson Parade.

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

As noted above, vegetation will not be impacted by the proposal with the building being provided largely within the existing footprint. A condition has been imposed requiring a landscape plan to be provided prior to a construction certificate. The landscape plan will be required to provide two (2) native canopy trees, in the form of a Grey Gum and Red Bloodwood.

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

The subject site is not located adjacent to a commercial zone.

In light of the above, the proposed side setbacks have been found to satisfy the outcomes of the control and therefore considered reasonable.

D3.9 Building envelope

The development breaches the prescribed building envelope along the southern elevation of the proposed studio adjacent to No 318 Hudson Parade.

The area of non-compliance is limited to the upper portion of the southern facade and eave line located at the south-west corner of the studio.

Notwithstanding the non-compliance, the proposed envelope breach is not unreasonable within the context of the site and when assessed against the outcomes of the control.

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

The development and its design has made due consideration for the desired future character of the Bilgola Locality by preserving the low-density residential setting with a structure that does

not exceed two storeys in any one place. Further, the development demonstrates compatibility with the landform and landscaped by retaining and preserving the landscaped setting.

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

The proposed non-compliance will not be visible from the existing streetscape being set below street level, and therefore below the height of existing trees on the site, thereby promoting an appropriate scale and density suitable to the site and desired character of the locality.

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

The development is considered to response to, reinforce and sensitively relate to the spatial characteristics of the existing natural environment.

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

The bulk and scale of the built form has been able to be minimised through an overall lowering of the building height from the existing 'workshop' with landscaping being retained to further minimise the bulk and scale of the built form. Due to concerns raised through a submission received during the notification period, the height of the building has been lowered by a further 575mm with the proposed roof ridge matching the level of the existing building and is approximately 1m below the highest point of the existing building, being a rooftop feature. The pitch of the roof has been reduced marginally to help minimise the perceived bulk and scale of the built form.

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

The properties to the north and south enjoy primary water views to the west of the Pittwater Waterway, which will remain unaffected by the development, including setback non-compliance, while the adjoining properties on the eastern side of Hudson Parade will continue to enjoy uninterrupted water views to the west.

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

Privacy has been considered with the design not incorporating any windows into the southern elevation, thereby maintaining privacy to the principal outdoor space and courtyard on the adjoining property. Solar access to the neighbour's northern terrace area in addition to the neighbour's north-facing living windows will continue to achieve reasonable solar access, as demonstrated by additional shadow diagrams prepared by the applicant due concerns raised by the neighbour.

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

Vegetation will not be impacted by the proposal with the building being provided largely within the existing footprint. A condition has been imposed requiring a landscape plan to be provided prior to a construction certificate. The landscape plan will be required to provide two (2) native canopy trees, in the form of a Grey Gum and Red Bloodwood.

In light of the above, the proposal is found to be reasonable when considered against the outcomes of the clause, therefore approval of the development and minor envelope breach is warranted.

D3.11 Landscaped Area - Environmentally Sensitive Land

The development provides for a total landscaped area of 888.9m² or 46.7%, resulting in a non-compliance and shortfall of 252.3m².

Clause D3.11 permits a variation to the minimum landscaped area where the outcomes of the control are achieved. This variation allows for up to 6% of the total site area to be provided as impervious landscape treatments providing these areas are for outdoor recreational uses. Including such areas, a total of 138.2m² may be included as part of the landscaped area calculation.

The following provides a merit assessment of the proposal against the outcomes of the control.

- *Achieve the desired future character of the Locality.*

The development and its design has made due consideration for the desired future character of the Bilgola Locality by preserving the low-density residential setting with a structure that does not exceed two storeys in any one place. Further, the development demonstrates compatibility with the landform and landscaped by retaining and preserving the landscaped setting.

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

The bulk and scale of built form is consistent with the predominant character and built form along Hudson Parade. The design has incorporate suitable articulation and modulation of the building to help minimise the bulk and scale.

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

Solar access and general amenity will continue to be provided within the development site and to adjoining sites.

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

Vegetation will not be impacted by the proposal with the building being largely provided within areas that have previously been disturbed. A condition has been imposed requiring a landscape plan to be provided to a construction certificate, The landscape plan will be required to provide two (2) native canopy trees, in the form of a Grey Gum and Red Bloodwood.

- *Conservation of natural vegetation and biodiversity.*

The development does not impact upon native vegetation and will be complemented with additional canopy tree planting.

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

The reduced landscaped area will not unreasonably impact stormwater management on the site, while continuing to prevent soil erosion and siltation of natural drainage channels.

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

The proposed development and reduced landscaped area will not impact on the existing character of the area, but will continue to provide for a predominately landscape setting.

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

Sufficient soft surface will continue to be provided for the infiltration of water to the water table, minimising water run-off and assist with overall stormwater management.

In all, the proposal and resulting shortfall in landscaped area is found to satisfy the outcomes of the control, therefore is considered worthy of support.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$20,051 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,005,146.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2020/1591 for Alterations and additions to a dwelling house and garage on land at Lot 1 DP 827733, 316 Hudson Parade, CLAREVILLE, Lot 2 DP 827733, 316 Hudson Parade, CLAREVILLE, Lot LIC 559856, 316 Hudson Parade, CLAREVILLE, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan, DA 2.00, Issue 4	10/3/2021	Baxter & Jacobson Architects
Site Cover/Waste Management, DA 2.01,	10/3/2021	Baxter & Jacobson

Issue 3		Architects
Site Analysis, DA 2.02, Issue 3	10/3/2021	Baxter & Jacobson Architects
Existing/Demolition - Level 1, DA 10.00, Issue 3	10/3/2021	Baxter & Jacobson Architects
Existing/Demolition - Lower Ground, DA 10.01, Issue 1	25/11/2020	Baxter & Jacobson Architects
Proposed Floor Plan - Level 1, DA 10.03, Issue 2	10/3/2021	Baxter & Jacobson Architects
Proposed Lower Ground Floor, DA 10.04, Issue 1	10/3/2021	Baxter & Jacobson Architects
Proposed Plan - Garage/Studio, DA 10.05, Issue 4	10/3/2021	Baxter & Jacobson Architects
Roof Plan - House and Pavilion, DA 10.06, Issue 2	10/3/2021	Baxter & Jacobson Architects
Roof Plan - Studio, DA 10.07, Issue 1	27/11/2020	Baxter & Jacobson Architects
Master Bedroom Level, DA 10.08, Issue 1	10/3/2021	Baxter & Jacobson Architects
Elevation - West, DA 20.00, Issue 4	10/3/2021	Baxter & Jacobson Architects
Elevation - South, DA 20.01, Issue 4	10/3/2021	Baxter & Jacobson Architects
Elevation - East, DA 20.02, Issue 3	10/3/2021	Baxter & Jacobson Architects
Elevation - East, DA 20.03, Issue 2	10/3/2021	Baxter & Jacobson Architects
House - Section, DA 30.03, Issue 2	27/11/2020	Baxter & Jacobson Architects
Long Site Section, DA 30.05, Issue 4	10/3/2021	Baxter & Jacobson Architects
Section - Pavilion - AA and BB, DA 30.10, Issue 1	25/11/2020	Baxter & Jacobson Architects
Section - Garage/Studio CC & DD, DA 30.20, Issue 3	10/3/2021	Baxter & Jacobson Architects

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment	26/11/2020	Naturally Trees
Geotechnical Assessment, Ref: J2990	27/11/2020	White Geotechnical Group
BASIX Certificate, A398970	25/11/2020	Leith Schmidt Architect

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

- c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- d) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Report	25/11/2020	Mark Baxter

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

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

2. Prescribed Conditions

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

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

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

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

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

Reason: Legislative requirement.

3. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety

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

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

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$20,051.46 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 2019. The monetary contribution is based on a development cost of \$2,005,146.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

5. **Security Bond**

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

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

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

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

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

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

6. **Tree Root Investigation**

Prior to the issue of a Construction Certificate a tree root mapping investigation as recommended in the Arboricultural Impact Assessment shall be conducted for the existing tree identified as tree number 1 (Grey Gum). The tree root investigation shall be undertaken along the edge of alignment of excavation works within the site to locate any woody structural roots and provide recommendations for tree sensitive measures to be implemented.

An Arborist with minimum AQF Level 5 in arboriculture shall supervise the works to verify tree root locations. A non-destructive root investigation shall be conducted complying with clause 3.3.4 of AS 4970-2009 Protection of Trees on Development Sites.

The root investigation shall map existing roots of significance that must not be impacted by construction works. The tree root investigation shall be conducted to confirm the following data to be used for the location/alignment of any new proposed works:

- i) confirmation of the location of any tree roots at or >25mm (Ø) diameter to areas that require excavation for proposed works. Alternative alignment of proposed works shall be provided as necessary to avoid major roots, and
- ii) mapping of the suitable location/alignment of proposed works.

The Tree Root Map shall be issued to a qualified Structural Engineer as a basis for structural design, and for determining the final location/alignment and construction methodology of proposed works within the tree protection zone (TPZ).

Prior to the issue of a Construction Certificate, the Arborist shall provide certification to the Certifying Authority that the tree root investigation and arboricultural recommendations have been adequately addressed in the Construction Certificate plans.

Reason: To ensure protection of vegetation proposed for retention or adjacent to the site.

7. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's WATER MANAGEMENT FOR ENGINEERING DEVELOPMENT POLICY. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White geotechnical report dated 27 November, 2020 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. 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 found here: <https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/1996-1999/pittwater-spotted-gum-forest-endangered-ecological-community-listing#:~:text=The%20Scientific%20Committee%2C%20established%20by,Schedule%201%20of%20the%20Act.>

Planting is to include at least three (3) Eucalyptus punctata to offset proposed tree removal associated with the DA.

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

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

10. Amendments to the approved plans

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

- The sliding doors on the west elevation of the "Gym/Studio" shown on Drawing No DA 20.00 are to be replaced with windows with fixed and angled privacy screens. The glass balustrade is to be deleted.
- The roof over the detached garage structure shall be reduced in length by 1m to the west where it extends over the existing balcony.
- The change wet area shall be reduced in size and comprise a WC and shower only.
- There shall be no kitchen, cooking facilities or wet bar.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

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

11. **Vehicle Driveway Gradients. parking and vehicular turning area**

The Applicant is to ensure driveway gradients, vehicular turning area and parking within the private property are to be designed in accordance with AS/NZS 2890.1:2004. A Civil Engineer certify compliance with the Australian standards.

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

Reason: To ensure suitable vehicular access to private property.

12. **Compliance with standards (Demolition):**

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

Details demonstrating compliance with the relevant Australian Standard are to be submitted to Council prior to the commencement of demolition works.

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

13. **Compliance with Standards**

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

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

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

14. **Sydney Water "Tap In"**

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

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

15. **Construction Traffic Management Plan**

The Applicant is to submit an Construction Traffic Management Plan ('CTMP') to Council for approval prior to issue of the Construction Certificate. The CTMP shall be prepared by an appropriately certified person and is to detail:

- Parking of trades and service people,
- Size, weight, dimensions and frequency of truck movements along the driveway,
- Management of driveway, noting shared use of the driveway,
- Storage of goods and materials.

Once approved, copies of the CTMP are to be furnished to all property owners who benefit from the driveway for their records. This is to occur at least 7 days prior to the commencement of any works on site.

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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **Project Arborist**

A Project Arborist, with minimum AQF Level 5 in arboriculture, shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection and ground protection.

The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works unless approved by the Project Arborist.

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment near existing tree numbers 1, 10, 19 and 20, and in particular:

- i) appendix 7 - schedule of works and responsibilities,
- ii) appendix 8 - tree management 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 Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded including at commencement, during the works and at completion.

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

Reason: Tree protection.

17. Tree Removal Within the Property

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

- i) tree 11 - Grey Gum
- ii) tree 14 - Native Frangipani
- iii) tree 17 - Grey Gum, subject to tree replacement
- ii) tree 18 - Red Bloodwood, subject to tree replacement

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.

Reason: To enable authorised building works.

18. Dead or Injured Wildlife

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

Reason: To protect native wildlife.

19. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected including:
 - i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,

- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.
- c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment.

The Certifying Authority must ensure that:

- d) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites do not occur within the tree protection zone of any tree and any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the site during the construction is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

ringbarking or removal of any tree(s) is prohibited.

Reason: Tree and vegetation protection.

21. 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.

22. Demolition Works - Asbestos

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

23. Installation and Maintenance of Sediment Control

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

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

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

24. **Required Tree Planting**

Trees shall be planted in accordance with the following:

1 x Eucalyptus punctata (Grey Gum) at 75 litre container size

1 x Corymbia gummifera (Red Bloodwood) at 75 litre container size

Tree planting shall be located within a 9m² deep soil area wholly within the site and be located a minimum of 3 metres from existing and proposed buildings and other trees. Tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight or where the proposed tree location may impact upon significant views.

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

Reason: To maintain environmental amenity.

25. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

26. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans and these conditions of consent.

Details demonstrating compliance are to be prepared by the landscape architect and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

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

27. **No Weeds Imported On To The Site**

No Priority or environmental weeds are to be imported on to the site prior to or during construction works.

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

29. **Replacement of Canopy Trees**

Tree replacement plantings required under this consent are to be retained for the life of the development and/or for their safe natural life.

Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: To replace locally native trees.

30. **Gym/Studio**

The 'Gym/Studio' and all other associated areas located on the Studio Plan are not to be used for the purposes of separate habitation (i.e. secondary dwelling or similar). The use of cooking facilities, including an oven and stove are prohibited.

Reason: To ensure consistency with the approved development and stamped plans.

31. **Noise from use of gym / studio**

Noise associated with the use of the studio / gym is not to be offensive as defined by the Protection of the Environment Operations Act 1997.

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

Signed



Anne-Marie Young, Planner

The application is determined on 04/05/2021, under the delegated authority of:



Lashta Haidari, Manager Development Assessments