

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/0055
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<b>Responsible Officer:</b>	Julie Edwards
<b>Land to be developed (Address):</b>	Lot 40 DP 28908, 9 Minkara Road BAYVIEW NSW 2104
<b>Proposed Development:</b>	Construction of a dwelling house
<b>Zoning:</b>	RU2 Rural Landscape
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Joshua Caine Dick
<b>Applicant:</b>	Joshua Caine Dick

<b>Application lodged:</b>	24/01/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	13/02/2019 to 01/03/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 16.47%
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 987,845.00
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### Executive Summary

This application seeks consent for the construction of a new dwelling with swimming pool, carport and an on-site wastewater management system. The works are described as a 'dwelling house' and are permissible with consent.

The proposal has a variation of 16.47% to the Height of Building Development Standard. As the variation is greater than 10%, the application is referred to the Development Determination Panel.

The proposed development is non compliant with the requirements of Clause 7.6 Biodiversity Protection of the Pittwater Local Environment Plan 2014 (PLEP) and Clauses A4.6 Ingreside Locality and B4.18 Heathland/Woodland Vegetation of the Pittwater 21 Development Control Plan (PDCP). These non-compliance are unacceptable and the proposal does not meet the outcomes of the control.

Public exhibition of the proposal resulted in two (2) submissions relating to compliance with the conditions of consent and protection of the existing bush land on the site and is currently the subject of compliance action in relation to the illegal clearing of protected bushland and unauthorised storage of shipping containers on the site.

Councils NECC (Bushland and Biodiversity) do not support the proposal as it is inconsistent with the objectives of PLEP Clause 7.6 Biodiversity, Pittwater 21 DCP Clause B4.18 Heathland/Woodland Vegetation, and the NSW Biodiversity Conservation Act 2016. The proposal also does not provide adequate supporting information required by the controls and consideration for supporting biodiversity information to accompany a new proposal.

The subject site is located within bushfire prone land and the Bushfire Threat Assessment was referred to the NSW RFS for comment. The NSW RFS raised several concerns with the bush fire consultants assessment of the bushfire risk and were not satisfied that the proposed development would be sited outside of a radiant heat exposure of 29kW/m<sup>2</sup> as is required.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is not suitable or appropriate development for the subject site.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be refused.

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection

**SITE DESCRIPTION**

<b>Property Description:</b>	Lot 40 DP 28908 , 9 Minkara Road BAYVIEW NSW 2104
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the western side of Minkara Road, Bayview.</p> <p>The site is irregular in shape with a frontage of 324.787m along Minkara and a depth of 102.475m. The site has a surveyed area of 2.163ha.</p> <p>The site is located within the RU2 Rural Landscape zone. The site is currently vacant except for three shipping containers.</p> <p>The site slopes from the rear western boundary down to the eastern front boundary with a slope of approximately 32%.</p> <p>The whole site was densely vegetated, however, since approximately the end of 2016, areas of the site (in the location of the proposed dwelling) has been cleared and earthworks undertaken without Council approval. There is evidence that there are native and threatened species present on the site. More details are provided under site history and NECC (Bushland and Biodiversity) referral comments.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by residential development. To the north, south and west of the site are single residential dwellings on large lots. To the east of the site is Aveo Retirement Village and Minkara Aged Care Facility. Along the western rear boundary of the site is an unformed road.</p>

Map:



## SITE HISTORY

### DA2018/0787

Construction of a new dwelling house and swimming pool  
Withdrawn - 13/08/2018

The application was requested to be withdrawn as the proposal could not be supported as a result of impacts on the natural environment and non-compliance with Clause 7.6 (Biodiversity) of PLEP 2014, B1.4 (Aboriginal Heritage) of P21 DCP and B4.18 (Heathland/Woodland Vegetation) of P21 DCP. The proposal also did not comply with requirements of the *NSW Biodiversity Conservation Act 2016*. Furthermore, there were concerns with the building height and insufficient information regarding access to the site and a landscape plan was not submitted.

A meeting was held with Applicant, Architect and Council Staff on 19 September 2019 to discuss the withdrawal of the application and what would be required for the re-lodgement of the proposal. Discussions included the existing unauthorised clearing of the site and the requirement for a Biodiversity Development Assessment Report (BDAR).

### Subject Development Application

A withdrawal letter was sent 28 May 2019. The withdrawal letter outlined issues with the current application including non-compliance with the PLEP and PDCP and insufficient and missing information. The insufficient information included a BDAR, Biodiversity Management Plan, Arborist Report, and Bushfire Assessment Report. The proposal was also missing a Landscape Plan and the swimming pool was not included in the Wastewater Management Plan or SEE.

A subsequent email was sent 12 June 2019 to the applicant with the NSW RFS referral comments in which the NSW RFS raise concerns with the information in the submitted Bushfire Risk Assessment Report. The issues raised in the referral comments are detailed elsewhere in the report.

The applicants Bushfire Consultant provided a response to the NSW RFS, which was forwarded to NSW RFS for review and further comment. At the time of writing, no response had been received from the NSW RFS.

The site is currently the subject of several Building Compliance investigations which are detailed below:

**EPA2018/0302** - Investigation Illegal Land Use - Shipping containers on site with no consent  
Order issued - 20/11/2018

Council received a complaint alleging that unauthorised building use have been undertaken at the site. An inspection undertaken by Council Officer on 23 October 2018 revealed the following observations:

- That an additional shipping container had been placed on the site and the property is being used to facilitate the storage of earth moving machinery and equipment.

The owner provided representation that two of the shipping containers would be removed and one would be used for the storage of horticultural tools and equipment. The use of one shipping container was considered fair and reasonable by Council.

A site inspection undertaken on 20 June 2019 revealed that the site was still being used to store earth moving machinery and that the two shipping containers had not been removed.

The matter is still under investigation.

**EPA2018/0288** - Investigation Illegal Land Use - Land clearing  
NOI Issued - 20/11/2018

Council received a complaint alleging that unauthorised earthworks have been undertaken at the site. An inspection undertaken by Council Officer on 23 October 2018 and 29 October 2018 revealed the following observations:

- Further earthworks had been undertaken on the property that is not considered exempt development and as a result has breached the Stop Works Order (EPA2018/0069) issued on 6 April 2018.
- The property is being used to temporary store earthmoving machinery.
- Inadequate siltation and erosion control where loose spoil/fill has been placed.

The matter is still under investigation pending the out come of the current Development Application.

**EPA2018/0278** - Investigation Illegal Land Use - Land clearing  
Order Issued - 20/11/2018

A development control order was served on 6 April 2018 advising the owner of the site to stop carrying out all further earthworks and vegetation removal from the allotment that does not meet the development control set out within the State Environmental Planning Policy- (Exempt and Complying) - 2008 .

Council received a complaint alleging that further unauthorised earthworks and land clearing had been undertaken since the issuing of a stop works Order by Council on 6 April 2018.

A site inspection undertaken 23 October 2018, revealed that further earthworks had been carried out and Council is of the opinion that the stop works order has been breached. An inspection undertaken by Council Officer on 23 October 2018 revealed the following observations:

- That further earthworks and land clearing had been undertaken since the last inspection that

was undertaken on 5 April 2018.

- Ariel mapping of the area revealed that earthworks and vegetation removal has occurred since the period between 13 June 2018 to 14 September 2018.

As a result of the above, Council reissued the stop works Order as dated above on this Development Control Order.

The matter is still under investigation, pending outcome of the current Development Application.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal is seeking approval for the construction of a new dwelling with swimming pool and spa located in the middle of the site, an on-site wastewater treatment system, carport and driveway from Minkara Road. The proposal includes the following:

### Basement

- Foyer and stairs,
- Home Cinema,
- Garden tool store,
- Pool equipment,
- Gym,
- Dark room,
- Games room,
- Retreat.

### Level 1

- Entrance, foyer, stairs and lift,
- Lounge and bar,
- Billiards room,
- Kitchen, dining, pantry and cellar,
- Laundry and storage,
- Family room,
- Access to outdoor terrace and swimming pool.

### Level 2

- Office, stairs and hall,
- Guest Bedroom, dressing room and bathroom,
- Terrace,
- Four bedrooms, Bedroom 1 with dressing room and ensuite.

### Outside

- Driveway,
- Carport and turning area,
- Swimming pool and spa,
- Outdoor terrace,

- Landscaping

## 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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters may be addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter may be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p><b>(i) Environmental Impact</b></p> <p>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. In summary, the impact on the habitat for the local populations of the Red-crowned Toadlet, Glossy Black Cockatoo, Eastern Pygmy Possum and numerous other threatened species which have been identified on the site or nearby have been inadequately documented.</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Council's biodiversity assessment, indicates that significant impact will occur and a comprehensive Biodiversity Development Assessment Report (BDAR), A Biodiversity Management Plan and Level 5 Arborist Report is required to address this issue. In the absence of these documents, the environmental impacts are not considered to have been fully addressed.</p> <p>The impacts on the site's biodiversity values as a result of the removal of at least 0.528ha of native bushland is considered inconsistent and unacceptable.</p> <p><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The suitability of the site in terms of likely impacts on the environment and amenity has been discussed in detail in the various section of this report. In summary, the suitability of the site for the development as proposed in its current form remains uncertain, due to fact that the proposal has not comprehensively addressed the environmental impacts on Threatened Species on the site. Therefore, a determination that the site is suitable cannot be supported.
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	<p>The public interest has been considered as part of the application process. In this instance, the public interest is best served by the consistent application of the requirements of the relevant planning controls, and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised and/or managed.</p> <p>The proposal has been assessed against the provisions of the relevant planning controls and is deemed to be unacceptable in terms of its impact on the natural environment (specifically the threatened species). and the developments inconsistency with the requirement(s) of clause 7.6 Biodiversity protection of the PLEP2014 and parts A4.6 Ingleside Locality, B3.2 Bushfire Hazard, B4.18 Heathland/Woodland Vegetation pf PDCP 21 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.</p>



## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application (prepared by Bushfire Protection Consultants, dated 19 December 2018). The report stated that the bushfire attack level of the site is Bal 29. The report recommended an alternative solution to comply with Planning for Bush Fire Protection.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW Rural Fire Service has raised a number of issues with the Bushfire Threat Assessment Report and were not satisfied that the proposed development was sited outside of a radiant heat exposure of 29kW/m<sup>2</sup>, as proposed by the bush fire consultant.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Julie Emerson	12 Minkara Road BAYVIEW NSW 2104
Ms Rosalind Dawn Williams	23 Jendi Avenue BAYVIEW NSW 2104

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

- Strict compliance with the approval
- Protection of the environment

The matters raised within the submissions are addressed as follows:

- **Strict compliance with the approval**  
The submission raised the following concerns *'applicant has previously done significant works to the property illegally, both in nature and in time, we request that very strict compliance processes be undertaken and monitored to ensure the development is carried out as per the approval.*  
*We do not wish to put up with building works outside of approved times, especially prior to 7am or on sundays as happened previously!!!*

Comment:

All approved development is subject to conditions regarding hours of work. The standard condition that would apply to this proposal would require building construction and delivery of material restricted to 7.00am to 5.00pm Monday to Friday, 8.00am to 1.00pm on Saturdays and no works on Sundays or public holidays. Demolition and excavation works are restricted to 8.00 to 5.00pm Monday to Friday only. Any works outside of these hours would need to be reported to the Certifying Authority and Councils Building Compliance team to investigate.

- **Protection of environmental**

The submission raised the following comment 'We also wish that regular monitoring be carried out to ensure the vegetation on the escarpment facing Minkara Road be maintained in its natural state and not degraded in any way'. A submission was also received with the following comment 'Will there ever be a time when Northern Beaches Council put the environment of this beautiful area before the profits of developers'.

Comment:

No works or landscaping are proposed along the escarpment facing Minkara Road. Council is not in a position to carry out monitoring of sites to make sure that they are not damaged, that is at the discretion of the owner, those contracted to do the works and the certifying authority. If damage does occur as a result of works on the site then this can be reported to the Certifying Authority and Council to investigate.

Council does not support the proposed and existing clearing and works on the site, as stated in the NECC (Bushland and Biodiversity) referral comments. Councils Building and Compliance team are currently investigating the illegal works on the site.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p><b>Supported subject to conditions</b></p> <p>The site is located in an Acid Sulfate Soil Class 5 area. No comment has been made in any of the reports submitted with this DA by the applicant especially the SEE which should specifically address this issue. It is noted that "Excavation is to 3.5m". The site appears sloping and basically self-draining and it is not expected that "ground water will be impacted by lowering the water table" the main thrust of the classification. However, the risk is considered negligible in regard to Acid Sulfate Soil. A condition will be added.</p> <p><b>Recommendation</b> Approval</p>
Environmental Health (Solid Fuel/Oil Heater)	<p><b>Supported subject to conditions</b></p> <p>Wood fire heater/fire places appear to be proposed as 2 chimneys and 2 fire places are shown on plans. No comment has been made in any of the reports submitted with this DA by the applicant especially the SEE which should specifically address this issue. Wood fire heaters have the potential to create an environmental smoke and odour nuisance. If the fire places are gas fires and the chimneys decorative only this needs to be stated in the SEE.</p>

Internal Referral Body	Comments
	<p>No details indicating compliance with specific wood fire design standards have been submitted.</p> <p>Note: The applicant does have the option of a separate Mod or providing details for this DA or removing these fire places from plan , and applying at a later time for a section 96 application.</p> <p><b>Recommendation</b> REFUSAL</p> <p><b>Additional Referral comments - 27/05/2019</b> The applicant has advised Councils Planner that the Chimneys are decorative and the heaters gas. A condition has be included to reflect this.</p> <p><b>Recommendation</b> APPROVAL</p>
Environmental Health (unsewered lands)	<p><b>Supported subject to conditions</b> This new DA mirrors previous DA2018/0787 where Environmental Health made positive comments following additional information after our initial refusal comments.</p> <p>The site is unsewered and an updated waste water report by Blue Mountains Geological and Environmental Services dated 29 August 2018 (previous reports 6 July 2018 and April 2017) has been submitted. An updated WW report by Grant Austin dated 29 August 2018 confirms his findings from the previous report 6 July 2018 including subsurface disposal area of 858m2.</p> <p>The current proposal related to effectively 6 bedrooms' potential occupation.</p> <p>It is noted that comments about the actual low intended occupancy by the owner are not relevant and misleading in respect the future and ongoing use of the property unless a legal covenant is the registered on the property restricting occupancy.</p> <p>Additionally, the issue of the waste water backwash from the swimming pool and spa which may contain chemical residue detrimental to a land application area has not been addressed in either the Waste Water Report or the SEE, as it has a potential environmental impact. The applicant may wish to propose a cartridge filter system to eliminate backwash to deal with this issue, otherwise the disposal of this waste water needs a management report.</p> <p>Therefore Environmental Health has no option but to recommend refusal at this time.</p> <p><b>Recommendation</b> REFUSAL</p>

Internal Referral Body	Comments
	<p><b>Planners Note:</b> The applicant has provided details to Council that a cartridge filter system will be installed in the swimming pool and spa. A condition has been included in the report.</p>
Landscape Officer	<p><b>Supported subject to conditions</b>  The proposal, in terms of landscape outcome, is acceptable subject to the protection of existing trees and vegetation, and the completion of landscaping to areas cleared for development works.</p> <p>Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP 2014 Controls:</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> </ul> <p>No Landscape Plan nor Arboricultural Impact Assessment is provided with the application, and conditions of consent shall be required to be met. There are no existing trees within 5m of the proposed dwelling or carport works.</p> <p>The site contains predominately native Eucalypt and Angophora forest with native understory shrubs and minimal ground cover plants. Existing rock outcrops and ledges shall also be protected.</p> <p>There is some minor weed invasion to be targeted as part of the development. Removal of all weeds and regeneration with native vegetation is required.</p> <p><b>Recommendation</b>  APPROVAL</p> <p><b>Planners Note:</b> These comments reflect the current state of the site not how the site was prior to being cleared. Matter relating to the clearing of the site are being addressed by Building Compliance.</p>
NECC (Bushland and Biodiversity)	<p><b>Not supported</b>  Council's Natural Environment - Biodiversity Section cannot support the application due to non-compliances with the Pittwater LEP and DCP controls.</p> <p>This application was assessed against the objectives of Pittwater LEP Clause 7.6 Biodiversity, Pittwater 21 DCP Clause B4.18 Heathland/Woodland Vegetation, and the NSW <i>Biodiversity Conservation Act 2016</i>. The property is also mapped as bushfire prone land and "Major Habitat" within Pittwater's wildlife corridor mapping. Any development application must consider proposal options which are compliant with applicable Pittwater LEP and DCP controls, specifically:</p> <ul style="list-style-type: none"> <li>• <i>The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</i></li> </ul>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• <i>Development shall retain and enhance habitat and wildlife corridors for threatened species, endangered populations, endangered ecological communities and other locally native species.</i></li> <li>• <i>Development shall not reduce or degrade habitat for locally native species, threatened species, endangered populations or endangered ecological communities.</i></li> </ul> <p>A substantial portion of the native intact bushland on the site was cleared prior to lodgement of this DA. The cleared area is located largely within the footprint of the proposed development. As such, there can be little consideration for ways to avoid and minimise impacts as per the application of mitigation hierarchy.</p> <p>The proposed development will result in a substantial loss of native vegetation (including canopy trees) and wildlife habitat on the site. The proposal as submitted does not demonstrate that the objectives of relevant Natural Environment controls have been taken into account in designing and siting the development, nor is it evident that the proponent has made an effort to avoid direct or indirect impacts to the site's biodiversity values.</p> <p>Given that the existing submission does not achieve compliance with LEP and DCP controls, the applicant is encouraged to consider a redesign of the proposal. It is noted that this DA includes additional impacts compared to the previous application. Any new proposal should incorporate a substantially reduced footprint (with reconsideration of the need for non-ancillary elements) and demonstrate feasible measures to avoid impacts to the site's biodiversity values.</p> <p><b>Detailed comments</b>  <i>Non-compliance with biodiversity controls and legislation</i>  The property is 2.18 ha and currently contains remnant native bushland (PCT 1783 and PCT 1250), including wildlife habitat large native trees with hollows and sandstone escarpments, and also provides corridor values. The proposal is for a new dwelling with 5 bedrooms, home office, billard room, lounge room, family room, gym, home cinema, retreat, games room, an associated swimming pool and spa, new concrete driveway, unspecified areas of landscaping, an on-site sewerage treatment system and treated water dispersal area, rough boulder wall and Asset Protection Zone (APZ) establishment.</p> <p>At least 0.528 ha of native bushland, including native trees with hollows, will be removed as a result of the proposal (Skelton 2018). There are inconsistencies within the supporting information which suggests this area is likely to be larger. The proposal will result in a substantial loss of native vegetation inconsistent with the controls. The property and area to be impacted provides habitat for threatened species, which have been identified onsite and records nearby, including, but not limited to:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• <i>Pseudophryne australis</i> Red-crowned Toadlet (heard calling within the property during the ecological survey by Nick Skelton)</li> <li>• <i>Haliaeetus leucogaster</i> White-bellied Sea-eagle</li> <li>• <i>Lophoictinia isura</i> Square-tailed Kite</li> <li>• <i>Calyptorhynchus lathamii</i> Glossy Black-Cockatoo</li> <li>• <i>Ninox connivens</i> Barking Owl, (owl pellet found onsite during site-inspection for this referral, possibly Barking Owl or Powerful Owl)</li> <li>• <i>Ninox strenua</i> Powerful Owl (as above)</li> <li>• <i>Rhodamnia rubescens</i> Scrub Turpentine</li> <li>• <i>Cercartetus nanus</i> Eastern Pygmy-possum</li> <li>• <i>Chalinolobus dwyeri</i> Large-eared Pied Bat</li> <li>• <i>Miniopterus australis</i> Little Bent-wing Bat</li> <li>• <i>Miniopterus schreibersii oceanensis</i> Eastern Bent-wing Bat</li> <li>• <i>Myotis macropus</i> Southern Myotis</li> </ul> <p><i>Inadequate supporting information required by controls and considerations for supporting biodiversity information to accompany any new proposals</i></p> <p>There is inadequate supporting documentation regarding impacts to biodiversity values on the site. Any new proposals should be accompanied with the following reports, in accordance with Council controls and guidelines as well as assessment against the NSW <i>Biodiversity Conservation Act 2016</i>. All reports are to be clear and consistent in terms of total scale of biodiversity impacts (trees and native vegetation).</p> <p>The submitted <b>Biodiversity Development Assessment Report</b> (BDAR, Skelton 2018) must assess all biodiversity impacts including site storage/containers, landscaping, construction, access, stockpiling and APZ impacts, and any likely indirect impacts such as installation of services and stormwater infrastructure, OSD tanks, changes in hydrology, soil disturbance, runoff, waste water disposal, artificial lighting etc. All areas of residual biodiversity impacts must be included in the offset calculation (including the driveway). Skelton states, "<i>The site contains a high density and variety of hollows including large tree hollows that are suitable for Cockatoos (such as Sulphur Crested Cockatoos and Glossy Black Cockatoos) and small hollows suitable for gliders and Eastern Pygmy Possums.</i>". These hollows must be described and provided on a map. No nocturnal survey was completed as per industry standard. The report did not follow survey guidelines for Species Credit microbat species, Large-eared Pied bat requires additional survey as per these guidelines (OEH 2018) and during identified survey season (Nov - Jan).</p> <p>A <b>Biodiversity Management Plan</b> must be provided with the application. A Biodiversity Management Plan is required to be submitted as per Clause B4.18 of the Pittwater 21 DCP in accordance with Council's guidelines. This plan must include tasks to be completed prior to and during construction, as well as ongoing long-</p>

Internal Referral Body	Comments
	<p>term management, to minimise impacts to biodiversity values.</p> <p>The submitted <b>Bushfire Assessment Report</b> must be consistent throughout in terms of APZ requirements, i.e. whether the APZ is as per calculated distances on Page 12 OR is the whole of the property to be managed as an IPA.</p> <p>An <b>Arborist Report</b> must be provided with the application. Council notes that there are trees within 5m of the works. The report must identify the location, species, health and size of all trees within 5m of the proposed development and meet the following requirements:</p> <ul style="list-style-type: none"> <li>• Prepared by a suitably qualified arborist with minimum AQF Level 5;</li> <li>• Prepared based on the actual plans and documentation submitted in support of the DA;</li> <li>• Take into account all above- and below-ground works and structures that are ancillary to the development, including the APZ;</li> <li>• A tree protection and management plan with specific tree protection measures to enable safe retention of all trees proposed for retention, including mapping Tree Protection Zones, Structural Root Zones and any encroachments.</li> </ul> <p>A <b>Landscape Plan</b>, which is consistent with the plans/reports above, which incorporates a minimum of 80% native plantings consistent with Plant Community Types (PCT) found onsite.</p> <p><b>Recommendation</b> REFUSAL</p>
NECC (Development Engineering)	<p><b>Supported subject to conditions</b></p> <p>The site is located within Geotechnical Hazard H1 Area, an "Acceptable Risk Management" Level can be achieved in accordance with the geotechnical report provided by White Geotechnical Group.</p> <p>The Access has been approved by council under the Section 139 of the Road Act 1993.</p> <p>No Development Engineering objection subject to conditions.</p> <p><b>Recommendation</b> APPROVAL</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Rural Fire Service –	The proposal was referred to the NSW Rural Fire Service. The NSW

External Referral Body	Comments
local branch (s79BA EPAA)	<p>Rural Fire Service has raised a number of issues with the Bushfire Threat Assessment Report prepared by Jon Delany dated 19 December 2018. The following issues were raised:</p> <p>The inappropriate use of Short Fire Run (SFR) Methodology:</p> <ul style="list-style-type: none"> <li>The consultant has incorporated the SFR methodology to several aspects of the proposed development on the subject site. As stated in the NSW RFS methodology guide for SFR (dated May 2019) , <i>"The proposal will need to be supported by a Bush Fire Design Brief (BFDB) which includes the site particulars together with the methodology proposed, and the inputs and outputs from calculations to support the proposal."</i> A BFDB was not submitted for the use of the SFR for this application prior to lodgement to Council, or prior to when referred to the NSW RFS for comment.</li> <li>Notwithstanding, the SFR is not considered appropriate for the use in this setting due to the connectivity of the vegetation around the site. As also stated within the NSW RFS methodology for SFR <i>"A proposed SFR must not have connectivity with any other parcels of land containing vegetation capable of supporting a fully developed fire that would directly impact the assets."</i> The bush fire consultant has addressed in their report that a fully developed fire is possible to the northern aspect of the site.</li> </ul> <p>The performance based modelling provided by the consultant was unable to be replicated by the NSW RFS.</p> <ul style="list-style-type: none"> <li>The modelling provided by the consultant for the fully developed fire to the northern aspect was not able to be replicated by the NSW RFS. A head width greater than 48 metres (as nominated by the consultant) is not supported, with the proposed radiant heat modeled from this aspect exceeding 29kW/m<sup>2</sup> based on the 44 metres setback vegetation.</li> </ul> <p>On the basis of this information provided, the NSW RFS is not satisfied that the proposed development is sited outside of a radiant heat exposure of 29kW/m<sup>2</sup>, as proposed by the bush fire consultant.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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



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

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

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

#### **SEPP 55 - Remediation of Land**

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 vacant 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. 918894S\_02 dated Friday, 14 September 2018). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0002651370-01 dated 14 Sep 2018).

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

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

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

**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	Chimney - 9.9m Roof - 9.8m Wall - 9.1m	16.47% 15.29% 7.05%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.9 Preservation of trees or vegetation	Yes
5.9AA Trees or vegetation not prescribed by development control plan	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	No
7.7 Geotechnical hazards	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:	Chimney - 9.9m Roof - 9.8m Wall - 9.1m

Percentage variation to requirement:	Chimney - 16.47% Roof - 15.29% Wall - 7.05%
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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.

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).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

- 'The proposed development has a roof ridge at 147.35m AHD along its southern wing, 7.1m above natural ground level at the western end up to 9.25m at its stepped down eastern end. This ridge point is 50m from the neighbouring property boundary to the south and 54m from the

street alignment'

- 'The building height limit for this site is 8.5m above natural ground level on the Height of Building Map. This means the roof structure exceeds the height limit by up to 0.75m at its eastern end. The highest wall height above natural ground level is 9.1m in the same location, exceeding the height limit by 0.6m',
- 'Due to the large distances between the building and neighbouring properties, and Minkara Road, the additional height shall cause no overshadowing problems or loss of view issues',
- 'A large portion of the site shall be left in its natural woodland state where canopy trees exceeding the height of the building will ensure the dwelling doesn't dominate the landscape'.

The proposal does not comply with the maximum building height development standard. An assessment of the plans provided shows that the chimney on the South Elevation has a maximum height of 9.9m above natural ground level, which is highest point of the building. The location of non-compliance with the height is where the land begins to naturally slopes away. The southern elevation chimney will be constructed of natural sandstone and the building will be colours and materials that will blend in with the natural environment of the site.

It is agreed that due to the proximity of the proposal to the street and adjoining properties as well as the landscaping to be retained on the site, that this non-compliance will not create an unreasonable impact with regards to view loss, overshadowing and bulk and scale. Overall , it is considered that demanding full compliance with Councils maximum height standard is unnecessary for this proposal.

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 RU2 Rural Landscape 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 proposal will be below the height of the existing tree canopy on the site and uses building colours and materials that will harmonise with the natural environment. On sites that have little opportunity for trees or are visually dominate single storey buildings are preferred, however, this site is surrounded by dense bushland and trees and will be screened from the street and surrounding properties. In regards to the height of the dwelling, the proposal is consistent with the relevant criteria of desired character of the locality.

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

Comment:

Immediately to to the west of the site are large single storey dwellings on cleared lots. To the north and south are one to two storey residential dwellings on more steeply sloping and vegetated lots, which are similar to the the subject site. To the east of the site is Aveo Minkara Residential Aged Care Facility. Aveo Minkara Residential Aged Care Facility has buildings of varying heights from one to three stories with varying building bulk and scale. Aveo Minkara Residential Aged Care Facility is also surrounded by dense bushland which is similar to the subject site. The height and scale of the proposal is compatible with the sites and scale of development to the north, south and west which have similar site conditions to the subject site.

*c) to minimise any overshadowing of neighbouring properties,*

Comment:

Due to the proposed location of the dwelling, the proposal will not result in overshadow of the adjoining neighbouring properties.

*d) to allow for the reasonable sharing of views,*

Comment:

The proposed location of the dwelling and its distance to the adjoining sites will maintain a reasonable sharing of views.

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

Comment:

The site has a moderate slope from the rear western boundary to the front eastern boundary. From the rear and sides of the dwelling the proposal will present as a two stories, and three stories from the front. Excavation will be required to construct the basement level. A more sympathetic design could have been utilised to limit the amount of excavation on the site, however, this would have resulted in a larger building footprint. It is considered that the design of the proposal responds sufficiently to the natural topography of the site.

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

Comment:

The proposed building form provides a bulk, scale and design that will sit below the bushland and canopy trees that are to be retained on the site. The proposal will also use colours and materials that blend into the natural environment. The design will ensure that the proposal will not present an unreasonable visual impact on the natural environment, heritage conservation areas and heritage items.

However, it is considered that a reduced version of the proposed dwelling sited more appropriately to minimise unnecessary additional clearing for the APZ would be more suitable response to the site constraints. The size and location of the proposal is not supported due to impact on remaining native bushland, threatened species and their habitat from further clearing to satisfy bushfire APZ.

## **Zone objectives**

The underlying objectives of the RU2 Rural Landscape zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*

Comment:

The proposal is for a new residential dwelling which is permitted in the zone.

- *To maintain the rural landscape character of the land.*

Comment:

The proposal is for a residential dwelling. The majority of the site will remain undeveloped which is consistent with the surrounding sites and will maintain the rural landscape character of the land.

- *To provide for a range of compatible land uses, including extensive agriculture.*

Comment:

The proposal is permitted in the zone and compatible on the site.

- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*

Comment:

The proposed single residential dwelling will not unreasonably increase the demand for public services or public facilities.

- *To minimise conflict between land uses within this zone and land uses within adjoining zones*

Comment:

Surrounding development consists of residential dwellings and an aged care facility. The proposal is consistent with the existing land uses and is likely to cause conflict between land uses within this zone and land uses within adjoining zones.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the RU2 Rural Landscape 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 Development Determination Panel, for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel.

**7.6 Biodiversity protection**

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.6 Biodiversity protection of the Pittwater Local Environmental Plan 2014.

**Pittwater 21 Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
Front building line	30m	44.2m	Yes
Rear building line	7.5m	Carport - 8.3m	Yes
Side building line	South - 7.5m	48.2m	Yes
Building envelope	South - 3.5m	Within envelope	Yes
	West - 3.5m	Within envelope	Yes
Landscaped area	94.15% or 20364.8m <sup>2</sup>	94.34% (20,407 m <sup>2</sup> )	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.6 Ingleside Locality	No	No
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	No	No
B3.11 Flood Prone Land	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.18 Heathland/Woodland Vegetation	No	No
B5.1 Water Management Plan	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D6.1 Character as viewed from a public place	Yes	Yes
D6.3 Building colours and materials	Yes	Yes
D6.5 Front building line	Yes	Yes
D6.6 Side and rear building line	Yes	Yes
D6.7 Building envelope	Yes	Yes
D6.8 Landscaped Area - Non Urban General	Yes	Yes
D6.12 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

#### Detailed Assessment

#### **A4.6 Ingleside Locality**

The proposed development and existing clearing/works on the site do not meet the desired character of the Ingleside Locality.

The locality aims to provide low impact residential development that is integrated with the landform and landscape. The existing and required clearing and excavation along with the minimal landscaping and large dwelling is not consistent with the desired future character of the locality.

The location of the proposal and the required APZ means that landscaping on the site such as canopy trees and native vegetation cannot be integrated into the design of the dwelling as per the desired character of the locality. Additionally, no landscape plan was provided with the application to show what landscaping will take place on the site and what trees and bushland is to be retained.

Furthermore, the development is to be designed to be safe from hazards. The application was referred to the NSW RFS, who raised several concerns with the Bushfire Assessment submitted.

The location, design and condition of the existing site are not consistent with Ingleside desired future character and an alternate design and location could provide a better outcome for the natural environment and provide a development that is consistent with the desired future character of the locality.

#### **B4.18 Heathland/Woodland Vegetation**

As detailed in the NECC (Bushland and Biodiversity) comments earlier in this report the proposal does not meet the requirements of the control.

This application was assessed against the objectives of PLEP Clause 7.6 Biodiversity, PDCP Clause B4.18 Heathland/Woodland Vegetation, and the NSW Biodiversity Conservation Act 2016. The property is also mapped as bushfire prone land and "Major Habitat" within Pittwater's wildlife corridor mapping. Any development application must consider proposal options which are compliant with applicable PLEP and PDCP controls, specifically:

- *Development shall retain and enhance habitat and wildlife corridors for threatened species, endangered populations, endangered ecological communities and other locally native species.*
- *Development shall not reduce or degrade habitat for locally native species, threatened species, endangered populations or endangered ecological communities.*

A substantial portion of the native intact bushland on the site was cleared prior to lodgement of this DA. The cleared area is located largely within the footprint of the proposed development. As such, there can be little consideration for ways to avoid and minimise impacts as per the application of mitigation hierarchy.

The proposed development will result in a substantial loss of native vegetation (including canopy trees) and wildlife habitat on the site. The proposal as submitted does not demonstrate that the objectives of relevant Natural Environment controls have been taken into account in designing and siting the development, nor is it evident that the proponent has made an effort to avoid direct or indirect impacts to the site's biodiversity values.

Given that the existing submission does not achieve compliance with PLEP and PDCP controls, the applicant is encouraged to consider a redesign of the proposal. It is noted that this DA includes additional impacts compared to the previous application. Any new proposal should incorporate a substantially reduced footprint (with reconsideration of the need for non-ancillary elements) and demonstrate feasible measures to avoid impacts to the site's biodiversity values.

Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause B4.18 Heathland/Woodland Vegetation of the PDCP.

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

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

In summary, a detailed assessment has been required for the following specific issues:

- Bushfire Prone Land, the application was referred to the NSW RFS who raised concerns with the Bush Fire Assessment Report provided.
- Non-compliance with the biodiversity controls and legislation, Council's Natural Environment - Biodiversity Section cannot support the application due to non-compliances with the Clause 7.6 Biodiversity of the Pittwater LEP 2014, Clause B4.18 Heathland/Woodland Vegetation of the Pittwater DCP and the NSW Biodiversity Conservation Act 2016.
- Inadequate supporting information required by the controls and consideration for supporting biodiversity information, the insufficient and missing information includes the BDAR, Biodiversity Management Plan, Arborist Report, Bushfire Assessment Report and Landscape Plan.
- Building Height, the proposal breaches the control with a height of 9.9m.
- Ingleside Locality, the proposal does meet the Desired Future Character of the locality.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is not suitable or appropriate development for the subject site. It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## **RECOMMENDATION**

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/0055 for the Construction of a dwelling house on land at Lot 40 DP 28908,9 Minkara Road, BAYVIEW, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) and Section 4.15(1)(b)(i) Environmental Impacts of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.6 Biodiversity protection of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A4.6 Ingleside Locality of the Pittwater 21 Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B4.18 Heathland/Woodland Vegetation of the Pittwater 21 Development Control Plan.
5. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.