

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2024/0262
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<b>Responsible Officer:</b>	Anne-Marie Young
<b>Land to be developed (Address):</b>	Lot 6 DP 749791, 113 Orchard Street WARRIEWOOD NSW 2102
<b>Proposed Development:</b>	Demolition works and construction of a dwelling house, horse arena, stables and paddocks
<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>Land and Environment Court Action:</b>	No
<b>Applicant:</b>	Boston Blyth Fleming Pty Ltd

<b>Application Lodged:</b>	26/03/2024
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Other
<b>Notified:</b>	02/04/2024 to 16/04/2024
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	4
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 973,500.00
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### PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the demolish the of the existing dwelling and construct a new two storey dwelling in a different location on site with swimming pool and horse arena. In detail, the proposal includes:

#### New dwelling - Ground Floor RL35.16

- double garage
- leisure room
- foyer with internal stair
- portico / porch to front

**New dwelling - First Floor RL38.16**

- kitchen and dining
- open plan living and family room with adjoining verandah, alfresco area and balcony
- four (4) bedrooms, bedroom 1 with ensuite and WIR
- bathroom
- laundry

**New dwelling - external materials and finishes**

- aluminium windows
- facebrick and hardies stira cladding
- colourbond roof

**New dwelling - Other**

- PV solar panels
- rainwater tank (500L)
- retaining walls
- swimming pool 4m x 2.5m x 1.2m deep located to the rear of the dwelling

**Note:** The applicant has requested that a consideration be given to the demolition of the existing dwelling not been required until the construction of the new dwelling is complete to allow the owners to live in the existing house during construction. It is suggested that a condition of consent to demolish the existing house within a determined timeframe once an occupation certificate has been obtained for the new house is requested.

**Horse arena, stables and associated structures**

- retaining walls up to 4.5m in height and fencing to create an unroofed horse arena 20m x 50m setback between 1.7m and 2.4m from the frontage
- four (4) stables with fenced yards located to the rear of the arena with associated fenced yards
- 4 paddocks to the centre and rear of the site
- horse paths and ramp connections from the horse arena to the stables and paddocks
- feed / tack rooms, horse manure storage area and hay storage area
- toilet
- additional parking and turning bay to the north of the site

**Note:** The applicant has confirmed that the horse arena and stables will be used for private purposes ancillary to the main dwelling.

**Landscaping and other work**

- removal of 76 trees
- new screen hedge planting 4m in height along the street frontage
- retaining walls
- fences
- excavation to a depth of 2.8m of and up 1300m<sup>3</sup> of landfill

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

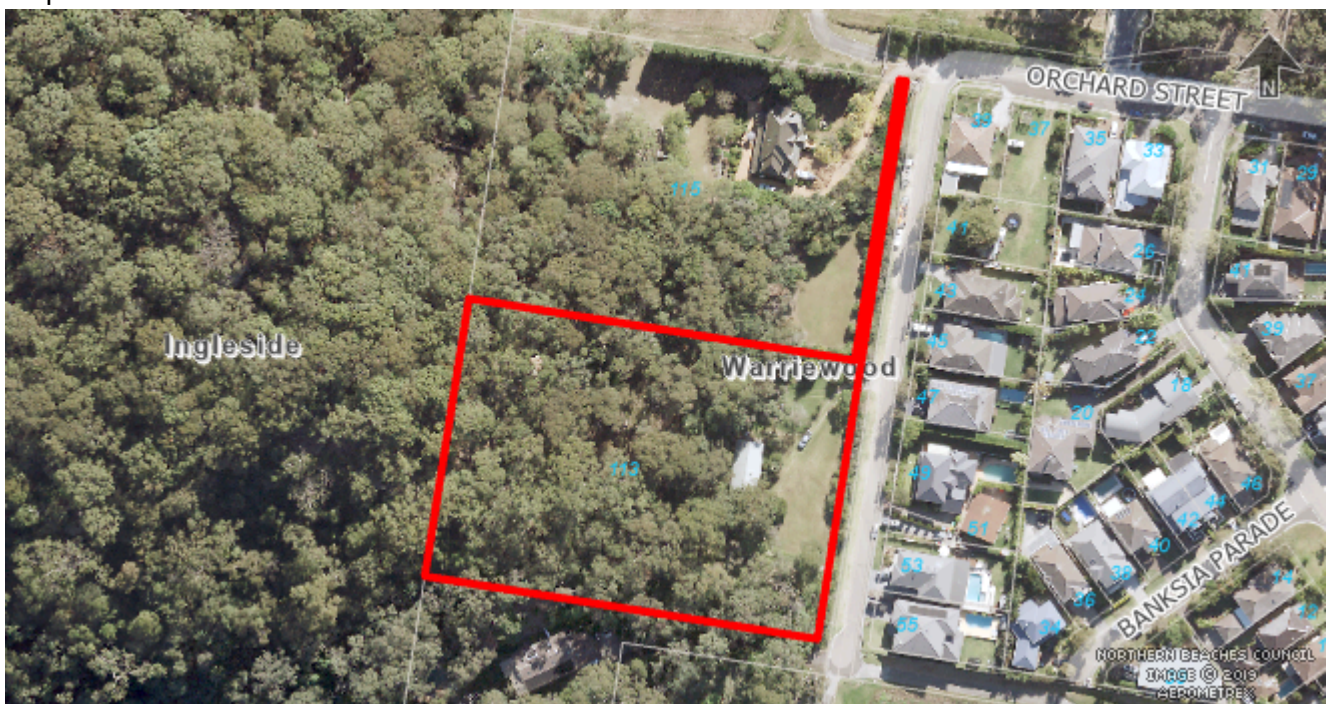
Pittwater Local Environmental Plan 2014 - Zone RU2 Rural Landscape  
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks  
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection  
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards  
Pittwater 21 Development Control Plan - A4.14 Warriewood Locality  
Pittwater 21 Development Control Plan - B3.1 Landslip Hazard  
Pittwater 21 Development Control Plan - B4.18 Heathland/Woodland Vegetation  
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements  
Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill  
Pittwater 21 Development Control Plan - C1.1 Landscaping  
Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy  
Pittwater 21 Development Control Plan - C1.17 Swimming Pool Safety  
Pittwater 21 Development Control Plan - D14.1 Character as viewed from a public place  
Pittwater 21 Development Control Plan - D14.2 Scenic protection - General  
Pittwater 21 Development Control Plan - D14.7 Front building line  
Pittwater 21 Development Control Plan - D14.8 Side and rear building line  
Pittwater 21 Development Control Plan - D14.14 Landscaped Area - Non Urban  
Pittwater 21 Development Control Plan - D14.17 Construction, Retaining walls, terracing and undercroft areas

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 6 DP 749791 , 113 Orchard Street WARRIEWOOD NSW 2102
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<p><b>Detailed Site Description:</b></p>	<p>The subject site consists of one (1) allotment located on the western side of Orchard Street, Warriewood.</p> <p>The site is generally regular in shape with a frontage of 82.2m along Orchard Street and a depth of 115m. The site has a surveyed area of 9766m<sup>2</sup>.</p> <p>The site is located within the RU 4 Rural Landscape zone from the PLEP and the Warriewood Locality from PDGP and accommodates a detached dwelling with informal access from Orchard Street. The site is characterised with a sloping topography that rises approximately 40m from street level to the rear of the property. The site has extensive tree coverage and the majority of the site is identified on the Biodiversity Values Map. The site is also mapped as Bushfire Prone. Street trees are present along the frontage and the rear of the site adjoins Heydon Reserve.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by large rural allotments to the north and south and low density two storey dwellings to the immediate east.</p>
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Map:



## SITE HISTORY

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

Application **DA2020/0707** for Alterations and additions to a dwelling house including a horse arena,

horse stables and paddock was withdrawn on 05/03/2021.

Application **DA2019/0021** for Alterations and additions to a dwelling house including swimming pool and horse stables was withdrawn on 29/05/2019.

Pre-lodgement Meeting **PLM2021/0368** was held on 01/03/2022 for construction of a dwelling-house, horse arena, stables and ancillary works. The PLM notes conclude:

*Concern is raised with the use of the horse arena in regard to it's location along the front boundary and proximity to the R3 Medium Density Residential zone to the east. An Operational Plan of Management is to be submitted with any development application to ensure any land use conflict is managed appropriately. The applicant is also encouraged to consider alternative design options to reduce impacts to native vegetation to the greatest extent possible. This will both improve compliance with local planning controls and potentially avoid exceeding the threshold for entry into the Biodiversity Offsets Scheme*

Application **DA2023/1127** for Demolition works and construction of a dwelling house, horse arena, stables and paddocks was withdrawn on 05/12/202 following a formal request for additional information to address concerns raised by Referral Officers.

Note: the subject application is identical to this application but is supported with additional information.

#### History of subject application

On 3 June 2024, a Request for Further Information (RFI) was sent to the applicant which raises issues with the following:

- Bushland and Biodiversity - a review of the submitted BDAR report identified a number of outstanding issues and errors in respect of the following:
  - Native Vegetation Surveys
  - Bat Surveys
  - Avoid and Minimise Strategies
  - Clearing for Asset Protection Zones
  - Biodiversity Management Plan
  - Compliance with the PLEP and PDCP controls
- Environmental Health raised concerns in respect of the following:
  - The location of the new sewer connection
  - Washing of horses
  - No details on the wastewater system
  - The irrigation area
  - The EMA location
  - The existing septic tank and trench
- Development Engineer has raised concerns in respect of the following:
  - Stormwater management
  - A DRAINS model is required
  - A Stormwater Management Plan
- Planning - The following issues were identified
  - The breach of the 20m front set back and inaccuracy with the SEE which assesses the development against the incorrect Locality controls.
- Submissions
  - A summary of issues raised through the submission



On 12 July 2024, the applicant uploaded the following information onto the Planning Portal:

- An updated BDAR report
- Updated Plans to delete the wash bay
- Updated stormwater plans and confirmation that no connection to the sewer is being proposed
- An updated SEE that address the correct Locality controls
- A response to submissions

On 13 August 2024, Council contacted the applicant in respect to issues with the geotechnical report namely, the geotechnical, dated 18 December 2018, relates to a different proposal. The report refers to the following drawings: drawings DA01/A, DA02/A & DA04/A, prepared by Tony McLain Architect, referenced as Project No.1825 dated 30 October 2018 which are not part of the subject DA.

It was requested that the author of the geotechnical report confirms in writing that that the recommendations contained within the report apply to the most recent set of architectural plans. The request has not been received.

On 20, August 20, 2024, Council raised the following issues with the applicant:

Council have concerns about the visual impact of the retaining wall with a maximum height of 4.5m as it presents to the street. As such, the development fails to meets the objectives of the RU4 Rural Landscape zone and the requirements and outcomes of the relevant PDPC controls including A4.14 Warriewood Locality, D14.1 Character as viewed from a public place, D14.2 Scenic Protection, D14.7 Front Building line.

To address this, these concerns it was recommended that the design be amended to have a 2.0m set back to the street frontage to allow sufficient space within the site boundary for planting and 10.0m from the southern side to reduce the extent of fill and height of the retaining wall. In addition, the hay store is setback 8.8m from the front boundary and breaches the 20m setback control. To address this it was requested that the hay store be setback 20.0m to comply with the setback control.

On 21 August 2024, the applicant in response indicated agreement to the request to amend the design to increase the setbacks of the development. The applicant requested that the design changes be a condition of consent. No amended plans have been submitted at the time of writing this report.

## 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	There are no current draft environmental planning instruments.

Section 4.15 Matters for Consideration	Comments
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 2021 (EP&A Regulation 2021)	<p>Part 4, <u>Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters could be addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 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 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Bushland and Biodiversity issues, wastewater and other Environmental Health issues, stormwater management, issues with the extent of landfill and the scale of the retaining walls within the front setback and issues with the geotechnical report.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter could be addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter could be addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter could 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>(i) <b>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.</p> <p>In summary, the significant landfill and associated high retaining walls within the frontage of the site will have an unreasonable visual impact on the landscape character of the RU2 zone, the visual amenity of the adjoining low density residential zone, the streetscape and the scenic quality of the area. Insufficient information has been submitted to</p>

Section 4.15 Matters for Consideration	Comments
	<p>satisfy Council that the proposal will not have an unreasonable impact on the biodiversity value of the site. Likewise, insufficient information has been submitted to satisfy Council that the proposed development has been designed to ensure that all geotechnical risks have been taken into account.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable 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	This assessment has found the proposal to be inconsistent with the RU2 Rural Landscape zone objectives and insufficient information has been submitted to demonstrate that the proposal will not have an unreasonable impact on biodiversity. The proposal is contrary to the relevant requirement(s) of the PLEP and PDGP 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.

## 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. The report stated that the bushfire attack level of the site is BAL 40.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions.



## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 02/04/2024 to 16/04/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mr Richard Paul O'flynn	102 Headland Road NORTH CURL CURL NSW 2099
Mr Michael Robert Molloy	111 Orchard Street WARRIEWOOD NSW 2102
Mrs Emma Kathleen Couch Mr Simon David Couch	45 Orchard Street WARRIEWOOD NSW 2102
Mr Matthew Robert Kelsall	47 Orchard Street WARRIEWOOD NSW 2102

***Stormwater - The submissions raised concerns that the discharge point for the new development are not owned or maintained by council. The discharge points are on private property which are maintained by 111 and 111A Orchard Street. Concern is expressed about the impact of excess stormwater being discharged onto 111A Orchard Street and 111 Orchard Street from the proposed discharge points and additional costs to maintain neighbouring property associated with new drainage requirements.***

***Concern is also expressed about horse effluent being mixed into the discharge noting the privately maintained easement that crosses 11A Orchard Street.***

### Comment:

An amended stormwater plan has been submitted which addresses the issues raised and which has been assessed by Council's Development Engineer as acceptable, subject to recommended conditions. Wastewater management has also been updated to address Council's Health Officers concerns, subject to recommended conditions. It is not expected that the use of the stables and horse arena, as an ancillary use to residential, will give rise to unreasonable odour issues given its domestic use.

Despite Engineering and Health issues now being addressed, the application is not supported, primarily due to the fact that insufficient information has been submitted to demonstrate that the proposal will have an acceptable impact on biodiversity.

***Services - (power, water and NBN/phone). The submissions raised concerns that services to No. 113 Orchard Street run along the boundary of 113 and 115 Orchard Street which is private property. Assurance is required that any disruption or damage to these services caused as a result of alterations, construction and landscaping are urgently rectified at the applicants cost.***

### Comment:

Had the application been recommended for approval conditions could have been included to ensure that services along the frontage of the site are not impacted by the development.

***Horse effluent - The submissions raised concerns about the amount of waste/effluent that will be produced and how this is going to be managed.***

Comment:

As above, additional information has been submitted to satisfy Council's Health Officer that the proposal could be supported subject to recommended conditions.

***Parking - the submissions raised concerns about impacts on access to 111 Orchard Street as a result of parked vehicles (both during construction of the proposed development and once complete due to stable operations) and materials storage. No consent is given for any materials and vehicles to be placed or parked on private property. Concern is also expressed about access to the neighbouring property if any proposed services works are undertaken.***

Comment:

Had the application been recommended for approval conditions could have been included to ensure that access to neighbouring property be maintained during construction, occupation of the dwelling and use of the ancillary horse stables and arena once building work and for any future servicing requirements. Conditions could also be included to ensure that all storage of materials is contained within the site boundary.

***Swale drain - The submissions raised concerns that there has been an attempt to dig by unknown person/persons in recent months to create the swale drain shown in the plans, without consent from the adjoining owners.***

Comment:

A search of Council's records did not find any evidence of unauthorised work on the site.

Two letters of support have been received from neighbours to the south on the opposite side of Orchard Street which are noted.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported - subject to conditions</b></p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>

Internal Referral Body	Comments
Environmental Health (Unsewered Lands)	<p><b>Supported - subject to conditions</b></p> <p><u>Additional comments following submission of further information 02/08/2024</u></p> <p>A review of the additional information satisfies the initial concerns raised by Environmental Health. Proposed conditions of consent address:</p> <ul style="list-style-type: none"> <li>- installation of the wastewater system</li> <li>- removal of the horse wash bay and no wastewater floor waste connection to stables</li> <li>- decommissioning of existing septic tank</li> <li>- approval to operate of the newly installed wastewater system prior to occupation.</li> <li>- separating pool backwash from wastewater system</li> </ul> <p>Environmental Health recommend further review from Bushland and Biodiversity regarding the proposed effluent management area (EMA) and its potential to impact the local bushland and biodiversity now that it is clearly defined in the martens report. Environmental Health are satisfied</p> <p><u>Comments 14/05/2024</u></p> <p>This application is seeking consent for construction of a new dwelling, horse arena, stables and paddocks at 113 Orchard Street, Warriewood. The proposed development will involve Demolition of existing dwelling and construction of new four bedroom dwelling, Construction of a new horse arena located in the eastern portion of the site, Construction of a horse stable for up to four horses with associated yards, wash bay and amenities and Construction of paddocks upslope (west) of the proposed stables.</p> <p>A wastewater report has been prepared by Martens Consulting Engineers, reference P2108165JR05V01, dated February 2024.</p> <p>The proposed wastewater system is to be constructed at the site to service a new four-bedroom dwelling and toilet for stable users only. The wastewater report states <i>'It is understood that horses are to be washed outside of the stables, and that stable bedding will be regularly changed and will absorb horse urine.'</i></p> <p>The report proposes <i>'To service the above elements, it is recommended that a new NSW DOH accredited aerated wastewater treatment system (AWTS) and onsite surface drip irrigation system be installed to manage wastewater from the proposed development.'</i></p> <p>Environmental Health has the following concerns that must be addressed by the applicant before we may offer our support to the proposal with conditions:</p>

Internal Referral Body	Comments
	<ol style="list-style-type: none"> <li>1. The SEE states that the martens report has confirmed that the site is able to connect to a new sewer connection? Does this mean to a sewer main which is the preferred option or the proposal listed in the Martens report of drip irrigation?</li> <li>2. The martens wastewater report states all washing of horses will be done outside of the stables. Is this to occur in the wash bay? This hasn't been considered in the wastewater report. The Statement of Environmental Effects state the following: <i>Behind the horse area will be 4 stables with smaller fenced yards. Feed/tack rooms, wash bays.</i></li> <li>3. No details of the proposed wastewater system to be installed have been provided by the applicant. The certificate of accreditation is required up front if wastewater is to be determined as part of the DA. Alternatively Env Health can condition that a section 68 approval to install is required prior to CC.</li> <li>4. The specific irrigation area has not been defined in the provided wastewater report which states that this will be confirmed through a section 68 approval. Env Health can condition that a section 68 approval to install is required prior to CC which will require a more defined location.</li> <li>5. The proposed EMA location for the wastewater is in a very shaded area with rocky outcrops which does not promote in the efficiency and effectiveness of an EMA through solar exposure.</li> <li>6. Comment is also required from Bushland and Biodiversity on the suitability of the proposed EMA given the amount of native vegetation located within the area.</li> <li>7. There is no mention of the existing septic tank and trench in any report. Is this proposed to be removed?</li> <li>8. The pool back wash will be required to be disposed of to a separate land application area than the wastewater. A Condition can be applied for this</li> </ol>
Landscape Officer	<p><b>Unsupported</b></p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause RU2 Rural Landscape zone, and the following Pittwater 21 DCP controls (but not limited to): B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; D14 Warriewood Locality.</p> <p>The site exists upon RU2 Rural Landscape zone land and the landscape objectives of the zone includes: maintain the rural landscape character of the land; minimise conflict between land uses within this zone and land uses within adjoining zones.</p> <p>An Arboricultural Impact Assessment (AIA) report is submitted in detail on the 163 existing trees consisting: 153 within the property; 5 within adjoining property or co-owned; and 5 within the road reserve</p>

Internal Referral Body	Comments
	<p>verge, and recommends existing trees for removal that are impacted by development works as well as providing tree protection measures for existing trees to be retained. As calculated a total of 76 existing trees are to be removed should the application be approved. A Landscape Concept Plan is provided with proposals for replanting of indigenous trees, shrubs, groundcovers and native grasses.</p> <p>It is noted that the property is bush fire prone land.</p> <p>It is noted the property falls within the Biodiversity Values Map (BVM) under the Biodiversity Conservation Act, and any tree removal within the BVM may trigger the Biodiversity Offsets Scheme (BOS). It is noted that the Biodiversity Development Assessment Report (BDAR) submitted has been prepared to include all potential impacts to native vegetation including development footprint, future 10/50 clearing entitlement associated with the new dwelling, APZs and associated services and infrastructure. This specific matter is deferred to Council's Bushland &amp; Biodiversity Referral team.</p> <p>Landscape Referral consider that the landscape setback from the front boundary to the horse area paddock is inadequate in width to support the intent of maintaining the rural landscape character of the land and to minimise conflict between land uses within this zone and land uses within adjoining residential zones, and suggest that a wider landscape buffer is essential to support the application whereby the requirements Pittwater DCP control C1.1 is able to be achieved, that list the following landscape outcomes: development results in retention of existing native vegetation; Landscaping results in the long-term retention of Pittwater's locally native tree canopy; and Landscaping enhances habitat and amenity value. Landscape Referral consider the proposed front setback to Orchard Street is unable to provide such outcomes and rather the amenity presentation is not a landscape setting outcome but a prominent rural outcome inconsistent with surrounding land. The proposed walling at the frontage is prominent and it is noted that the proposed front buffer is unable to achieve the C1.1 requirement for "a range of low-lying shrubs, medium-high shrubs and canopy trees shall be retained or provided to soften the built form" due to the limited proposed width of the landscape zone.</p>
NECC (Bushland and Biodiversity)	<p><b>Unsupported</b></p> <p><u>Amended Comments (2nd September 2024)</u> Amended documentation was submitted by the applicant and has been reviewed by Council's Biodiversity Referrals team, including:</p> <ul style="list-style-type: none"> <li>• Amended BDAR (Kingfisher Urban Ecology and Wetlands, July 2024)</li> <li>• Vegetation Management Plan (Kingfisher Urban Ecology and Wetlands, July 2024)</li> <li>• Pre-Development Application Asset Protection Zone/Landscaping Report (CBAA Bushfire Experts, July</li> </ul>



Internal Referral Body	Comments
	<p>2024)</p> <ul style="list-style-type: none"> <li>Additional Bushfire Information (No details of author or date)</li> </ul> <p>It is noted that the Amended BDAR has been submitted as a Draft, has not been signed and certified by an Accredited Assessor, does not include finalised credit reports in Appendix 2 and Council have not been added as a case party in the Biodiversity Offsets and Agreement Management System (BOAMS). As such, Council are unable to review the final credit outcomes in BOAMS which is critical to the assessment of the BDAR and application as a whole and the application must be refused.</p> <p>In relation to the amendments to the BDAR, the Ecologist has provided amended BAM plots in accordance with Council's request, therefore increasing the VI score and resulting in a significant increase in Ecosystem Credits and Species Credits. Credits increased from 1 to 8 Ecosystem Credits for PCT 3176 Sydney Enriched Sandstone Moist Forest and from 5 to 10 Species Credits for Swift Parrot and Large-eared Pied Bat</p> <p>It is noted that in the previous Biodiversity Referral comments, Council's Biodiversity Officers requested that the Ecologist consider Eastern Cave Bat as the Ecologist identified a call potentially representing the species on site during targeted surveys. The species has not been considered by the Ecologist and credits have not been generated. The requirements for the species are the same as the Large-eared Pied Bat which has generated 10 species credits. Furthermore, it is noted that the Ecologist has stated that they received verbal advice from the BOS help desk relating to the microbat targeted survey. For future reference, any advice from the BOS helpdesk in relation to alteration of targeted survey methodology is to be obtained in writing and included in the BDAR.</p> <p>While the Ecologist has amended the Vegetation Zones and Management Zones in accordance with Council's request, as Council do not have access to BOAMS, the amendments cannot be verified and confirmed. Furthermore, Council have not been supplied with amended shapefiles in accordance with the previous request.</p> <p>Whilst justification for avoidance and minimisation has now been included in the BDAR, it is difficult to follow and lacks quantitative evidence of the progressive reduction of impacts to biodiversity such as a comparison of total areas of impact or differences in tree removal between proposed designs. For example, the main justification by the Ecologist states is that "the total development footprint for 2024 is smaller than original. The APZ being the largest impact. The APZ will be only a partial reduction in vegetation and created and maintained in accordance with the VMP (July 2024)". The APZ has not been considered for previous versions of the plans in terms of impact/avoid and minimise. In comparison, the current</p>

Internal Referral Body	Comments
	<p>assessment of impacts relies totally on the APZ and arena area, where all other discussion of previous plans discussed them in relation to only the development footprint. This demonstrates that the comparison of impacts is not consistent and makes it difficult to ascertain the overall reduction of biodiversity impacts across the plan variations.</p> <p>The Vegetation Management Plan (VMP) is unclear, and is missing critical information that is required to be amended, including:  A clear description of management zones within the VMP. Section 1.1 describes two management zones, however there are currently a number of zones discussed including VMP area, APZ area, Sandstone area, Central area, Front roadside house, approved horse arenas, paddocks and stables area, Conservation zones of the APZ, restoration area and Koaa area (?). Should these area be sub-zones within the VMP management zones, as management will be different to meet the objectives of the management zones (APZ vs Conservatino vs Landscaped area?)  A site map showing site boundaries, bush fire asset protection zones (APZs), any new 10/50 Code clearing entitlements, and BMP management zones including any proposed temporary or permanent fencing (Figure 2.1 missing)  Paragraph 2 in section 1.2 needs to be re-written to clarify meaning. Section 1.2 includes a heading Benchmark, but it is unclear if this is different to Performance Criteria in section - suggest deletion.  The BDAR is not referenced as an information source in section 1.4.  The need for Section 1.6 Summary Actions is questioned - suggest deletion.  Section 1.6.1 should be moved to earlier in section 1 of the Plan so the relationship between the proposed development footprint, APZ and Conservation areas and the proposed VMP management areas is clearer.  Section 2.1 includes management actions, however there is an entire section on management later in the document and another summary at Table 3.1 - this results in lack of clarity of management requirements within zones?  Section 2.1.1 (Sandstone Area) is stated as being within the conservation area, however management for APZ requirements such as under pruning and canopy separation is included. The statement on page 6 "Areas outside the APZ are the conservation zones of the APZ" is unclear.  Describing the Central area that spans both VMP and APZ areas is confusing, and the actions required largely ignore requirements for the conservation zone but includes extensive detail for the APZ. Whether ground fuels are to managed with leaf blower or raking, fuel should be removed from the site to comply with APZ requirements.  There is reference to a Fire and Vegetation Mgt Plan, and it is unclear if this is a seperate document or it is a reference to two existing documents.  The examples of habitat to be retained would be more important for APZ area where native vegetation management may occur that</p>

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	<p>would possibly impact the fauna habitats. All habitat outside APZ must be retained.</p> <p>Is section 2.1.3 management in accordance with the approved Landscape Plan and APZ requirements. The sentence "Environmental weeds (exotics that spread by seed or piece) are not planted on site and if grow as weeds that they are removed.." needs to be amended?</p> <p>Section 2.2 Weeds would be better to follow section describing native Vegetation above.</p> <p>Section 2.3 is incomplete.</p> <p>Baseline photo points. These are to be taken at the time of the BMP preparation and before works commence to track progress of site management, and a map of the location and direction of photo points (including coordinates).</p> <p>A list of suitable local native species for planting on site and the minimum planting densities for groundcovers, understorey, mid-storey and canopy. The VMP notes that this is available in Appendix VI, however it is missing from the document.</p> <p>A suitable weed management methodology including primary and secondary weeding. The VMP discusses weed control in Section 3.1.4, however only discusses secondary weed removal. It is understood that the presence of weeds within the site is currently low, therefore the requirement for secondary weed removal to occur on a quarterly basis is considered excessive.</p> <p>The performance criteria for weeding in Table 4.1 is to be revised to ensure that after 6 months total weed control is &lt;20% and maintained at &lt;10% in the following years. It is noted that in Table 4.1 the Ecologist has stated that "planting only to take place if natural recruitment is &lt;10% across native regeneration areas". A suitable timeframe is to be allocated to this performance criteria, such as in year 2 or 3 of the VMP.</p> <p>Table 4.1 - some management actions must be in place prior to commencement rather than within 6 months of commencement.</p> <p>Table 4.1 - there is confusion between natural regeneration, revegetation (natural)(?) and plantings, and monitoring of natural recruitment will be required to determine if revegetation is required, and the plant densities and heights must be defined for the two zones.</p> <p>Section 5.1 Monitoring requires detail of what information will be collected, and to justify the cost of \$1685 per visit?</p> <p>Table 6.1 VMP schedule of works is to be revised to ensure that secondary weeding is undertaken no more than bi-annually and to occur concurrently with the vegetation monitoring. Erosion controls and fencing and signage and are to be inspected at a minimum of once per annum.</p> <p>The table of contents, table numbers and table references, figure numbers and figure references etc throughout the document are incorrect which makes comprehension difficult.</p> <p>Better integration of the VMP requirements and the BDAR Mitigation Measures is required in order to make the VMP a single source of requirements for the management of the development site.</p>

Internal Referral Body	Comments
	<p>Furthermore, the VMP is to be prepared in accordance with Guideline 3: Biodiversity Management Plan of Northern Beaches Council's Biodiversity Requirements for Development Applications.</p> <p><u>Original Comments (17th May 2024)</u> Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable provisions:</p> <ul style="list-style-type: none"> <li>• NSW Biodiversity Conservation Act 2016</li> <li>• NSW Biodiversity Conservation Regulation 2017</li> <li>• Pittwater LEP 2014 cl. 7.6 Biodiversity Protection</li> <li>• Pittwater 21 DCP cl. B4.18 Heathland/Woodland Vegetation</li> <li>• Planning for Bushfire Protection 2019 - Bush Fire Prone Land</li> </ul> <p>Council's Biodiversity referrals team are unable to complete the assessment of the Development Application as there is insufficient information within the BDAR to make a determination. Upon submission of the required amendments, Council's Biodiversity referrals team will recommence assessment.</p> <p><u>Biodiversity Values Map and Entry into the Biodiversity Offset Scheme (BOS)</u> The majority of the site is identified on the NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act 2016, any removal of native vegetation from within BV mapped areas will trigger the Biodiversity Offset Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). As the proposed development is located within the BV Map and the proposal requires the removal of native vegetation, the BOS is triggered. A BDAR (Kingfisher Urban Ecology and Wetlands, February 2024) has been prepared and submitted with the Development Application. The BDAR has identified that the Development Application triggers the BOS due to the removal of native vegetation within the BV map as well as exceeding the area clearing threshold. The Ecologist has assessed the proposal under the Streamlined Assessment - Small Area Module which is reflected in the Biodiversity Offsets and Agreement Management System (BOAMS).</p> <p>It is noted that the BDAR and associated fieldwork was undertaken by Kingfisher Urban Ecology and Wetlands and certified by Accredited Assessor Kathryn Duchatel (BAAS17054).</p> <p>Council's review of the BDAR has identified a number of outstanding issues and errors with the BDAR, as outlined below. Review of the BDAR also included a site assessment including an audit of BAM Plots 1 and 3.</p>

Internal Referral Body	Comments
	<p><u>Native Vegetation Surveys</u></p> <ul style="list-style-type: none"> <li>The Ecologist has selected Belrose Coastal Slopes as the Mitchell Landscape in BOAMS. However, the BDAR has identified that the correct Mitchell Landscape is Sydney - Newcastle Barriers and Beaches. This is to be amended in BOAMS.</li> <li>The Ecologist has applied three different Vegetation Zones within PCT 3176: VZ1 - Moderate, VZ2 - Low (Sandstone Boulders) and VZ3 - Low. In accordance with the BAM Operational Manual (Stage 1), the assessor must stratify areas of each PCT that are in different broad condition states into separate Vegetation Zones (VZ). Council's Biodiversity Referrals team do not agree with the stratification of vegetation and have identified two VZs rather than three, these being VZ1 Moderate (east) and VZ2 Moderate (west), based largely on landscape position, presence of sandstone outcropping within the west of the site and slight differences in the Vegetation Integrity (VI) scores for each of the plots (undertaken by Council). Vegetation mapping is to be reviewed, to include all native vegetation within the site, including the south-eastern corner of Plot 4, which has not been mapped.</li> <li>Furthermore, the Ecologist has identified five Management Zones (MZ) within each of the VZs, including new structures, footprint, APZ, 10 and 50. Council do not agree with the proposed MZs, and have instead identified two MZs to reflect either wholesale clearing or partial clearing (in accordance with future clearing entitlements). Council have identified that the development footprint (including the APZ) and the residual 10/50 area that extends past the APZ are the two proposed MZs. This is because the future VI score of the development footprint (including the APZ) will be 0 (reflective of wholesale clearing) and the future VI score of the residual area of the 10/50 clearing entitlement that extends past the APZ being reduced in BOAMS to clear all understory species (reflective of partial clearing).</li> <li>The Ecologist has miscalculated the full impact of native vegetation clearing in BOAMS within a number of MZs. Only two MZs have had the future VI score reduced to 0, including for 'structures' and '10' (of the 10/50). See Table 3.4 of the BDAR. The total area of the footprint, APZ and structures MZs should all be reduced to 0. The remaining MZ '50' (of the 10/50) has been correctly calculated by the Ecologist, reflecting the removal of understory and the retention of trees. This miscalculation within the MZs appears to intentionally underestimate the clearing impact and as a result reduces the generation of Ecosystem Credits required by the proposal.</li> <li>Council's Biodiversity Officers undertook BAM Plots in the same location as the Ecologist had undertaken Plot 1 and</li> </ul>



Internal Referral Body	Comments
	<p>Plot 3 and revealed a significant difference in the structure and composition of vegetation within the plots. A number of species were not identified within the BAM Plots by the Ecologist, reducing native species richness. Furthermore, the Ecologist had calculated a much lower cover percentage for many of the species recorded in the plot. Misrepresentation of vegetation condition has the potential to influence credit obligations, and in this instance, the result of the plots being undertaken at a low standard has meant that two VZs have such a low VI score that credits are not generated to offset the vegetation within those areas. As such, the proposed offset area for vegetation within the site is only 0.14 ha out of a total of 0.80 ha that is being impacted.</p> <ul style="list-style-type: none"> <li>• It is noted that two of the BAM plots undertaken by the Ecologist (Plots 2 and 3) are not entirely within the boundary of the subject site. Any additional or future plots are to be located within the boundaries of the lot.</li> <li>• Council's Biodiversity Officers calculated VI scores of 48.7 (Plot 1) and 43 (Plot 3). This depicts a more accurate representation of the moderate condition of vegetation found on site. As such, the Ecologist is required to revise the BAM plots and resubmit plot data.</li> </ul> <p><u>Bat Surveys</u></p> <p>The Ecologist identified that targeted surveys were required for Large-eared pied bat, which is listed as threatened species under the BC Act, and is classified as a candidate Serious And Irreversible Impacts (SAIL) species in accordance with the BAM (2020). One Anabat Swift detector was utilised for targeted survey and was installed on site between the 11/11/2022 and 17/11/2022, within the required survey period. However, the survey does not meet the minimum survey effort as prescribed in the 'Species credit' threatened bats and their habitats NSW guide for the Biodiversity Assessment Method (DPIE 2021). The minimum survey effort is four Anabat detectors over four nights or one device for 16 nights (or equivalent). As the survey does not meet the minimum requirements, the species is assumed present and species credits will be required to be generated for Large-eared pied bat and an SAIL assessment for the species is to be included in the BDAR.</p> <p>Furthermore, the Ecologist has not included a map of the location of the Anabat Detector within the BDAR and has not specified the name, details or experience of the threatened bat surveyor who analysed the results of the survey. This information is required to be included in the BDAR in accordance with the 'Species credit' threatened bats and their habitats NSW guide for the Biodiversity Assessment Method (DPIE 2021).</p> <p>The Ecologist also stated in the BDAR that two species credit bat species potentially occurred within the site, but could not be</p>

Internal Referral Body	Comments
	<p>confidently identified, including Southern Myotis and Eastern Cave Bat which are also candidate SAIL species. As such, additional targeted survey is required to be undertaken in accordance with the guidelines, or, they are to be assumed present on site. If the latter is decided, species polygons must be mapped in accordance with the guidelines in order to calculate species credits. Note: suitable habitat is located on site for Eastern Cave Bat and Large-eared Pied Bat in accordance with requirements listed in the Threatened Biodiversity Database Collection (TBDC).</p> <p><u>Avoid and Minimise</u> The Ecologist has made no attempt to describe strategies in which the proposal has avoided and minimised impacts on biodiversity values associated with the proposals location or design. Rather, they have included screenshots of impacts associated with tree loss taken directly from the submitted Arborist Report. There are also no maps of alternative footprints considered by the proposal to avoid or minimise impacts to biodiversity. This should be provided given the previous Development Applications submitted in the past for the site. Council believe that there is potential to avoid and minimise, particularly with the location of the proposed dwelling. For example, If the dwelling was located closer to the road or within the footprint of the existing dwelling, the APZ and future 10/50 clearing entitlements would not extend so far into remnant native vegetation within the western portion of the site. There has been no consideration of this within the BDAR and there are no alternative designs discussed within the report.</p> <p><u>Clearing for Asset Protection Zones</u> Advice provided by Council's Biodiversity Referrals team for the previously withdrawn Development Application (DA2023/1127) was that <i>"the bushfire consultant and arborist are to confirm if tree removal is required in addition to the 25 trees proposed for removal in order for the APZ to meet the minimum requirements of Planning for Bushfire Protection. Additional tree removal may not be supported (29/09/2023)"</i>. This has not been addressed in the current application. From review of the Arborist Report, after consideration of the trees proposed for removal for the development footprint, it is unclear if canopy cover has been reduced enough to meet the minimum APZ requirements. As such, further tree removal may be required, in which case it must be considered in the impact assessment.</p> <p><u>Biodiversity Management Plan (BMP)</u> Council's Biodiversity referrals team previously requested that a Biodiversity Management Plan (BMP) be submitted with the application in order to clarify proposed impact mitigation measures. This has not been submitted with the current application and is required to be included with the application in order for Council's Biodiversity Referrals team to complete the referral. We note that the BDAR states that the preparation of a BMP will be via a condition of</p>

Internal Referral Body	Comments
	<p>consent, however is considered that review of the the full BMP is required prior to determination in order to demonstrate how any retained vegetation and wildlife habitat will be protected and managed.</p> <p><u>Compliance with Council's LEP and DCP</u>  The BDAR has considered the applicable LEP and DCP controls, however has only considered the loss of trees as a potential impact. It is important to note that a key element of the BOS is the consideration of the future potential for native vegetation clearing within the property as a result of clearing entitlements such as APZs and 10/50. In addition, applicable local planning controls require consideration of impacts to all native vegetation. From calculations within the BDAR, it is estimated that up to 80% of native vegetation within the site will be modified. As such, the full impacts of the vegetation clearing should be reassessed by the Ecologist for compliance against the LEP and DCP controls.</p> <p><u>Required Documentation</u>  In summary, the application requires the following:</p> <ul style="list-style-type: none"> <li>• Amended BDAR</li> <li>• Species credits generated for Large-eared Pied Bat, Eastern Cave Bat, Southern Myotis</li> <li>• Biodiversity Management Plan</li> <li>• Updated Bushfire and Arborist Reports confirming whether the proposed tree removal satisfies the minimum APZ requirements in accordance with Planning for Bushfire Protection 2019. The amended BDAR must also be consistent with the conclusions of the updated Bushfire and Arborist Reports</li> <li>• Upon resubmission, shapefiles are to be cleaned and tidied in order for them to be adequately analysed. The shapefiles currently consists of numerous polygons for one management zone which makes calculation of areas unnecessarily difficult.</li> </ul> <p><b>Amended Comments (2nd September 2024)</b>  Amended documentation was submitted by the applicant and has been reviewed by Council's Biodiversity Referrals team, including:</p> <ul style="list-style-type: none"> <li>• Amended BDAR (Kingfisher Urban Ecology and Wetlands, July 2024)</li> <li>• Vegetation Management Plan (Kingfisher Urban Ecology and Wetlands, July 2024)</li> <li>• Pre-Development Application Asset Protection Zone/Landscaping Report (CBAA Bushfire Experts, July 2024)</li> <li>• Additional Bushfire Information (No details of author or date)</li> </ul> <p>It is noted that the Amended BDAR has been submitted as a Draft,</p>

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	<p>has not been signed and certified by an Accredited Assessor, does not include finalised credit reports in Appendix 2 and Council have not been added as a case party in the Biodiversity Offsets and Agreement Management System (BOAMS). As such, Council are unable to review the final credit outcomes in BOAMS which is critical to the assessment of the BDAR and application as a whole and the application must be refused.</p> <p>In relation to the amendments to the BDAR, the Ecologist has provided amended BAM plots in accordance with Council's request, therefore increasing the VI score and resulting in a significant increase in Ecosystem Credits and Species Credits. Credits increased from 1 to 8 Ecosystem Credits for PCT 3176 Sydney Enriched Sandstone Moist Forest and from 5 to 10 Species Credits for Swift Parrot and Large-eared Pied Bat</p> <p>It is noted that in the previous Biodiversity Referral comments, Council's Biodiversity Officers requested that the Ecologist consider Eastern Cave Bat as the Ecologist identified a call potentially representing the species on site during targeted surveys. The species has not been considered by the Ecologist and credits have not been generated. The requirements for the species are the same as the Large-eared Pied Bat which has generated 10 species credits. Furthermore, it is noted that the Ecologist has stated that they received verbal advice from the BOS help desk relating to the microbat targeted survey. For future reference, any advice from the BOS helpdesk in relation to alteration of targeted survey methodology is to be obtained in writing and included in the BDAR.</p> <p>While the Ecologist has amended the Vegetation Zones and Management Zones in accordance with Council's request, as Council do not have access to BOAMS, the amendments cannot be verified and confirmed. Furthermore, Council have not been supplied with amended shapefiles in accordance with the previous request.</p> <p>Whilst justification for avoidance and minimisation has now been included in the BDAR, it is difficult to follow and lacks quantitative evidence of the progressive reduction of impacts to biodiversity such as a comparison of total areas of impact or differences in tree removal between proposed designs. For example, the main justification by the Ecologist states is that "the total development footprint for 2024 is smaller than original. The APZ being the largest impact. The APZ will be only a partial reduction in vegetation and created and maintained in accordance with the VMP (July 2024)". The APZ has not been considered for previous versions of the plans in terms of impact/avoid and minimise. In comparison, the current assessment of impacts relies totally on the APZ and arena area, where all other discussion of previous plans discussed them in relation to only the development footprint. This demonstrates that the comparison of impacts is not consistent and makes it difficult to ascertain the overall reduction of biodiversity impacts across the plan</p>

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	<p>variations.</p> <p>The Vegetation Management Plan (VMP) is unclear, and is missing critical information that is required to be amended, including:</p> <ul style="list-style-type: none"> <li>• A clear description of management zones within the VMP. Section 1.1 describes two management zones, however there are currently a number of zones discussed including VMP area, APZ area, Sandstone area, Central area, Front roadside house, approved horse arenas, paddocks and stables area, Conservation zones of the APZ, restoration area and Koaa area (?). Should these area be sub-zones within the VMP management zones, as management will be different to meet the objectives of the management zones (APZ vs Conservatino vs Landscaped area?)</li> <li>• A site map showing site boundaries, bush fire asset protection zones (APZs), any new 10/50 Code clearing entitlements, and BMP management zones including any proposed temporary or permanent fencing (Figure 2.1 missing)</li> <li>• Paragraph 2 in section 1.2 needs to be re-written to clarify meaning.</li> <li>• Section 1.2 includes a heading Benchmark, but it is unclear if this is different to Performance Criteria in section - suggest deletion.</li> <li>• The BDAR is not referenced as an information source in section 1.4.</li> <li>• The need for Section 1.6 Summary Actions is questioned - suggest deletion.</li> <li>• Section 1.6.1 should be moved to earlier in section 1 of the Plan so the relationship between the proposed development footprint, APZ and Conservation areas and the proposed VMP management areas is clearer.</li> <li>• Section 2.1 includes management actions, however there is an entire section on management later in the document and another summary at Table 3.1 - this results in lack of clarity of management requirements within zones?</li> <li>• Section 2.1.1 (Sandstone Area) is stated as being within the conservation area, however management for APZ requirements such as under pruning and canopy separation is included. The statement on page 6 "Areas outside the APZ are the conservation zones of the APZ" is unclear.</li> <li>• Describing the Central area that spans both VMP and APZ areas is confusing, and the actions required largely ignore requirements for the conservation zone but includes extensive detail for the APZ.</li> <li>• Whether ground fuels are to managed with leaf blower or raking, fuel should be removed from the site to comply with APZ requirements.</li> <li>• There is reference to a Fire and Vegetation Mgt Plan, and it is unclear if this is a seperate document or it is a reference to two existing documents.</li> </ul>



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	<ul style="list-style-type: none"> <li>• The examples of habitat to be retained would be more important for APZ area where native vegetation management may occur that would possibly impact the fauna habitats. All habitat outside APZ must be retained.</li> <li>• Is section 2.1.3 management in accordance with the approved Landscape Plan and APZ requirements. The sentence "Environmental weeds (exotics that spread by seed or piece) are not planted on site and if grow as weeds that they are removed.." needs to be amended?</li> <li>• Section 2.2 Weeds would be better to follow section describing native Vegetation above.</li> <li>• Section 2.3 is incomplete.</li> <li>• Baseline photo points. These are to be taken at the time of the BMP preparation and before works commence to track progress of site management, and a map of the location and direction of photo points (including coordinates).</li> <li>• A list of suitable local native species for planting on site and the minimum planting densities for groundcovers, understorey, mid-storey and canopy. The VMP notes that this is available in Appendix VI, however it is missing from the document.</li> <li>• A suitable weed management methodology including primary and secondary weeding. The VMP discusses weed control in Section 3.1.4, however only discusses secondary weed removal. It is understood that the presence of weeds within the site is currently low, therefore the requirement for secondary weed removal to occur on a quarterly basis is considered excessive.</li> <li>• The performance criteria for weeding in Table 4.1 is to be revised to ensure that after 6 months total weed control is &lt;20% and maintained at &lt;10% in the following years. It is noted that in Table 4.1 the Ecologist has stated that "planting only to take place if natural recruitment is &lt;10% across native regeneration areas". A suitable timeframe is to be allocated to this performance criteria, such as in year 2 or 3 of the VMP.</li> <li>• Table 4.1 - some management actions must be in place prior to commencement rather than within 6 months of commencement.</li> <li>• Table 4.1 - there is confusion between natural regeneration, revegetation (natural)(?) and plantings, and monitoring of natural recruitment will be required to determine if revegetation is required, and the plant densities and heights must be defined for the two zones.</li> <li>• Section 5.1 Monitoring requires detail of what information will be collected, and to justify the cost of \$1685 per visit?</li> <li>• Table 6.1 VMP schedule of works is to be revised to ensure that secondary weeding is undertaken no more than bi-annually and to occur concurrently with the vegetation monitoring. Erosion controls and fencing and signage and are to be inspected at a minimum of once per annum.</li> </ul>

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	<ul style="list-style-type: none"> <li>The table of contents, table numbers and table references, figure numbers and figure references etc throughout the document are incorrect which makes comprehension difficult.</li> <li>Better integration of the VMP requirements and the BDAR Mitigation Measures is required in order to make the VMP a single source of requirements for the management of the development site.</li> </ul> <p>Furthermore, the VMP is to be prepared in accordance with Guideline 3: Biodiversity Management Plan of Northern Beaches Council's Biodiversity Requirements for Development Applications.</p>
NECC (Development Engineering)	<p><b>Supported, subject to conditions</b></p> <p><u>Updated Comments</u></p> <p>The previous issues have now been addressed and the stormwater management plans amended accordingly, no objections subject to conditions.</p> <p>Previous comments.</p> <p>The proposed stormwater management plan as prepared by NB consulting has been reviewed and is not supported for the following reasons:</p> <p>1) The stormwater point of discharge being the existing table drain located in the access handle of the adjacent property is not supported as there is no drainage easement . The drainage easement which benefits the property is denoted as (A) in DP 715324. Accordingly an amended stormwater management plan is to detail a piped connection to the easement . If there is no existing drainage line within drainage easement (A) than the plans are to also include the installation of a downstream stormwater line suitable sized and connected to the privately owned downstream stormwater system.</p> <p>If there is an existing downstream drainage line located within easement (A) then a hydraulic capacity check is to be undertaken to ensure the downstream drainage system has capacity to handle the additional development flows. The size of the on site stormwater facility on site may require upsizing to mitigate the developed site stormwater flows.</p> <p>A DRAINS model is to be prepared for both scenarios and model stormwater flows up to the 1/100 AEP storm event.</p> <p>2) The stormwater management plan is also to detail the pipe sizes required for the driveway access slabs located within the adjacent right of carriageway.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b>Supported - subject to conditions</b></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Rural Fire Service - Local Branch - EP&A Act, s4.14	<p><b>Supported - subject to conditions</b></p> <p>Development Application in accordance with section 4.14 of the Environmental Planning and Assessment Act 1979 and supported subject to recommended conditions by NSWRFSS.</p>
Aboriginal Heritage Office	<p><b>Supported - subject to conditions</b></p> <p>The Aboriginal heritage Office conducted a site inspection was carried out on 12 May 2024.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

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

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

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

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

#### SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 1732635S dated 17 January 2024).

A condition could be included requiring compliance with the commitments indicated in the BASIX Certificate.

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

### Ausgrid

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

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

### Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions.

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

### Chapter 4 – Remediation of Land

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

## **Pittwater Local Environmental Plan 2014**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with: aims of the LEP?	No

zone objectives of the LEP?	No
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#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.1m	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	No
7.6 Biodiversity protection	No
7.7 Geotechnical hazards	No
7.10 Essential services	Yes

#### Detailed Assessment

### **Zone RU2 Rural Landscape**

#### **Permissibility**

Dwellings and *animal boarding or training establishments* are permitted with consent within the RU2 Rural Landscape zone.

The Pittwater LEP defined animal boarding or training establishment as *a building or place used for the breeding, boarding, training, keeping or caring of animals for commercial purposes (other than for the agistment of horses), and includes any associated riding school or ancillary veterinary hospital.*

The applicant has confirmed that the horse stables and arena will be ancillary to the dwelling house. An assessment of the application against the objectives of the zone is provided below:

#### Objectives of zone

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

#### Response:

Not relevant, there is no existing primary industry production on the site and the proposal maintains the existing residential use of the site.

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



Response:

Concern has been raised regarding the excessive earthworks, in particular the landfill, and the visual impact of the high retaining walls associated with the horse arena within the front setback on the landscape character of the RU2 Rural Landscape zone, the streetscape and neighbouring properties. To address it was suggested that the design be amended to increase the setback of the arena by 10.0m to the south and 2.0m to the front. This in turn will help ensure that the size of the horse arena presents as domestic scale and ensure sufficient space for landscape planting to soften the visual impact of the structure from the public domain. This suggestion was supported in principle by the applicant, however, it was requested that the required design changes be subject to a condition of consent. As the applicant has failed to provide sufficient information to (a) address concerns from Council's Biodiversity Officer and (b) confirm that the recommendations of the 2018 geotechnical report are still valid, the application cannot be supported. As such, issues with respect to the visual impact of the development on the rural landscape character cannot be conditioned and remain outstanding. In summary, due to the siting and scale of the development and the limited space for landscaping the proposal does not maintain the rural character of the land and is therefore inconsistent with objective 1 of the zone.

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

Response:

As above, the proposal retains the existing residential use of site which is permissible within the zone.

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

Response:

The proposal will not unreasonably increase the demand for public services / facilities and conditions could be recommended to ensure this.

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

Response:

As above, the scale and visual impact of the horse arena and stables will have an unreasonable impact on the adjoining R3 Medium Density Residential zone.

## **7.2 Earthworks**

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

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

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

Comment: Amended stormwater plans have been submitted to satisfy Council that the proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

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

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

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

Comment: Concern is raised in respect to the amount of fill being proposed which results in significant changes to the landform especially towards the front of the site. As a result of the proposed landfill retaining walls, up to 4.2m in height, are proposed with a 2.0m setback to the street. While conditions could be imposed to ensure that the quality of the fill is acceptable, in principle, the extent of earthworks is not supported and the proposal is assessed as being inconsistent with the objectives of the control.

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

Comment: Due to the extent of landfill and the creation of a retaining walls up to 4.5m in height at the street frontage the proposal will have an unreasonable adverse visual impact on the amenity of the adjoining residential properties to the immediate east.

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

Comment: As above, the extent of fill is not supported due to the unreasonable visual impacts.

*(f) the likelihood of disturbing relics*

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

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

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

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

Comment: The geotechnical report submitted with the application does not relate to the subject proposal, therefore, the recommendations of the report cannot be relied upon to ensure impacts from the earthworks are minimised. In addition, the proposed landfill and associated retaining walls will result in unreasonable the visual impacts to the adjoining residential area.

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

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

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## 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:

Insufficient information has been submitted to demonstrate 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. Insufficient information has been submitted to demonstrate 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:

Insufficient information has been submitted to satisfy Council 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:

Insufficient information has been submitted to satisfy Council that the development is designed, sited and will be managed to any significant adverse environmental impact.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## 7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for

development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

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

Comment:

The Geotechnical report does not relate to the subject development, as such, insufficient information has been submitted to satisfy Council that the proposed development has been designed to ensure that all geotechnical risks have been taken into account.

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

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

Comment:

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

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

- (i) *the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
- (ii) *if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*
- (iii) *if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.*

Comment:

As above, the Geotechnical report does not relate to the subject development, as such, insufficient information has been submitted to satisfy Council that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## Pittwater 21 Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	20m	Dwelling 48.9m Hay Store 8.8m	NA	Yes <b>No</b>

		Manure store 18.9m Walls / fences associated to horse arena approx 1.8m - 2.4m		<b>No No</b>
Rear building line	7.5m	48.6m	N/A	Yes
Side building line	Northern 7.5m	Northern 2.2m	N/A	<b>No</b>
	Southern 7.5m	Southern 9.5m	N/A	Yes
Building envelope	3.5m	Northern Within envelope	N/A	Yes
	3.5m	Southern Within envelope	N/A	Yes
Landscaped area	96% minus 400m <sup>2</sup>	Insufficient information to confirm compliance	Unknown	No

#### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
A1.7 Considerations before consent is granted	No	No
A4.14 Warriewood Locality	No	No
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	No	No
B3.2 Bushfire Hazard	Yes	Yes
B4.18 Heathland/Woodland Vegetation	No	No
B5.15 Stormwater	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	No	No
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	No
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.23 Eaves	Yes	Yes
D14.1 Character as viewed from a public place	No	No
D14.2 Scenic protection - General	No	No
D14.3 Building colours and materials	Yes	Yes
D14.7 Front building line	No	No
D14.8 Side and rear building line	No	No
D14.14 Landscaped Area - Non Urban	No	No
D14.16 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D14.17 Construction, Retaining walls, terracing and undercroft areas	No	No

#### Detailed Assessment

#### **A4.14 Warriewood Locality**

Warriewood Locality - Desired Future Character (DFC)

*Existing residential areas will remain primarily low-density with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.*

*Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.*

#### Response:

The proposed earthworks includes 1,330m<sup>3</sup> of fill to the frontage of the site and associated retaining walls, up to 4.5m in height, which are setback 2.0m from the front boundary. Due to the significant landfill to the frontage of the site and the scale of the associated retaining walls insufficient space is retained to the frontage of the site to allow for suitable landscape planting to help reduce the visual impact of the development. As such, the proposal fails to integrate with the landform and landscape and is inconsistent with the desired future character of the Warriewood Locality.

#### **B3.1 Landslip Hazard**

The control requires:

*All development on land to which this control applies must comply with the requirements of the Geotechnical Risk Management Policy for Pittwater (see Appendix 5).*

*Development must be designed and constructed to ensure that every reasonable and practical means available is used to remove risk to an acceptable level as defined by the Geotechnical Risk Management Policy for Pittwater (see Appendix 5) for the life of the development.*



*The development must not adversely affect or be adversely affected by geotechnical processes nor must it increase the level of risk for any people, assets and infrastructure in the vicinity due to geotechnical hazards.*

Comment:

The geotechnical report submitted with the application does not relate to the proposed development. As such, insufficient information has been submitted to demonstrate that the development is designed and constructed to ensure that every reasonable and practical means available is used to remove risk to an acceptable level. Further, insufficient information has been submitted to confirm that the development will not adversely affect or be adversely affected by geotechnical processes nor must it increase the level of risk for any people, assets and infrastructure in the vicinity due to geotechnical hazards. The proposal is therefore inconsistent with the requirements of the control and the following outcomes:

*Protection of people.*

*Protection of the natural environment.*

*Protection of private and public infrastructure and assets.*

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

The controls requires:

*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.*

*Wastewater shall receive tertiary treatment and not be discharged directly into heathland.*

*Compliance with Council's Water Management for Development Policy is required.*

*Caretakers of domestic animals shall prevent them from entering wildlife habitat areas.*

*Fencing, where permitted, shall allow the safe passage of native wildlife.*

*Development shall not negatively impact on heathland.*

*Development shall ensure long-term sustainability of wetlands and must include an appropriate buffer - minimum of 10 metres from wetland edge.*

*Development shall ensure that at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Native Plants for Your Garden available on the Pittwater Council website).*

*Landscaping works are to be outside areas of bushland and do not include environmental weeds.*

Comment:

Insufficient information has been submitted to demonstrate that the development will retain and enhance wildlife corridors or reduce or degrade habitat for locally native species. As such the proposal

is inconsistent with the requirements and outcomes of the control. Refer to the detailed comments from Council's Biodiversity Officer in the referral section of this report.

### **B6.3 Off-Street Vehicle Parking Requirements**

The proposal includes a double garage which is part of the dwelling plus 4 additional parking and turning bays located within the northern setback close to the frontage of the site.

As before, the applicant has confirmed that the development is for a dwelling and ancillary horse arena and stables. The control requires 2 parking spaces for the dwelling there is no requirement for parking for the horse arena and stables as such an excessive number of car parking spaces are proposed which suggests a more commercial use. The application cannot be supported primarily due to insufficient information, otherwise a condition could have been imposed to require the deletion of the excessive spaces.

### **B8.1 Construction and Demolition - Excavation and Landfill**

The control requires:

*Excavation and landfill on any site that includes the following:*

- *Excavation greater than 1 metre deep, the edge of which is closer to a site boundary or structure to be retained on the site, than the overall depth of the excavation;*
- *Any excavation greater than 1.5 metres deep below the existing surface;*
- *Any excavation that has the potential to destabilize a tree capable of collapsing in a way that any part of the tree could fall onto adjoining structures (proposed or existing) or adjoining property;*
- *Any landfill greater than 1.0 metres in height; and/or*
- *Any works that may be affected by geotechnical processes or which may impact on geotechnical processes including but not limited to constructions on sites with low bearing capacity soils,*

*must comply with the requirements of the Geotechnical Risk Management Policy for Pittwater (see Appendix 5) as adopted by Council and details submitted and certified by a Geotechnical Engineer and/or Structural Engineer with the detail design for the Construction Certificate.*

#### Merit Consideration

- *Site disturbance is minimised.*

#### Comment:

The proposal includes significant earthwork including 1,330m<sup>3</sup> of fill towards the site frontage which will result in significant site disturbance contrary to the requirement of the control.

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

#### Comment:

The geotechnical report submitted with the application does not relate to the proposed

development, as such insufficient information has been submitted to confirm that the excavation and landfill will not have an adverse impact contrary to the requirement of the control.

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

Comment:

As above, the geotechnical report submitted with the application does not relate to the proposed development, as such insufficient information has been submitted to confirm that the excavation and landfill will not have an cause damage to adjoining property contrary to the requirement of the control.

Having regard to the above assessment, it is considered that the proposed development is inconsistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported / is not supported, in this particular circumstance.

### **C1.1 Landscaping**

The control requires:

*All canopy trees, and a majority (more than 50%) of other vegetation, shall be locally native species. Species selection and area of landscape to be locally native species is determined by extent of existing native vegetation and presence of an Endangered Ecological Community. Note if the land is within an Endangered Ecological Community there will be a Development Control specifically covering the requirements for Landscaping in an Endangered Ecological Community.*

*In all development a range of low-lying shrubs, medium-high shrubs and canopy trees shall be retained or provided to soften the built form.*

*At least 2 canopy trees in the front yard and 1 canopy tree in the rear yard are to be provided on site. Where there are existing canopy trees, but no natural tree regeneration, tree species are to be planted to ensure that the canopy is retained over the long-term. Where there are no canopy trees the trees to be planted are to be of sufficient scale to immediately add to the tree canopy of Pittwater and soften the built form.*

*Each tree planted is to have a minimum area of 3 metres x 3 metres and a minimum 8m<sup>3</sup> within this area to ensure growth is not restricted.*

*The following soil depths are required in order to be counted as landscaping:*

*300mm for lawn  
600mm for shrubs  
1metre for trees*

*The front of buildings (between the front boundary and any built structures) shall be landscaped to screen those buildings from the street as follows:*

*Screening shall be of vegetation (not built items), and shall be calculated when viewed directly onto the site.*

*In bushfire prone areas, species shall be appropriate to the bushfire hazard.*

*Landscaping shall not unreasonably obstruct driver and pedestrian visibility.*

*Development shall provide for the reasonable retention and protection of existing significant trees, especially near property boundaries, and retention of natural features such as rock outcrops.*

*Canopy trees are to be located a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used.*

Comment:

The proposal seeks consent for extensive earthworks and associated retaining walls up to 4.5m in height sited 2.0m from the frontage. The proposal is assessed against the outcomes of the control:

*A built form softened and complemented by landscaping.*

Comment:

Insufficient space is retained to the frontage to support landscaping planting to screen the development and help soften the built form.

*Landscaping reflects the scale and form of development.*

Comment:

The excessive earthworks and large retaining walls suggest a scale of development that is not consistent with the RU2 Rural Landscape zone. As above, insufficient space is retained to the frontage to screen and soften the development.

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

Comment:

The proposal seeks consent for the removal of 76 existing trees. Insufficient information has been submitted to satisfy Council's Biodiversity Officer that the proposal can be supported as detailed in the referral section of this report.

*Development results in retention of existing native vegetation.*

Comment:

As above, insufficient information has been submitted to support the removal of canopy trees.

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

Comment:

As above, insufficient information has been submitted to support the removal of canopy trees.

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

*Landscaping enhances habitat and amenity value.*

Comment:

As above, insufficient information has been submitted to satisfy Council's Biodiversity Officer that the proposal can be supported as detailed in the referral section of this report.

*Landscaping results in reduced risk of landslip.*

Comment:

As above, the geotechnical report does not relate to the subject development, therefore insufficient information has been submitted to ensure that there is no landslip risks.

*Landscaping results in low watering requirement.*

Comment:

The landscaping associated with the development is not acceptable therefore this outcome is not relevant.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **C1.6 Acoustic Privacy**

It is not anticipated that the ancillary use of the arena for horse training and riding will result in unreasonable acoustic impacts to neighbours.

## **C1.17 Swimming Pool Safety**

The control requires:

*Swimming pool fencing and warning notices (resuscitation chart) shall be manufactured, designed, constructed, located and maintained in accordance with the Swimming Pools Act 1992 and regulations. The fencing and warning notices (resuscitation chart) shall be permanent structures.*

The proposal is assessed against the outcomes of the control:

*The promotion of personal safety.  
Compliance with Swimming Pools Act 1992 and Regulations.*

Comment:

No details of the swimming pool fence have been submitted, as such, insufficient information has been submitted to confirm that the proposal is consistent with the requirement and outcomes of the control.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.1.3 of

the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

#### **D14.1 Character as viewed from a public place**

The control requires:

*The bulk and scale of buildings must be minimised.*

*Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.*

The 1000m<sup>2</sup> horse arena is setback between 1.7m and 2.4m from the frontage, due to extensive landfill required to level the frontage of the site to create the arena extensive retaining walls are required along the frontage which measure up to 4.5m in height at the south-eastern corner.

The proposal is assessed against the outcomes of the control:

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

Comment:

As above, the proposal does not achieve the desired future character of the Warriewood Locality.

Comment:

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

Comment:

Significant earthworks are proposed to the frontage of the site with limited space of landscaping planting to help screen the development. As such, the development fails to respond to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment.

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

Comment:

The height and scale of the retaining walls associated with the horse arena and the limited setback to allow for sufficient landscape screening will result in a development that will have an unreasonable visual impact on the streetscape due to its height, scale and density.

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

Comment:

The height and scale of the built form associated with the horse arena with insufficient space for landscape planting results in a development that dominates the street frontage contrary to the



outcome of the control.

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

Comment:

The retaining walls are excessive in height and dominate the natural environment.

*Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum.*

Comment:

As above, the retaining walls are excessive in height and are not at a human scale.

*To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.*

Comment:

It is not expected that the proposal will negatively impact views.

*To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.*

Comment:

The proposal does not enhance the rural landscape setting.

*To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land.*

Comment:

The proposal does not complement the landscape character of the area.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

#### **D14.2 Scenic protection - General**

The control requires:

*Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.*

The application is assessed against the outcomes of the control:

*Achieve the desired future character of the Locality.*

Comment:

As above, the proposed development does not achieve the desired future character of the Locality.

Comment:

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

*Preservation of the visual significance of the Ingleside/Warriewood Escarpment.*

Comment:

As above, the built form dominates the site as viewed from the public domain and the landscape is secondary.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

#### **D14.7 Front building line**

The control requires:

*Built structures, other than driveways, fences and retaining walls are not permitted within the front building setback. The applicable front setback is 20m.*

The retaining walls and fence that enclose the horse arena are located entirely within the front setback. In addition, the hay store and three (3) car parking are located within the front setback.

Technically the retaining walls to the horse arena are permitted within the front setback, however, the height and scale of the structure and limited front setback for landscape screen planting will result in a development that is inconsistent with the following outcomes of the control.

*Achieve the desired future character of the Locality.*

Comment:

Refer to discussion above.

*The amenity of residential development adjoining a main road is maintained.*

Comment:

The scale and density of the development will have an unreasonable visual impact on the amenity of the residential development on the opposite side of the road.

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

Comment:

As above, there is insufficient space within the frontage to scree and soften the built form.

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

Comment:

As above, the proposal will not preserve or enhance the rural character of the locality.

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

Comment:

Due to the scale of the development within the front setback and insufficient space for landscape screening the proposal will not enhance the existing streetscape.

*To encourage attractive street frontages and improve pedestrian amenity.*

Comment:

The proposal does not present an attractive street frontage and the retaining walls and other structures dominate the rural landscape as observed by pedestrians.

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

Comment:

As above, due to the setting of the proposal the development responds to, reinforces and sensitively relates to the spatial characteristics of the existing environment

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

#### **D14.8 Side and rear building line**

The control requires a side setback of 7.5m. The proposed hay store is setback 2.2m from the northern boundary and is inconsistent with the requirement and following outcomes of the control:

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

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

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

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

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

#### **D14.14 Landscaped Area - Non Urban**

The control requires 96% of the site area minus 400m<sup>2</sup>.

Insufficient information has been submitted with the application to determine compliance with the control.

#### **D14.17 Construction, Retaining walls, terracing and undercroft areas**

The control requires:

*Lightweight construction and pier and beam footings should be used in environmentally sensitive areas.*

*Where retaining walls and terracing are visible from a public place, preference is given to the use of sandstone or sandstone like materials.*

*In the provision of outdoor entertaining areas, preference is given to timber decks rather than cut/fill, retaining walls and/or terracing.*

*Undercroft areas shall be limited to a maximum height of 3.5 metres. Adequate landscaping shall be provided to screen undercroft areas.*

The proposal includes the construction of gabion retaining walls up to 4.5m in height within the front setback. The proposal is assessed against the outcomes of the controls.

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

#### Comment:

As above, the proposal does not achieve the DFC of the Warriewood Locality.

*To protect and minimise disturbance to natural landforms.*

#### Comment:

The proposal includes significant earthwork and disturbance to the natural landforms.

*To encourage building design to respond sensitively to natural topography.*

#### Comment:

The design does not respond sensitively to the natural environment.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

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

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## CONCLUSION

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

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

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

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 DA2024/0262 for the Demolition works and construction of a dwelling house, horse arena, stables and paddocks on land at Lot 6 DP 749791, 113 Orchard Street, WARRIEWOOD, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
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 Zone RU2 Rural Landscape of the Pittwater Local Environmental Plan 2014 and the following Clauses contained in the Pittwater 21 Development Control Plans: Clause A4.14 Warriewood Locality, Clause C1.1 - Landscaping, Clause D14.1 Character as viewed from a public place, D14.2 Scenic Protection - General, Clause D14.7 Front building line and D14.8 Side and rear setbacks

Particulars:

The proposal includes significant landfill to the frontage of the site and the construction of extensive retaining walls associated with the horse arena. The proposal also includes a shed and car parking within the 20m front setback. Insufficient space is retained to the frontage to allow space for suitable landscaping to screen the development and reduce the visual impact of the built form. As such, the proposed development does not maintain the rural character of the land contrary to the RU2 Rural Landscape zone objectives. The proposal fails to integrate with the landform and landscape and is inconsistent with the desired future character of the Warriewood Locality and the scenic qualities of the area. The proposal will result in unreasonable visual impacts on the streetscape and the adjoining R2 Low Density Residential Zone.

3. 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 7.2 Earthworks and Clause 7.7 Geotechnical Hazards of the Pittwater Local Environmental Plan 2014 and Clause B3.1 Landslip Hazards and Clause B8.1 Construction and Demolition - Excavation and Landfill of the Pittwater 21 Development Control Plan.

Particulars:

The geotechnical report submitted with the application does not relate to the proposed development. As such, insufficient information has been submitted to demonstrate that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

4. 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 and Clause B4.18 Heathland / Woodland Vegetation of the Pittwater 21 Development Control Plan.

Particulars:

(i) Insufficient information has been submitted to demonstrate 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. Insufficient information has been submitted to demonstrate that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land. Insufficient information has been submitted to satisfy Council that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

(ii) The proposed development has not been accompanied by a completed BDAR as required by the *Biodiversity Conservation Act 2016*.

5. 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 C1.17 Swimming Pool Safety of the Pittwater 21 Development Control Plan.



#### Particulars

No details of the swimming pool fence have been submitted, as such, due to insufficient information, the proposal has failed to demonstrate compliance with the requirements and outcomes of Clause C1.17 Swimming Pool Safety.

6. 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 D14.17 Construction, Retaining walls and undercroft area of the Pittwater 21 Development Control Plan.

#### Particulars:

Due to the scale of the retaining walls within the front setback and insufficient space for landscape screening the proposal will not enhance the existing streetscape contrary the outcomes of the control.

7. 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 D14.14 Landscaped Area - Non Urban of the Pittwater 21 Development Control Plan.

#### Particulars

Due to insufficient information it has not been possible to confirm that the proposal retains a sufficient amount of landscape open space to comply with the requirements and outcomes of Clause D14.14 Landscaped Area - Non Urban.

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

#### **Signed**



**Anne-Marie Young, Principal Planner**

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



**Adam Richardson, Manager Development Assessments**