

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2018/1227
<b>Responsible Officer:</b>	Kent Bull
<b>Land to be developed (Address):</b>	Lot 14 DP 236797, 59 Cheryl Crescent NEWPORT NSW 2106
<b>Proposed Development:</b>	Demolition works and construction of a detached secondary dwelling
<b>Zoning:</b>	E4 Environmental Living
<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>Owner:</b>	Nenad Gligorevic Veronika Gligorevic Predrag Gligorevic Ljeposava Gligorevic
<b>Applicant:</b>	Nenad Gligorevic
<b>Application lodged:</b>	17/07/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New second occupancy
<b>Notified:</b>	21/12/2018 to 25/01/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 137,810.00

### 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 - 5.4 Controls relating to miscellaneous permissible uses

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

Pittwater 21 Development Control Plan - C1.1 Landscaping

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - C1.7 Private Open Space

Pittwater 21 Development Control Plan - D10.4 Building colours and materials

Pittwater 21 Development Control Plan - D10.13 Landscaped Area - Environmentally Sensitive Land

Pittwater 21 Development Control Plan - D10.16 Construction, Retaining walls, terracing and undercroft areas

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 14 DP 236797 , 59 Cheryl Crescent NEWPORT NSW 2106
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Cheryl Crescent. The site is known as 58 Cheryl Crescent, Newport and is legally referred to as Lot 14 in DP 236797.</p> <p>The site is irregular in shape with a frontage of 8.3m along Cheryl Crescent and a total area of 784.1m<sup>2</sup>. The slope of the site is 49.4% and falls from the northwestern corner of the site to the rear boundary. Primary vehicular and pedestrian access is gained via Cheryl Crescent. A right of carriageway intersects the property at the rear.</p> <p>The site is located within the E4 Environmental Living zone. The site currently accommodates a three (3) storey brick dwelling house located towards the front and two metal sheds towards the rear portion of the site.</p> <p><b>Detailed Description of Adjoining/Surrounding Development:</b></p> <p>Adjoining and surrounding development is characterised by low density residential dwellings within a heavily landscaped setting.</p>

Map:



## **SITE HISTORY**

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

### 20 March 2017

Development Application N0367/16 for the construction of a secondary dwelling was refused by Council on 20 March 2017. The proposed development was contrary to drainage and stormwater controls under B5.7 and B5.10 as well as built form and natural environment controls under D10.8, D10.11, D10.13, D10.16 and D10.18 of the P21 DCP.

## **APPLICATION HISTORY**

### 17 July 2018

Development Application DA2018/1227 lodged for the construction of a secondary dwelling.

### 28 August 2018

Site inspection undertaken.

### 18 October 2018

A letter was issued to the applicant requesting that the application be withdrawn due to concerns that the proposed development would not meet the landscaping requirements of the P21 DCP.

### 6 November 2018

Following a phone discussion with applicant concerning the intention to submit amended plans, an email was sent to the applicant raising further issues concerning the overall height of the proposed development would not meet the requirements of Clause 4.3 (Height of Building) of the Pittwater LEP

2014 and meeting the private open space and access requirements of the P21 DCP.

#### 7 December 2018

Amended plans were submitted by the applicant addressing the above concerns. These documents form the basis of the following assessment.

#### 21 December 2018

Amended plans were subject to re-notification to adjoining property owners between 21 December 2018 to 25 January 2019.

#### 25 January 2019

Re-notification period closed.

#### 5 February 2019

Geotechnical Addendum Letter and revised BASIX Certificate submitted by the applicant.

### **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks consent for the construction of a secondary dwelling. In particular, the works include:

- Construction of secondary dwelling in the rear yard
- Construction of retaining walls and access stairs between the secondary dwelling and principal dwelling
- Demolition of two metal sheds, associated decking and stairs in the rear yard

### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 Matters for Consideration'	Comments
	<p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<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>	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <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</p>



Section 4.15 Matters for Consideration'	Comments
	economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mrs Robyn Elizabeth Phillips	72 Wallumatta Road NEWPORT NSW 2106

The following issues were raised in one (1) submission and each have been addressed below:

- Use of right of carriageway for construction vehicles  
Comment:  
The submission received raised concerns regarding damage arising from the use of the right of way for construction vehicles. In order to address this concern, conditions have been recommended to ensure construction vehicles and material do not to impede access for the properties that benefit from the right of carriageway, that construction vehicles within the right of way must not be larger than a 2 ton tipper type vehicle, and that all costs incurred to ensure the rectification of any damage that occurs to the right of way as a result of construction or the transportation of materials and equipment to and from the development site must be borne by the person entitled to act on this Consent.
- Damage to private property  
Comment:  
Concerns were raised in the submission received regarding potential damage to private property arising from the works associated with the proposed development. In order to address this concern, a condition has been recommended to require the production of a pre and post Dilapidation Report with respect of the adjoining property.

- Landslip Hazard

Comment:

A submission was received from the adjoining property owner at 72 Wallumatta Road, raising concerns of the stability of the site at 59 Cheryl Crescent. Council's Development Engineer has provided comments indicating the submitted Geotechnical Report addresses relevant P21 DCP controls and raised no objections, subject to conditions as recommended.

- Stormwater runoff

Comment:

The submission received from the down slope adjoining property raised concerns relating to stormwater runoff arising from the proposed development. Council's Development Engineer has provided comments indicating that the submitted drainage design is in accordance with the P21 DCP.

- Off-Street Parking

Comment:

A submission was received from the adjoining property owner at 72 Wallumatta Road, raising concerns regarding the location of parking for the occupants of the proposed secondary dwelling. The application proposes that the additional parking space for the secondary dwelling to be located on the existing concrete driveway which is accessed via Cheryl Crescent. This arrangement is considered acceptable on merit and a preferable solution compared to access from the right of carriageway. See Clause B6.3 Off-Street Vehicle Parking Requirements for discussion.

- Environmental Impact and Tree Coverage

Comment:

A submission was received from the adjoining property owner at 72 Wallumatta Road, raising concerns regarding the necessity for trees on the subject site. In order to address this concern, as well as visual privacy concerns, conditions have been recommended for the planting of locally native shrub species and a canopy tree prior to the issue of an Occupational Certificate. See Clause C1.1 Landscaping for discussion.

- Visual Privacy

Comment:

A submission was received from the adjoining property owner at 72 Wallumatta Road, raising concerns of overlooking and privacy from the proposed secondary dwelling, directly south, towards the private open space of 73 Wallumatta Road. The application proposes louvred privacy screens on all windows along the southern elevation of the secondary dwelling. Conditions have also been recommended for the planting of locally native shrub species to screen the proposed development when viewed from adjoining properties. See Clause C1.5 Visual Privacy for discussion.

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	The landscape component of the proposal is acceptable subject to

Internal Referral Body	Comments
	<p>completion of landscaping.</p> <p>Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP 2014 Controls:</p> <p>C1.1 Landscaping</p> <p>C1.11 Secondary Dwellings and Rural Worker's Dwellings D10.16 Construction, Retaining walls, terracing and undercroft areas</p> <p><b>Planner Comments:</b></p> <p>Condition (Required planting) amended to include the the provision of one (1) canopy tree in accordance with the requirements under Clause C1.1 Landscaping.</p>
NECC (Bushland and Biodiversity)	<p>Council's Bushland and Biodiversity section considers the Development Application to be consistent with the following Pittwater 21 DCP 2014 Controls:</p> <p>B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community Outcomes: Conservation of intact Pittwater Spotted Gum Forest EEC. Regeneration and/or restoration of fragmented and / or degraded Pittwater Spotted Gum Forest EEC. Reinstatement of Pittwater Spotted Gum Forest to link remnants. Long-term viability of locally native flora and fauna and their habitats through conservation, enhancement and/or creation of habitats and wildlife corridors.</p>
NECC (Development Engineering)	<p>The existing driveway and carparking area off Cheryl Cr are to remain which satisfies the DCP requirements for access and carparking for this proposal. The submitted drainage design is in accordance with Council's stormwater DCP controls. The submitted geotechnical report also satisfies the relevant DCP controls. No objection to approval, subject to conditions as recommended.</p> <p><b>Amended plans and information received 5/02/2019</b></p> <p>The revised architectural plan has been reviewed and the changes do not alter the previous assessment by Development Engineering. The amended Geotechnical report has been included in the conditions.</p> <p>No objection to approval, subject to conditions as recommended.</p>

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



## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

#### SEPP 55 - Remediation of Land

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

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

A BASIX certificate has been submitted with the application (see Certificate No. 931102S\_02 dated 05 February 2019).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	40	50

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

#### SEPP (Infrastructure) 2007

##### Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.

- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

**Pittwater Local Environmental Plan 2014**

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	5.5m	4.5m	N/A	Yes
Secondary Dwelling:	60m <sup>2</sup>	56m <sup>2</sup>	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

**5.4 Controls relating to miscellaneous permissible uses**

The proposed floor area of the secondary dwelling is measured at 56m<sup>2</sup>.

**Pittwater 21 Development Control Plan**

Built Form Controls

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Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	36.6m	N/A	Yes
Rear building line	6.5m	8.8m	N/A	Yes
Side building line	2.5m	4m	N/A	Yes
	1m	2.8m	N/A	Yes
Building envelope	3.5m	Within envelope	N/A	Yes
	3.5m	Within envelope	N/A	Yes
Landscaped area	60%	49.94%	16.77%	No

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	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	No	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	No	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	No	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D9.17 Scenic Protection Category One Areas	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	No	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	Yes	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D10.15 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	No	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

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

The proposed development indicates the additional parking space for the secondary dwelling to be located on the existing concrete driveway which is accessed via Cheryl Crescent. While the additional parking space does not comply with the cross-fall requirements for an open car parking space and the existing double carport is technically non-compliant with this control, Council's Development Engineer has reviewed the existing driveway and car parking area and indicated that the arrangement satisfies the requirements for access and carparking of this clause. The control also allows a merit consideration for a reduction in the car parking requirements for secondary dwellings to a minimum of 2 spaces per allotment. Variations can also be considered for the provision for additional carparking to be waived on steep sloping sites. In considering the on-street parking available on Cheryl Crescent and the difficulty to provide a compliant parking space due to topographical site constraints, the proposed parking arrangement is considered acceptable and able to meet the demands generated by the development.

Based on the consideration above, the proposed development is consistent with the outcomes of the control and the non-compliance is supported on merit.

### **C1.1 Landscaping**

The application does not provide for any additional landscape plantings or canopy trees to the subject site and therefore is inconsistent with the requirements of clause C1.1 of the P21 DCP. In order for the built form of the proposed development to be sufficiently screened, as well as to enhance the biodiversity of the area through the use of locally native plant species and a canopy tree, a condition is

recommended for additional plantings prior to the issue of any Occupational Certificate.

Subject to compliance with this condition, the proposed development is consistent with the outcomes of the control.

### **C1.5 Visual Privacy**

The control states that private open space areas of proposed and any existing adjoining dwellings are to be protected from direct overlooking by such measures as landscaping and screening devices. In order to address concerns of visual privacy resulting from the proximity of the proposed secondary dwelling and private open space of 72 Wallumatta Road, the overall height of the secondary dwelling has been reduced from 6.67m to 4.5m and the setback from the rear boundary increased from 6.3m to 8.8m. The application also proposes louvred privacy screens on all windows along the southern elevation of the secondary dwelling to further maintain privacy. Conditions have also been recommended for the planting of locally native shrub species to screen the proposed development when viewed from adjoining properties. Subject to compliance with this condition, the proposal in this instance is considered to satisfy the objectives of this clause and is supported on its merits.

### **C1.7 Private Open Space**

The submitted site plan indicates a 10m<sup>2</sup> of private open space directly north of the entry to the secondary dwelling. The purposes of a private open space is for the area to be used for outdoor purposes such as for recreation, clothes drying facilities and are to function as an extension of internal living areas. While the slope constraints of the site limit the available usable area, retaining walls have been proposed, in part, to improve accessibility to the secondary dwelling and private open space from timber access stairs along the eastern side boundary. The private open space does not reduce the existing private open space of the principal dwelling, and its location behind the secondary dwelling when viewed from the right of carriageway, maximises privacy and solar access for the occupants. The area is therefore considered sufficient for private open space. The proposal is considered to satisfy the objectives of this clause and is supported on merit.

### **D10.4 Building colours and materials**

The proposed secondary dwelling external colours and finishes to match the existing dwelling is not authorised. A condition is recommended to ensure that the development compliance with the requirements for dark and earthy tones under the control.

### **D10.13 Landscaped Area - Environmentally Sensitive Land**

Existing Landscape Area: 54% (425.657m<sup>2</sup>)  
Required Landscape Area: 60% (470.46m<sup>2</sup>)  
Proposed Landscape Area: 49.9% (391.58m<sup>2</sup>)  
Proposed Landscape Area (with variations): 59.1% (463.85m<sup>2</sup>)

The proposed development is technically non-compliant with the control that requires 60% of the total site area to be dedicated for landscaping. The proposal seeks to vary this control reducing the overall landscape area to 49.9% (391.58m<sup>2</sup>), representing a shortfall of 78.88m<sup>2</sup>. The variations of this clause allow for a revised landscape area calculation to include imperious area of less than 1m in width, and up to 6% of the total site area if used for outdoor recreational purposes. Total pathways is 3.2% (25.27m<sup>2</sup>) and the variation for outdoor recreational areas is 6% (47m<sup>2</sup>). The revised landscape area is 59.1% (463.85m<sup>2</sup>). While there remains a non-compliance the proposal seeks to remove 33.61m<sup>2</sup> of hard surface being two sheds to reduce the stormwater and built form impacts on site. As the rear yard lacks significant vegetation, conditions have been recommended for the planting of locally native shrub

species to screen the proposed development and enhance the bushland character of the site. Existing amenity to adjoining property owners is unlikely to be affected by the proposed secondary dwelling with adequate setbacks, solar access and amenity provided to neighbouring properties. Subject to compliance with these conditions, the proposed development is considered to meet the objectives of this clause and is supported on merit.

#### **D10.16 Construction, Retaining walls, terracing and undercroft areas**

The control states that adequate landscaping shall be provided to screen undercroft areas. The application has not indicated any landscaping to screen the undercroft areas of the proposed secondary dwelling. Conditions have therefore been recommended for screen plantings in order to meet the requirements of this clause. Subject to compliance with this condition, the proposed development is considered to meet the objectives of this clause and is supported on merit.

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

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

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

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

#### **POLICY CONTROLS**

##### **Pittwater Section 94 Development Contributions Plan**

#### **CONCLUSION**

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP



- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1227 for Demolition works and construction of a detached secondary dwelling on land at Lot 14 DP 236797, 59 Cheryl Crescent, NEWPORT, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Sheet 2 of 4 (Site Plan)	30 January 2019	Bonic Building Services
Sheet 1 of 4 (Floor Plan, Elevations)	30 January 2019	Bonic Building Services

Engineering Plans		
Drawing No.	Dated	Prepared By
Sheet 4 of 4 (Retaining Wall Design Detail)	30 January 2019	Bonic Building Services

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report, J1694	29 March 2018	White Geotechnical Group
NatHERS Certificate, 002830099-01	4 February 2019	Building & Energy Consultants Australia
Geotechnical Addendum Letter, J1694A	5 February 2019	White Geotechnical Group
BASIX Certificate, 931102S_02	5 February 2019	Building & Energy Consultants Australia

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

c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No.	Dated	Prepared By
Waste Management Plan	13 July 2018	Vaughan Milligan Development Consulting P/L

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

## 2. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

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

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

Reason: Legislative Requirement (DACPLB09)

### 3. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative

change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

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

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

## FEES / CHARGES / CONTRIBUTIONS

### 4. Security Bond

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

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

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

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

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 5 February 2019 and 29 March 2018 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

### 6. On-site Stormwater Detention Compliance

Drainage plans are to be submitted by the applicant detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's Pittwater DCP21 Clauses B5.7 and B5.10, and the concept drawing by Michal Korecky, drawing number 17132 SW-1 dated 16/11/17. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater

management arising from the development.

**7. Compliance with Standards**

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

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

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

**8. Sewer / Water Quickcheck**

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

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

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACPLC12)

**9. External Colours and Materials**

The external colours and materials shall be dark and earthy tones, non-glare and of low reflectivity. White, light coloured, red or orange roofs and walls are not permitted. The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted. A satisfactory specification which achieves this shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate in the form of a Schedule of Finishes.

Reason: To ensure the external colours and materials comply with Council's requirements

**10. Dilapidation Report**

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing physical condition of adjoining public and private properties (including the right of carriageway from Wallumatta Road, any associated retaining wall and drainage system) and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council prior to the issue of the Construction Certificate, any other owners of public infrastructure and the owners of adjoining and affected private properties. This survey is to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property/ies.

All costs incurred in achieving compliance with this condition must be borne by the person entitled to act on this Consent.

If access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, to Council's satisfaction attempts have been made to obtain access and/or advise the affected property owner of the reason for the survey and these



attempts have been unsuccessful. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

Reason: To maintain proper records in relation to the proposed development. (DACPLCPCC2)

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

### **11. Installation and Maintenance of Sediment and Erosion Control**

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

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site (DACNED06)

## **CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

### **12. Road Reserve**

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

Reason: Public Safety.

### **13. Right of carriageway**

The following conditions must be complied with during demolition and building work:

(i) The right of carriageway must be used and maintained in accordance with the terms of the right of carriageway. If no weight limit is specified in the terms of the right of carriageway, construction vehicles utilising the right of way must not be larger than a 2 tonne tipper-type vehicle.

(ii) Construction vehicles and materials are not to impede access for the properties that benefit from the right of way and turning area throughout the construction phase. The applicant must provide neighbours who use the right of way and turning area with contact details of the contractor in the event that access to the right of way is blocked.

Reason: To ensure access is available to all property owners who benefit from the right of carriageway during the construction phase.

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

### **14. Required planting**

a) Existing landscaping not impacted by the works is to remain in place and protected during construction works. Any damage to existing landscaping shall be replaced with like planting.

b) Planting of locally native shrub species to achieve a height to screen the undercroft of the proposed development shall be planted to soften the built form, as follows:

i) plants shall be selected that are suited to the aspect, and may include *Banksia spinulosa*, *Callistemon viminalis*, *Ceratopetulum gummifera*, and *Melaleuca armillaris*.

ii) all planting shall be a minimum 300mm pot size. At least nine (9) plants shall be installed along the southern facade of the secondary, and set at least 2 metres from the wall.,

iii) prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the planting works have been completed in accordance with the conditions of consent.

c) Planting of locally native shrub species to achieve a height of 3 metres shall be planted along the northern boundary to the extent of new deck:

i) plants shall be selected that are suited to the aspect, and may include *Banksia spinulosa*, *Callistemon viminalis*, *Ceratopetulum gummifera*, and *Melaleuca armillaris*,

ii) all planting shall be a minimum 300mm pot size. At least four (4) plants shall be installed,

iii) prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the planting works have been completed in accordance with the conditions of consent.

d) Planting of at least one (1) locally native canopy tree in the rear yard which will achieve a minimum mature height of 8m.

(i) the tree planting shall be a minimum 75 litre pot size, and planted between 3 to 5 metres from existing and proposed built structures,

ii) prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the planting works have been completed in accordance with the conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity.

**15. Authorisation of Legal Documentation Required for Onsite Detention**

The original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land.

**16. Registration of Encumbrances for On-site Stormwater Detention**

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any

interim / final Occupation Certificate.

Reason: To identify encumbrances on land.

**17. Stormwater Disposal**

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

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

**18. On-Site Stormwater Detention Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

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

Reason: To ensure stormwater disposal is constructed to Council's satisfaction. (DACENF10)

**19. Positive Covenant and Restriction as to User for On-site Stormwater Detention**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.

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

Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy is to be completed and submitted to the Principal Certifying Authority.

Reason: To ensure geotechnical risk is mitigated appropriately.

21. **Right of Carriageway**

All costs incurred to ensure the rectification of any damage that occurs to the right of way as a result of construction or the transportation of materials and equipment to and from the development site must be borne by the person entitled to act on this Consent.

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

22. **Landscape maintenance**

- i) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species.
- ii) Any existing landscaping required to be retained together with any additional landscaping required by this Consent is to be maintained for the life of the development.

Reason: To maintain local environmental amenity

23. **No Planting Environmental Weeds**

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

Reason: Weed management.

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

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

Reason: To protect Aboriginal Heritage.

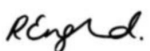
In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Kent Bull, Planner**

The application is determined on 18/02/2019, under the delegated authority of:



**Rebecca England, Acting Development Assessment Manager**