

**SUBJECT:** N0317/16 – 62 and 85 Hillside Road, NEWPORT NSW 2107 (Lot 1, DP 408800 and Lot 2, DP 1036400) Subdivision of 62 Hillside Road into 4 residential lots plus civil and landscaping works to 62 and 85 Hillside Road to facilitate the subdivision

Determination Level: Northern Beaches Independent Assessment Panel

---

**SUMMARY OF RECOMMENDATION      CONSENT WITH CONDITIONS**

---

<b>REPORT PREPARED BY:</b>	Tyson Ek-Moller
<b>APPLICATION SUBMITTED ON:</b>	25 July 2016
<b>APPLICATION SUBMITTED BY:</b>	Peter Roach Cariste Pty Ltd PO Box 7099 MCMAHONS POINT NSW 2060
<b>OWNER(S):</b>	62 Hillside Road: Cariste Pty Ltd 85 Hillside Road: Amelia Anne Gordon Roach
<b>NUMBER OF SUBMISSIONS</b>	Twenty four (24)
<b>COST OF WORKS</b>	\$90,000

---

**1.0 ISSUES:**

Pittwater Local Environment Plan 2014

- Clause 7.2 Earthworks
- Clause 7.6 Biodiversity
- Clause 7.7 Geotechnical Hazards

Pittwater 21 Development Control Plan

- A4.10 Newport Locality
- B2.2 Subdivision - Low Density Residential Areas
- B3.1 Landslip Hazard
- B3.2 Bushfire Hazard
- B4.17 Littoral Rainforest - Endangered Ecological Community
- B4.22 Preservation of Trees or Bushland Vegetation
- B5.1 Water Management Plan
- B5.10 Stormwater Discharge into Public Drainage System
- B5.12 Stormwater Drainage Systems and Natural Watercourses
- B6.2 Internal Driveways
- B6.3 Off-Street Vehicle Parking Requirements
- B6.7 Transport, Traffic Management
- B8.2 Construction and Demolition - Erosion and Sediment Management
- C1.3 View Sharing
- C1.13 Pollution Control
- C4.1 Subdivision - Protection from Hazards
- C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities
- C4.5 Subdivision - Utility Services
- C4.6 Service and delivery vehicle access in subdivisions
- C4.7 Subdivision - Amenity and Design
- D10.1 Character as viewed from a public place

## 2.0 SITE DETAILS

The subject site consists of two allotments identified as 62 and 85 Hillside Road, Newport (Lot 2, DP 1036400 and Lot 1, DP 408800 respectively). Both allotments are irregularly-shaped and surround 87 Hillside Road; the primary boundaries are oriented towards the south and adjoin the Hillside Road road reserve. The combined area of the allotments is approximately 10,633m<sup>2</sup> (based on Council records) and is steeply sloped, with an elevational change of approximately 51 metres between the highest and lowest points.



**Figure 1:** An aerial photograph of the subject and the immediate surroundings. 62 Hillside Road is outlined by the yellow border, and 85 Hillside Road is outlined by the green border.



**Figure 2:** A panoramic streetscape photo of the subject site; the existing driveway entrance is located on the left side of 87 Hillside Road, which is located in the centre of the photo.

Both sites are heavily vegetated and an ephemeral creekline/natural watercourse runs in a northwest-to-southeast direction through the site. Development on the subject site includes a

driveway (approved by Development Application No. N0274/09) that is partially constructed; 62 Hillside Road contains a small detached dwelling within the southeast portion of the site and 85 Hillside Road contains a larger two storey residential dwelling that is centrally located on that site (adjacent to the aforementioned driveway).

The subject site is within an E4 Environmental Living zone. The eastern boundary adjoins an E2 Environmental Conservation zone (commonly known as "Attunga Reserve") while all other boundaries adjoin E4-zoned residential allotments. There are also a number of other zone boundaries within the surrounding area that are as follows:

- RE1 Public Recreation zones are located approximately 80m southwest, 100m southeast and 110m north of the subject site at their nearest respective points.
- An SP2 Infrastructure (Water Supply System) zone is located approximately 60m east of the site.
- An SP2 Infrastructure (Public Utility Undertaking) zone is located approximately 90m southeast of the site.
- An SP2 Infrastructure (Community Facility) zone is located approximately 190m southeast of the site.
- Other E4 Environmental Living zones are located approximately 190m southeast, 240m southeast and 300m southwest of the site at their nearest respective points.
- Other E2 Environmental Conservation zones are located approximately 120m north and 280m southwest of the subject site.
- R2 Low Density Residential zones are located approximately 160m west, 300m southeast and 300m south of the subject site.

Both allotments within the subject site are bushfire prone and are affected by a geotechnical hazard. Both allotments are also affected by Class 5 Acid Sulphate Soils and biodiversity mapping (Littoral Rainforest). A review of the respective deposited plans noted a variable width watercourse though the site. The subject site is not within a heritage conservation area nor does it contain a heritage item, and there are no heritage items within the immediate vicinity,

Development within surrounding residential-zoned sites and areas consists predominately of low-density residential development (i.e. detached dwelling houses and associated structures such as pools, outbuildings, etc.). Development is not apparent within the E2-zoned reserve while development within the broader area largely relates to zones in which they are located.

Inspections of the subject site were undertaken by the assessing officer on 29 August 2016, 12 December 2016, 21 April 2017 and 6 June 2017. All inspections confirmed that the existing layout of the site is consistent with the submitted plans. Some works associated with the approved driveway were also noted during these inspections, though no other significant issues were identified.

### **3.0 PROPOSAL IN DETAIL**

The subject development application seeks consent for the following:

- A four (4) lot subdivision. While civil and landscaping works would affect both allotments within the subject site, the four proposed allotments would be located within the existing boundaries of 62 Hillside Road. The details of the four proposed allotments are as follows:
  - Lot 1a: 1372m<sup>2</sup>
  - Lot 1b: 2049m<sup>2</sup>
  - Lot 1c: 1277m<sup>2</sup>
  - Lot 1d: 1276m<sup>2</sup>
- Minor modifications to the driveway previously approved by Development Application No. N0274/09. Changes include:
  - Minor increases to the driveway width;
  - A 20m passing bay to compensate for a 3.5m "pinch point" adjacent to proposed Lot 1c;

- Provision of a turning Bay for service vehicles;
- Redesign of the turning “Y” bay to reallocate two off-street car visitor parking spaces
- Stormwater works to service the proposed allotments;
- Clearing of vegetation for Asset Protection Zones (APZs) and building footprints within the proposed allotments; and
- Demolition of the dwelling/associated development within 85 Hillside Road (Lot 1, DP 408800).

Apart from works associated with the subdivision, new dwellings are not proposed.

## 4.0 BACKGROUND

### 4.1 Site background:

Date	Affected site(s)	Comments
12/02/2001	85 Hillside Road, Newport	Development Application No. N1235/99 refused. The application proposed a residential subdivision comprising of one lot into three allotments. An appeal of the refusal before the NSW Land and Environment Court was discontinued on 10 September 2002.
12/02/2001	85 Hillside Road, Newport	Development Application No. N1236/99 refused. The application proposed the construction of a dwelling house on an allotment within the subdivision proposed by Development Application No. N1235/99.
12/02/2001	85 Hillside Road, Newport	Development Application No. N1237/99 refused. The application proposed the construction of a dwelling house on an allotment within the subdivision proposed by Development Application No. N1235/99.
20/03/2006	62 Hillside Road, Newport 85 Hillside Road, Newport	Development Application No. N0401/03 refused. The application proposed a residential subdivision comprising of eight allotments. An appeal of the refusal before the NSW Land and Environment Court was dismissed on 24 September 2007.
14/07/2010	62 Hillside Road, Newport 85 Hillside Road, Newport	Development Application No. N0274/09 approved for the construction of a driveway.  <b>Note:</b> The subject development application proposes modifications to this driveway. Despite the age of the original approval, the consent is not deemed to have lapsed due to the amount of work undertaken to date.
06/05/2011	85 Hillside Road, Newport	Development Application No. N0730/10 approved for the residential subdivision of one allotment into two allotments.  <b>Note:</b> This subdivision has not been registered, as completion of the driveway approved by Development Consent N0274/09 is required before the provision of services/utilities to the approved allotments can be completed. The registration of this approval would not affect the subject development application.
25/07/2016	62 Hillside Road, Newport 85 Hillside Road, Newport	Subject Development Application lodged.

### 4.2 Application history:

Date	Comments
25/07/2016	Subject Development Application lodged.

23/08/2016	Application reallocated to different assessment officer.
29/08/2016	Site inspection undertaken
24/10/2016	Request for additional information sent to the applicant.
25/11/2016	Additional information received.
12/12/2016	Site inspection undertaken
10/03/2017	External comments received from the NSW Rural Fire Service (RFS)
21/04/2017	Site inspection undertaken
12/05/2017	Final internal referral comments received.
06/06/2017	Site inspection undertaken
09/08/2017	Determination of subject application deferred by the Northern Beaches Independent Assessment Panel (NBIAP).  The deferral was made until the applicant could provide documentation that the proposed subdivision would not result in significant impacts under the <i>Environment Protection Biodiversity Conservation Act, 1999</i> (Cth) in relation to listed threatened species communities and/or populations.
25/08/2017	Request for additional information sent to the applicant.
29/01/2018	Additional information received (referral decision).

## 5.0 NOTIFICATION

### 5.1 Notification

The subject development application was advertised and notified; procedures associated with this processes included:

- The postage of notification letters to the owners of surrounding allotments and selected properties within Hillside Road;
- The placement of an advertisement in the Manly Daily (June 5, 2017); and
- The erection of a notification sign at the front of the property.

Despite objections to the contrary, inspections by the assessing officer noted that the sign was appropriately located and erected. The gate upon which the sign was erected was open during one of the inspections, however the notification sign was still visible from the public road reserve.

The subject development application was initially notified for a fourteen (14) day period from 2 August 2016 to 16 August 2016. In response, Council received twenty one (21) submissions containing twenty nine (29) signatures.

Following the submission of additional information in November 2016, the subject application was notified for a further thirty five (35) day period; the extended period was to account for the Christmas/New Year holiday period. In response, Council received a further eleven (11) submissions however ten of these were submitted by persons who had lodged a submission within the previous notification period.

It was later identified that the subject application constituted “threatened species development” and more specifically as “other advertised development” by Cl. 5(2)(b) of the *Environmental Planning and Assessment Regulation 2000*; in accordance with Cl. 89(3) of the Regulations, the subject application was advertised for a 30 day period from 6 June 2017 to 6 July 2017. In response, Council received four (4) submissions however three of these were submitted by persons who had lodged a submission within the previous notification period.

A further submission was also received following the deferral of the application by the NBIAP in August 2017.

In total, Council received a total of twenty four (24) submissions containing thirty three (33) signatures. All submissions objected to the proposal.

## **5.2 Addresses of objectors**

Where identified, the addresses of objectors are as follows:

- 3 Kanimbla Crescent, Newport
- 11 Karimbla Crescent, Newport
- 23 Kanimbla Crescent, Newport
- 38 Kanimbla Crescent, Newport
- 53 Kanimbla Crescent, Newport
- 25 Hillside Road, Newport
- 40 Hillside Road, Newport
- 42 Hillside Road, Newport
- 45-47 Hillside Road, Newport
- 6 Hillslope Road, Newport
- 52 Hillside Road, Newport
- 55 Hillside Road, Newport
- 58 Hillside Road, Newport
- 60 Hillside Road, Newport
- 69 Hillside Road, Newport
- 73 Hillside Road, Newport
- 79 Hillside Road, Newport
- 81 Hillside Road, Newport
- 87 Hillside Road, Newport

## **5.3 Issues raised by objections**

Due to the number of submissions received and the range of matters raised within them, the issues identified by the submissions have been broadly categorised and summarised below.

- Lack of detail about dwellings that would be situated on the proposed allotments
  - Visual impacts associated future residential development are unclear;
  - The visual impacts of four dwellings and fireproof fences would be significant;
  - Council should request design details about residential development on the allotments;
  - Approving a subdivision but later refusing dwellings on the lots would pointlessly sacrifice flora and fauna lost to subdivision works;
- Impacts on fauna/wildlife
  - The proposed development would have significant detrimental impacts on remaining native wildlife as the site adjoins Attunga Reserve;
  - There are no alternative locations for wildlife displaced by the proposed development. Affected wildlife would need to compete for habitat in the adjoining Attunga Reserve;
  - Changes to the vegetation canopy would be unsuitable for foraging animals;
  - The proposed development would disrupt the powerful owl, possum populations, bush hen, osprey, bats and flying foxes;
- Inadequate assessment of fauna/wildlife
  - Relevant animals are highly mobile and may be limited to occasional passage through the site, however such conclusions disregard that such animals may return to the site;
  - The fauna surveys were inadequate as they were undertaken in winter. A more comprehensive survey in different seasons would detect a greater number of species;
  - The findings of the flora and fauna report is at odds with the experiences of local residents, and a Species Impact Statement would require full community consultation;
- Impacts on flora
  - The proposed development would require the clearance of littoral rainforest, which is an endangered ecological community. The approval of any damage to such endangered communities would be inappropriate;

- Submitted information does not identify the likely effectiveness of the temporary three year vegetation management plan;
- Removal of dead wood and rocks would further degrade the area;
- Areas outside of the proposed building footprints would still be exposed/vulnerable to people moving around and storing items within “conservation areas”;
- The vegetation management plan does not cover a sufficient period of time; after five years there are no assurances that vegetation management would continue, leading to further degradation of the natural environment;
- The vegetation management plan should be implemented indefinitely;
- The felling of trees would create visual, noise and traffic impacts;
- Impacts on the environment are more important in 2016 than in 2006 due to storm damage and clearing associated with the 10/50 vegetation clearing code;
- **Parking and traffic**
  - Hillside road is congested. An additional four dwellings and eight vehicles would have an unacceptable impact on the road;
  - Parking in Hillside Road is constrained, and there would be no parking for visitors. At least four spaces per allotment should be provided for residents and visitors to the site;
  - Parked cars within Hillside Road reduces the road to single lane traffic flows, prevents emergency vehicle and garbage truck access;
  - Parked cars within the cul-de-sac turning head restricts vehicular manoeuvring. If garbage trucks cannot enter the site, twelve additional bins would be placed with the turning head at the time of collection, further reducing manoeuvring space;
- **Geological hazards**
  - The site is geologically sensitive and subject to landslip, soil creep and loose boulders;
  - There would be a significant risk to property and life if a boulder became dislodged;
  - New development that could further destabilise the area;
  - Development above Hillside Road properties has affected lower sites through increased flooding, rock falls and falling trees. The proposed development would put residents at risk;
  - Heavy engineering works could worsen such issues and put residents at risk;
- **Bush fire hazard:**
  - Most of the proposed site disturbance is associated with bushfire mitigation works;
  - Future dwellings may attract a higher Bushfire Attack Level (BAL) rating, which could worsen land clearing and disturbance;
  - Rural Fire Service requirements may prevent the retention and protection of bushland;
  - A bushfire assessment report should accompany the application;
- **Impacts on water flows and creeklines**
  - The drainage line is an ephemeral creek and should be preserved as it affects water flowing from Bilgola Plateau into reserves below;
  - The site is within an upper catchment and contains numerous ephemeral rivulet waterways which vary in size and depth. The proposal only addresses the primary creekline and does not consider smaller onsite waterways, some of which are within proposed building footprints and bushfire Asset Protection Zones;
  - Disturbance of the creek would affect aquatic fauna;
  - Alterations to local hydrology, urban runoff/pollution, increases in nutrient loads and weed control have not been adequately considered;
  - Stormwater runoff from the site currently affects properties on Hillside Road. Proposed drainage arrangements would direct rainwater into the creek; existing issues would be worsened through land-clearing, increased stormwater volumes and water velocities;
- **Noise:**
  - The shape of the valley forms an amphitheatre that would enhance noise from the proposed dwellings;
  - Garbage trucks make a lot of noise if unable to pass parked vehicles in Hillside Road;

- There would be no means by which to enforce ongoing management of the site (i.e. stormwater facilities and vegetation management);
- The slope of the proposed allotments exceeds the 30% requirement within Pittwater 21 DCP;
- Approval of the subdivision should not be justified by better weed control, as the *Noxious Weeds Act 1993* enables Council to clear noxious weeds from the land and recover costs;
- The proposed development would not address the provisions of SEPP No. 19;
- The proposed development would contravene planning controls within the *Environmental Planning and Assessment Act 1979*;
- The allotments would not comply with minimum 1,200m<sup>2</sup> lot size requirements;
- The subject development application and associated environmental impacts has not significantly changed from earlier proposals;
- One dwelling per allotment within the locality is indicative of the topographical and environmental constraints. The size of 62 and 85 Hillside Road reflects the difficult topography of the area further subdivision should not be permitted; increased density and subdivisions of existing allotments should not be permitted;
- The site was subject to an agreement by the “first council” to be a “gentleman’s property” that was not to be subdivided due to environmental and topographic constraints;
- The size of the development is too large and should be limited to two new lots to minimise impacts on the natural environment;
- The proposed development is not consistent with Council policy, as the subdivision would not create allotments that would be safe from hazards and that are appropriately serviced;
- Visual impact of streetlights and electricity wires has not been addressed;
- The location of the driveway adjacent to 85 Hillside Road could facilitate additional residential subdivision/development;
- It is unclear whether the future position and size of the allotments could be changed or incrementally expanded. The current submitted information may therefore be misleading;
- Earlier onsite sediment/erosion control measures have not been appropriately managed;
- Council should purchase the site and limit development to areas where the two existing dwellings are located;
- The Hornsby-based consulting engineers do not appreciate local requirements;
- The notification sign has not been appropriately located;
- Information was received by a resident(s) the day before the notification period closed;
- The integrity of Northern Beaches Council would be compromised by allowing the destruction of the small rainforest gully;
- The “matter” has already been determined by the Land and Environment Court; is the Council’s authority above that of the court?

#### **5.4 Response to objector issues**

Matters raised within received submissions have been considered as part of this assessment, with most issues considered as part of the detailed assessments within Parts 5 and 7 of this report. Where not specifically addressed, issues capable of being considered are discussed within the following table:

Issue	Response
<b>Lack of detail about dwellings that would be situated on the proposed allotments</b>	<p>There is no requirement for design details to be provided if dwellings are to be subject to separate applications. Submitted plans and information are however required to consider any applicable constraints and demonstrate that the proposed allotments could sufficiently accommodate suitably-sized building platforms.</p> <p>If approved, the footprints of future dwellings would be limited to the proposed building envelopes as part of restrictions on title, though the design of any future dwelling on the allotments would however be subject to a separate assessment and determined accordingly.</p>
<b>Noise</b>	<p>It is not possible to assess the impacts of any additional noise associated with future development until a future application(s) is lodged for development on the proposed</p>

	allotments; it is however likely that the proposed lots would accommodate residential development, and such land uses are not typically associated with significant noise generating activities. Construction activity (e.g. hours of construction) is subject to recommended conditions.
<b>There is scope for further allotments to be created. The layout of the site/driveway may facilitate further subdivision and/or development. The applicant may modify the proposal at a later stage.</b>	Any change to development consent would require approval by the consent authority. While resident concerns are noted, there is no prohibition preventing the applicant from submitting a proposal: <ul style="list-style-type: none"> <li>• To subdivide the site; and/or</li> <li>• To modify a development consent.</li> </ul> Any such application(s) would be subject to an assessment in accordance with applicable legislation and regulations, and would be determined accordingly.
<b>The findings of the flora and fauna report is at odds with the experiences of local residents (i.e. in terms of observations of animals, etc.).</b>	While the experiences of local residents are noted, such observations are anecdotal and no formal reporting and/or documented evidence has been submitted to contradict the observations and findings of the submitted Species Impacts Assessment.

## 6.0 Referrals:

### 6.1 Internal referrals:

**Note:** Detailed comments from Council officers are contained within Part 7 of this report.

Officer	Comments
Development Engineer	<b>Recommendation:</b> Supported, subject to conditions.
Natural Environment	<b>Recommendation:</b> Supported, subject to conditions.
S94 Contributions officer	<b>Recommendation:</b> Supported, subject to conditions.
Property and Commercial	<b>Recommendation:</b> No objections, no conditions recommended.

### 6.2 External referrals:

External body	Comments
NSW Rural Fire Service (RFS)	The subject application was referred to the NSW Rural Fire Service (RFS) on 1 August 2016. Final comments were received on 8 March 2017; these indicated that the application was supportable, subject to conditions of consent.
Electricity supply authority (Ausgrid)	The subject application was referred to the relevant Electricity supply authority. No response was received.

## 7.0 STATUTORY AND POLICY CONSIDERATIONS

### **Applicable instruments and policies:**

Where applicable, the following relevant state, regional and local instruments and policies have been considered:

- Environmental Planning and Assessment Act 1979 (the Act)
- Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).
- Coastal Management Act 2016

- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)
- State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55)
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
- Pittwater 21 Development Control Plan (P21 DCP)

**Tables of Compliance:**

T - Can the proposal satisfy the technical requirements of the control?      Y – Yes  
 O - Can the proposal achieve the control outcomes?                              N – No  
 N - Is the control free from objection?    N/A or - - Not applicable

**7.1 Acts**

<b>Environmental Planning and Assessment Act No. 203</b>				
<b>Clause</b>	<b>Assessment and Comment</b>	<b>T</b>	<b>O</b>	<b>N</b>
80 Determination	Submissions queried whether Council could act as the consent authority on the “matter”. While it did not elaborate, it is assumed that the submission was referring to the dismissal of the appeal for Development Application No. N0401/03 (See Part 4 of this report). The subject development application is unrelated to earlier development proposals and is not subject to an appeal, therefore Council would be the Consent Authority.	Y	-	N
147 Disclosure of political donations and gifts		Y	Y	Y

<b>Coastal Management Act 2016</b>			
The provisions of the Act are not applicable to the subject application, as they relate to the identification of coastal areas and the establishment of coastal management programs and coastal management manuals.	-	-	-

<b>Noxious Weeds Act 1993</b>			
A submission made reference to the <i>Noxious Weeds Act 1993</i> , however such legislation has been repealed and replaced with the <i>Biosecurity Act 2015</i> ; the provisions of this Act are not applicable to the proposal.	-	-	N

<b>Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)</b>			
<b>Biodiversity Officer comments:</b> <i>“Following preliminary assessment of the proposal by the Independent Assessment Panel in August 2017, the applicant referred the proposal to the Commonwealth Department of Environment and Energy in accordance with Section 75 of the Environment Protection and Biodiversity Conservation Act 1999.</i>  <i>The Department of Environment and Energy determined that the proposal did not constitute a controlled action on the 25 of January 2018.”</i>	Y	Y	Y

**7.2 State Environmental Planning Policies**

The following SEPPs would be applicable to the proposed development and have been assessed as follows:

<b>State Environmental Planning Policies (SEPPs)</b>				
<b>SEPP</b>	<b>Assessment and Comment</b>	<b>T</b>	<b>O</b>	<b>N</b>
SEPP (Infrastructure) 2007	<b>Division 5 – Electricity transmission or distribution</b> Pursuant to Cl. 45(2) and as noted within Part 6 of this report, the subject application was notified to the relevant electricity authority; no response was received.	Y	-	N

	<b>Division 17 – Roads and traffic</b> Division 17 of the SEPP is not applicable. The site does not have immediate access to part of the Classified Road Network, and the proposal is not considered to be “Traffic Generating Development” by Schedule 3 of the SEPP; a referral to RMS is not required.	-	-	-
Coastal Management SEPP (DRAFT)	The Coastal Management SEPP is currently in draft form. The site is within an area to which current local planning directions apply; such directions only apply however when a relevant planning authority prepares a planning proposal within affected areas. The draft SEPP is therefore not currently applicable to the subject development application.	-	-	-
SEPP No. 19 – Bushland in Urban Areas	Submissions indicate that the proposed development would not comply with the provisions of this SEPP. The SEPP does not reflect recent amalgamations, however under Schedule 1 the former Pittwater Local Government Area (LGA) was not an area to which the policy applies. The SEPP is subsequently not applicable.	-	-	<b>N</b>
SEPP No. 26 – Littoral Rainforest	While the Draft NSW Coastal Management State Environmental Planning Policy Maps indicates that Littoral Rainforest is present on the subject site, Council’s Land Information Officer has confirmed that there is no land within the former Pittwater LGA to which SEPP No. 26 applies; the SEPP is therefore not applicable. The draft Coastal Management SEPP will replace SEPP 26, however it is not currently applicable (see above).	-	-	<b>N</b>
SEPP No. 55 – Remediation of Land	A review of the site history indicates that the subject site has been used for residential purposes for an extended period of time; apart from the shed and fibro dwelling, such uses and/or development are not typically associated with activities that would result in the contamination of the site. Submitted information, site inspections and this assessment did not identify evidence of contamination. With consideration to the above, and assuming that recommended conditions are satisfied, it is unlikely that the site is significantly contaminated and would be suitable for the proposed development.	Y	Y	Y

### **7.3 Pittwater Local Environment Plan (PLEP) 2014**

#### **7.3A Permissibility:**

The subject site is located within an E4 Environmental Living zone under Pittwater Local Environment Plan (PLEP) 2014. While subdivisions are not identified within the land use table as being a permissible form of development within the E4 zone, Clause 2.6(1) of PLEP 2014 permits the subdivision of land, subject to development consent.

#### **7.4B Zone objectives**

An assessment of the objectives of the E4 zone is as follows:

<b>Objective</b>	<b>Assessment and Comment</b>
<i>To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.</i>	The proposed subdivision would facilitate future construction of residential development within an area that is affected by ecological and aesthetic values.
<i>To ensure that residential development does not have an adverse effect on those values.</i>	An assessment of the proposal indicates that the proposed development would have an acceptable level of impact on the natural environment; refer to detailed comments within Part 7 of this report.

To provide for residential development of a low density and scale integrated with the landform and landscape.	As residential development is not proposed, the visual impacts of any future residential development would be subject to the assessment of a future application(s). The proposed allotments would however provide suitable areas for residential development; the size and slope of such areas would be capable accommodating development of a density, scale and design that would likely be similar to that of surrounding development and which could be integrated with the landform and landscape.
To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.	Assessments by Council officers (refer to Part 7 of this report) concludes that, subject to conditions, the proposed subdivision would be capable of being developed in a manner that would promote the retention and enhancement of most riparian vegetation and local wildlife corridors.  Foreshore vegetation considerations are not applicable.

In summary, the proposed development is permissible with consent in the E4 Environmental Living zone and would be consistent with the objectives of the zone.

#### **7.4C Assessment of LEP standards and requirements**

Refer below to a table of compliance for applicable controls under the LEP.

Clause	Numerical Standard	Numerical Proposal	T	O	N
<b>Pittwater Local Environmental Plan 2014</b>					
1.9A Suspension of covenants, agreements and instruments			-	-	-
4.1 Minimum subdivision lot size	Minimum lot size: 700m <sup>2</sup>  <b>Note:</b> A number of submissions refer to a minimum lot size requirement of 1200m <sup>2</sup>	Proposed lot sizes: <ul style="list-style-type: none"> <li>• Lot 1a: 1372m<sup>2</sup></li> <li>• Lot 1b: 2049m<sup>2</sup></li> <li>• Lot 1c: 1277m<sup>2</sup></li> <li>• Lot 1d: 1276m<sup>2</sup></li> </ul>	Y	Y	N
4.2 Rural subdivision			-	-	-
4.3 Building Height	Maximum allowable height: 8.5m		-	-	-
4.4 Floor Space Ratio			-	-	-
4.6 Exceptions to development standards			-	-	N
5.4 Controls relating to miscellaneous permissible uses			-	-	-
5.5 Development within the coastal zone			-	-	-
5.6 Architectural roof features			-	-	-
5.7 Development below mean high water mark			-	-	-
5.8 Conversion of fire alarms			-	-	-
5.9 Preservation of trees and vegetation		<b>Note:</b> This clause was previously considered, however following the deferral of the application, it was repealed as part of changes to the LEP which became effective on 25 August 2017.	-	-	N
5.10 Heritage conservation			-	-	-
7.1 Acid Sulphate Soils		Natural Environment officer comments: "Acid Sulphate Region 5."	Y	Y	Y
7.2 Earthworks			Y	Y	N
7.3 Flood planning			-	-	-
7.4 Floodplain risk management			-	-	-
7.5 Coastal risk planning			-	-	-
7.6 Biodiversity			Y	Y	N

Clause	Numerical Standard	Numerical Proposal	T	O	N
7.7 Geotechnical hazards			Y	Y	N
7.8 Limited development on foreshore area			-	-	-
7.9 Residual lots			-	-	-
7.10 Essential services			Y	Y	N
7.11 Converting serviced apartments to residential flat buildings			-	-	-
7.12 Location of sex services premises			-	-	-

#### **7.4D Detailed assessments of relevant provisions within (PLEP) 2014**

7.6 Biodiversity (includes comments associated with the assessment of Part B4.17 (Littoral Rainforest - Endangered Ecological Community) and B4.22 (Preservation of Trees or Bushland Vegetation) of Pittwater 21 Development Control Plan)

#### **Planner comments:**

##### Clause 7.6 Biodiversity

As the subject site is subject to biodiversity mapping, Clause 7.6 is applicable to the proposal pursuant to Cl. 7.6(2) of PLEP 2014. More detailed comments addressing specific biodiversity issues are contained within comments by Council's Natural Environment officer (below), however a planning assessment of Clause 7.6 is as follows:

Clause	Comment	Compliance
(3) Before determining a development application for development on land to which this clause applies, the consent authority must 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 (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	Council as the consent authority have considered matters required to be assessed pursuant to Cl 7.6(3)(a) and (b).  Relevant assessments have identified that the site contains Littoral Rainforest and may contain some foraging habitat for certain species of fauna. While the proposal includes tree removal and some land clearing, the location of the proposed subdivision would situate large proportions of the proposed development within areas of the site that are of relatively poor environmental quality due to previous works/land clearing within those areas. The proposed locations of the building envelopes are within these disturbed areas, which would likely minimise adverse ecological impacts. As a result, the proposed development would have adverse effects on a relatively small proportion of the area consisting of good quality Littoral Rainforest. Ongoing management of remaining Littoral Rainforest within the subject site would (if approved and undertaken in accordance with recommended conditions) likely maintain and improve the quality of such areas. With regard to the above, it is unlikely that the proposed development would significantly fragment, disperse and/or reduce foraging habitats of fauna within the locality. Any impacts on threatened and local fauna are therefore unlikely to be significant.	<b>YES</b>
(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that: (a) the development is designed, sited and will be managed to avoid 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	Appropriate measures to mitigate impacts of the development on the environment would be subject to recommended conditions; these include restrictions of the proposed allotments with regard to the placement of future development and ongoing vegetation management. Any future development on the proposed allotments would be subject to applicable planning provisions (including those within Cl. 7.6 of PLEP 2014) and title restrictions on the	<b>YES</b>

development will be managed to mitigate that impact.	individual allotments (included as part of recommendations for the approval of the subject application).	
--	--	--

In summary, the proposed development would satisfy both the objectives and provisions of the clause, subject to recommended consent conditions.

#### **B4.17 Littoral Rainforest - Endangered Ecological Community**

More detailed comments addressing specific biodiversity issues are contained within comments by Council's Natural Environment officer (below), however a planning assessment of Part B4.17 (Littoral Rainforest - Endangered Ecological Community) of Pittwater 21 DCP is as follows:

<b>Control</b>	<b>Comment</b>	<b>Compliance</b>
Development shall retain, enhance and regenerate areas of Littoral Rainforest and its habitat.	The proposed development would be largely situated within disturbed parts of the site. While the proposal would remove approximately 6% of areas identified as "good quality Littoral Rainforest", ongoing vegetation maintenance (if undertaken in accordance with recommended consent conditions) should retain and enhance areas of Littoral Rainforest within the site.	<b>YES</b>
Development shall not result in an onsite loss of canopy cover or a net loss in native canopy trees or Littoral Rainforest	As indicated within the assessment by Council's Natural Environment officer, any proposed canopy loss would be classified as marginal since impacts associated with the proposed development would be mitigated by additional planting and management strategies that would improve the quality of the remaining Littoral Rainforest.	<b>NO</b>
Development shall retain and enhance habitat and wildlife corridors for locally native species, threatened species and endangered populations.	As indicated within Part 7.4 of this report, assessments indicate that the subject site contains suboptimal foraging and roosting habitats for most fauna species likely to be affected by the proposed development. In the event of an approval, it is likely that the development would be capable of retaining and enhancing habitats and wildlife corridors due to ongoing vegetation management works combined with maintained connectivity to adjoining reserves (which contains habitats of similar and/or better quality).	<b>YES</b>
Caretakers of domestic animals shall prevent them from entering bushland.	Subject to recommended conditions.	<b>YES</b>
Fencing, where permitted, shall allow the safe passage of native wildlife.	Subject to recommended conditions.	<b>YES</b>
Development shall ensure that at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Littoral Rainforest Endangered Ecological Community).	Subject to recommended conditions.	<b>YES</b>
Development shall ensure any landscaping works are outside areas of existing Littoral Rainforest Endangered Ecological Community and do not include environmental weeds.	Any future development and likely landscaping works within the proposed allotment would be restricted by the locations of respective building envelopes and individual vegetation management plans.  Any new planting associated with the subject application (if approved) would be subject to recommended conditions that would prohibit environmental weeds/exotic species. Approval of residential development is commonly subject to conditions that stipulate similar requirements; it is likely that such requirements would be imposed on any such future development within the proposed allotments.	<b>YES</b>

In summary, the proposed development would mostly comply with the development controls within Part B4.17 of Pittwater 21 DCP.

**Natural Environment officer comments:**

*“The properties contain two dwelling houses, a natural watercourse and native vegetation of which is a majority remnant Littoral Rainforest. There has been approval for a driveway to be built into both properties under N0274/09 and the land has been cleared for this already. The proposed works include subdivision of one lot into four lots and with building envelopes and establishment of APZs.*

*A previous development application was refused for this property (N0401/03). The main reason for refusal as stated by the court was the following:*

*‘The outcome of this subdivision is undoubtedly the loss of an important littoral rainforest endangered ecological community that would be contrary to B4.15.’*

*The current application is significantly different from the previous in that the (application proposes) four lots. This has reduced the proposed encroachment into the Littoral Rainforest Endangered Ecological Community although not taken it away completely. A further reduction in proposed lots (for example the northern two lots being merged into one) would not significantly reduce the overall impacts of the development and is considered unnecessary.*

**Arboricultural Report**

*An arborist report has been submitted (Footprint Green, 22 June 2016) which assesses 111 trees which are within close proximity to the proposed subdivision works, building envelopes or APZs. Fifty seven (57) trees are proposed for removal. Nine (9) of those are exempt species and will not be discussed further. Nineteen (19) have been given short SULE and low to moderate landscape significance.*

*Removal is proposed due to either location within the set building envelopes or establishment of the APZ. The following trees are not impacted by the building envelopes and should be considered for retention or transplantation if possible: T33 (retention), T138 (retention), T43, 44, 45 and 46 (transplantation).*

*Tree 76 has been noted for retention in the tree impact table however it was marked for removal on the tree removal plan. This tree is not within the building envelope and therefore should be retained.*

*The southern side of the driveway is highly disturbed and requires only a small number of trees to be removed to accommodate the proposed subdivision. The northern side of the driveway requires numerous native trees to be removed to accommodate the proposed subdivision and building envelopes however reduction from two to one lot would not significantly reduce the number of trees which require removal. It is also noted the majority of those trees proposed for removal are of low to moderate significance. In regards to impacts on trees only (excluding impacts to Littoral Rainforest or fauna) the proposed building envelopes appear to be located in the most suitable spots with the least impact.*

**SPECIES IMPACT STATEMENT**

*A species impact statement (SIS) has been submitted (Cumberland Ecology, June 2016).*

**Observations/Recordings**

*Littoral Rainforest in the NSW North Coast, Sydney Basin and South East Corner Bioregions Endangered Ecological Community has been identified in the subject site.*

*Littoral Rainforest and Coastal Vine Thickets of Eastern Australia is listed as Critically Endangered Ecological Community and parts of the vegetation mapped in the subject site comply with this listing.*

*Flora and fauna surveys, including targeted threatened species surveys within the subject site were carried out from March 2015 to June 2015. Data from previous studies was also analysed and helped supplement the survey data.*

*Limitations for the fauna surveys were acknowledged in that early winter (June 2015) is not the ideal season to detect the majority of fauna seasons. This was justified with the reasoning that the surveys were targeting the Powerful Owl and also that previous studies over several years on the subject site can supplement the survey data. It was noted that accessibility was limited in parts of the subject site due to ground conditions being boggy in June 2015.*

*Littoral Rainforest – Closed native canopy with native dominated understorey and closed native canopy with exotic dominated understorey was found throughout the subject site. The vegetation conforms to the TSC Act (Threatened Species Conservation Act 1995) listing however does not meet the conditioned threshold for the listed community under the EPBC Act (Environment Protection and Biodiversity Conservation Act 1999).*

*These communities along with two others was mapped and displayed in Figure 4.2. This map indicates the entire area north of the approved driveway is Littoral Rainforest closed native canopy with native dominated understorey and south of the driveway is a mixture of Littoral rainforest closed native canopy with exotic dominated understorey and urban native/exotic vegetation.*

*No threatened flora species was identified within the subject site.*

*Potential habitat for fauna species was found throughout the site and included rainforest habitat (dense canopy for foraging and roosting of passerine birds and the Powerful Owl and understorey for foraging and nesting for small mammals), drainage line (foraging and breeding for amphibians), rock outcrops (habitat for reptiles and potential roost sites for microchiropteran bats), leaf litter and ground stratum (cover for amphibians, reptiles and small mammals) and old shed (possible roosting habitat for microchiropteran bats).*

*No threatened bird species were recorded during diurnal bird surveys. A list of recorded bird species from the surveys is provided in Table 4.6 and a full list of bird species identified between 1999 and 2015 has been provided in Appendix C.*

*Two (2) threatened microchiropteran bats were recorded in the targeted survey. These are the Eastern Bentwing-bat and Little Bentwing-bat. Both listed as Vulnerable under the TSC Act.*

*Other surveys resulted in some common fauna species being identified including the Common Ringtail Possum, Common Brushtail Possum, Tawny Frogmouth and Common Eastern Froglet. A list of potentially occurring threatened fauna species have been listed and are mostly avifauna and bats.*

### **Impacts**

*The primary and direct impact from the proposed works is the loss of vegetation and associated habitat with the subject site. The establishment of proposed building envelopes and APZs will result in complete removal of 6% of all Littoral Rainforest which is a majority good quality. A further 17% will be modified as part of an APZ and other purposes which is a majority good quality.*

*Three key threatening processes are applicable to the habitat to be removed including: clearing of native vegetation, bushrock removal, removal of dead wood and dead trees. The majority of the habitat which would be utilised by threatened species is within the Littoral Rainforest. It was noted that the habitat to be removed is relatively small and suitable habitat was being retained within the subject site along with connectivity to the adjacent reserve.*

*Habitat for threatened species will be removed however with the exception of microchiropteran bats it was stated that the majority of threatened species would only use the subject site as part of a broader foraging range. The suitable roosting habitat for microchiropteran bats is likely utilised for breeding and nursing. The report states that removal of this habitat is unlikely to be important in the long-term survival of the local population.*

*It is acknowledged that the development would result in habitat fragmentation however the retained vegetation will not be completely isolated as connectivity to the offsite reserve will remain. Similarly, the 'edge effects' are likely to increase however flora and fauna on site are already experiencing these effects therefore the increase will only have a minor impact. Increased light penetration will occur at the margins which may reduce some habitat in these areas however like the 'edge effects' the additional area will only result in a minor impact. The existing drainage depression is going to be maintained and additional run-off from new dwellings will be managed as detailed in the Stormwater Management Plan and therefore will only minimally impact the hydrological regimes.*

*An assessment of species likely to be affected has been carried out and included in Section 5.2 of the SIS. The following is a summary:*

- Superb Fruit-Dove: no breeding habitat present as is it now known to breed in the Pittwater CMA sub-region. Only a small area of potential sub-optimal, foraging habitat is to be removed which is not considered significant within the local context as larger areas of higher quality habitat remain within the locality. Connectivity between the subject site and offsite reserves will also be maintained.*
- Barking Owl: no records within the study area and the species has a large foraging range up to 6000ha. Little to no roosting habitat is present. Some potential foraging habitat is present however it is not preferred due to the lack of hollows. Only a small amount of habitat to be removed however higher quality habitat is present in the local area and connectivity to this will remain.*
- Powerful Owl: Records exist for the subject site and it has been determined by previous studies that the Powerful Owl both nests and forages in the locality. No nesting sites are recorded in the subject site and although it contains suitable foraging habitat it is not ideal as it lacks hollows suitable for the preferred prey.*
- Eastern Bentwing-bat: Records exist for the subject site and in the locality. The subject site provides both potential foraging and roosting habitat for the Eastern Bentwing-bat. The proposal will remove a small area of both potential foraging and roosting habitat for this species. The report states that this removal is unlikely to be significant in the long-term due to presence of suitable habitat in nearby reserves and the retention of some habitat on site. The report concludes that due to the ability of the species to be highly mobile and able to access habitat both connected and not connected the removal of the habitat is not considered likely to affect habitat connectivity.*
- Large-eared Pied Bat: There are no records within the site however there are some records for the locality. The site provides potential roosting habitat with sandstone boulders along existing drainage line. No foraging habitat is present. Habitat will be removed from the site however some will be retained and connectivity will remain to habitat off-site. The species is also capable of moving to unconnected habitat therefore the report concludes the proposal is not likely to affect habitat connectivity for the Large-eared Pied Bat within the site or locality.*
- Little Bentwing-bat: Records exist for the site and the locality. The site provides suitable roosting and foraging habitat. The proposal will result in a loss of suitable foraging and sub-optimal roosting habitat. This is not considered significant due to the presence of larger areas of the same or better quality habitat nearby. For the same reasons as the other bats the proposal is not considered likely to affect habitat connectivity.*
- Squirrel Glider: There are no records for the site but they have been recorded in the locality. Some suitable foraging habitat is present however the site is lacking suitable hollows to support a local population. As better foraging habitat exists nearby in a reserve it is unlikely a*

local population would be solely dependent on the site for long-term survival. Retention of suitable foraging habitat and connectivity are the reasons given for the proposal not having a significant impact on the population.

- *Grey-headed Flying Fox: Records exist in the locality however the site does not contain a roosting camp but suitable foraging habitat is present. It is unlikely the known roosting camps are solely dependent on the site foraging. Due to the retention of foraging habitat on site and in connected reserves the report concludes the removal of habitat is unlikely to be significant to the survival of the species in the locality in the long term.*

### **Consideration of alternatives**

- *Original proposal was 8 lots and was refused.*
- *Proposal at pre-lodgement stage was 5 lots and after discussion with Council this has been reduced to 4 lots.*
- *A reduced scale from the proposed 4 would result in the proposed development being financially unviable.*
- *The design has been done in conjunction with the RFS and has included avoidance of significant rock outcrops, boulders and mature trees.*
- *There is limited scope for redesign due to the approved driveway position.*
- *The building footprints are located in areas which have the greatest disturbed area and will reduce ecological impacts.*
- *Larger lots and set building envelopes reduces the impact on the Littoral Rainforest. They are also tightly clustered to avoid edge effects.*
- *Canopy loss will be offset by supplementary planting with the quality of Littoral Rainforest improved by management.*
- *The loss of canopy cover is considered marginal.*

### **Impacts on EEC – Littoral Rainforest**

- *A total of 0.61ha of good quality Littoral Rainforest is present on the subject site. A total of 0.23ha of low quality Littoral Rainforest is present on the site.*
- *Generally, the upslope portions of the site contain high quality Littoral Rainforest.*
- *Without management a number of 'transformer' weeds would spread in the future and cause a decline in the condition of the Littoral Rainforest on site. Development will help fund the removal of those weeds.*
- *If left without management the Littoral Rainforest will likely degrade over time however with management actions it will be able to regenerate.*
- *The area of Littoral Rainforest on the Subject Site, a total of 0.84ha, contributes significantly to the local extent of this community.*
- *Only 0.05ha (6%) out of the 0.61ha of good quality Littoral Rainforest will be removed. A further 0.15ha (17%) of Littoral Rainforest will be modified as part of an APZ and other purposes.*
- *Littoral Rainforest retained on the site is to be actively managed under a Vegetation Management Plan (VMP) to restore the degraded areas and maintain the integrity of the Littoral Rainforest patch present in the Study Area.*
- *The proposed development will not reduce the width of the local corridor.*
- *Mitigation measures named under the VMP are aimed to reduce the impact of the threatening processes which the development will exacerbate and improve the condition of the Littoral Rainforest overall.*

### **Ameliorative Measures**

- *These include during construction measures and long-term management strategies. Pre-construction measures are also required.*
- *Impacts during construction include runoff, sedimentation, erosion and pollution. Stormwater and Sediment and Erosion plans have been prepared by Martens and Associates (2016) to*

address those issues. A Waste Management Plan will be developed to mitigate waste and pollution entering the surrounding environment.

- Long-term Management: Vegetation Management Plan (VMP) has been prepared. It is for 3 years to start from the date of land subdivision. A trust is to be established to pay for implementation of the VMP which will be funded by a portion of the sale from each lot with limited future maintenance works.
- Additional measures include installation of nestboxes.
- Ongoing monitoring is proposed.

### **Assessments of Significance**

- These were completed for Littoral Rainforest, Superb Fruit-dove, Barking Owl, Powerful Owl, Microchiropteran bats (Eastern Freetail-bat, Greater Broad-nosed Bat) and Squirrel Glider.
- The impact on the Littoral Rainforest was not considered to be significant due to the implementation of the VMP.
- The proposal is not considered to significantly impact on the other assessed species.

### **Conclusion**

- When considered in terms of the improvements in condition that can be achieved through implementation of the VMP, and prescribed mitigation measures to improve the water quality and control flow of run-off on the site, no significant impact is expected to occur to any species, populations or communities, as listed under the TSC Act and EPBC Act.
- Furthermore, the long term security of the Littoral Rainforest present on the Subject Site will be confirmed by the establishment of a protective covenant (S88B) placed on each of the new lots under the proposed subdivision.

### **VEGETATION MANAGEMENT PLAN**

A Vegetation Management Plan (VMP) has been submitted (Cumberland Ecology, June 2016) which was referenced in the Species Impact Statement.

The VMP addresses conservation requirements for the Littoral Rainforest across Lot 1, 21 and 22. The management period should apply for five (5) years. After this a review is proposed.

Three Management Zones have been created – Intact Littoral Rainforest (Zone 1), Degraded Littoral Rainforest (Zone 2) and Asset Protection Zones and Development Setbacks (Zone 3).

Section 4.2 provides flora and fauna management actions to be adopted pre and during construction.

Section 5.2 outlines weed management actions for the site with a timeline for the first 6 months and then the remaining 4 ½ years of the VMP. Site visit frequency is outlined specifically however there is scope for change if site weed loads are lower.

Section 8.1 indicates a monitoring program will be carried out for the duration of the VMP with the intention that if the regeneration and weeding works are not performing as they should then changes will be made to the program. A yearly report will be produced and given to Council for approval for the duration of the VMP. A final report at the end of 5 years will certify completion of works.

A letter from Cumberland Ecology was submitted (25/11/16) which addresses previously requested information.

The implementation phase will include the primary weeding program of 6 months.

- (1) Four sub-plans have been provided so that each proposed lot has a management plan (identified as Lot 1a, 1b, 1c and 1d) that can be independently funded by the property owner

*and which refers back to the master Vegetation Management Plan that has already been provided.*

- (2) A draft example of the S88B has been provided with an outline of the details which are included. The creation of these covenants for each lot must be finalised prior to issue of the Subdivision Certificate. In summary the covenant notes the registered proprietor must at their own expense sufficiently maintain the lot according to the VMP. If this does not occur even after requests from Council then they must pay for Council to carry out the necessary works. Only the Northern Beaches Council has the power to alter the covenant. This is acceptable.*
- (3) The 'indicative' wording has been removed from the subdivision plan and the letter confirms the building envelopes on the subdivision plan represent the maximum building footprint and no additional structures will be permitted outside of the footprint.*
- (4) The letter confirms that the reviews of each VMP sub-plan and implementation of the master VMP will be carried out by an appropriately qualified ecologist or bush-regeneration contractor appointed by the landowner of each lot. Council will be provided a brief report at years 3, 5 and 10 of the program. This is acceptable."*

#### 7.2 Earthworks, 7.7 Geotechnical hazards (includes comments associated with the assessment of P21 DCP Part B3.1 Landslip Hazard and C4.1 Subdivision - Protection from Hazards)

As indicated within Part 2 of this report and noted within numerous submissions, the subject site is affected by a geotechnical hazard; the provisions of Clause 7.7 and Parts B3.1 and C4.1 of the DCP are applicable to the proposal.

Information submitted with the subject application was provided in accordance with Council's Geotechnical Risk Management Policy, and was twice referred to Council's Development Engineers for assessment; these assessments considered Cl. 7.7(3) of the LEP and applicable matters to which the clause applies. As a result of these assessments and in accordance with Cl. 7.7(4) of the LEP, Council (as the Consent Authority) is satisfied that the proposed subdivision would be appropriately designed and sited to minimise adverse impacts on the site. In accordance with Part B3.1 of the DCP, the design and proposed methods of construction would (if undertaken in accordance with consent conditions) reduce risks associated with geotechnical hazards to an acceptable level. Ongoing management of the proposed subdivision would be subject to recommended conditions to also minimise risks associated with the proposed development. In addition to addressing applicable provisions within the LEP, both the outcomes and controls within Parts B3.1 and C4.1 of Pittwater 21 DCP would be satisfied.

If the proposed subdivision were approved, any future residential development on the proposed lots would be subject to planning provisions (including Clauses 7.2 and 7.7 of the LEP and applicable parts of the DCP) to ensure that any such future development minimises risks on both the subject site and surrounding sites.

While broader concerns raised by submissions have been addressed above and elsewhere within Parts 5, 6 and 7 of this report, a number of submissions have expressed specific concern about increased geotechnical and associated flooding risks to surrounding properties and the dislodgment of boulders during construction. In response to such concerns, Council's development engineer indicated that:

- The proposed subdivision is in accordance with controls and policies relating to stormwater management and both geotechnical and vegetation management requirements;
- Any future development on the proposed allotments would need to be designed in accordance with the same policies and specific requirements associated with any approval of the proposed subdivision ;and
- Any work that is conditioned to comply with the recommendations of the submitted geotechnical hazard assessment would need to be completed under the supervision of the Consulting Geotechnical Engineer.

If the proposed subdivision and future residential development were undertaken in accordance with such measures, disturbance and risk to surrounding properties would be minimised.

In summary, the proposed development (if approved and undertaken in accordance with recommended conditions) would minimise risks associated with geotechnical hazards that affect the site. Any future development on the proposed allotments would also be subject to further assessments to ensure that such development is both suitable for the site and would minimise risks associated with relevant site hazards.

## **7.5 Pittwater 21 Development Control Plan**

### **7.5A Assessment of DCP controls**

Refer below to a table of compliance for applicable controls under the DCP; more detailed assessments and elements of noncompliance are also assessed/discussed in depth below.

<b>Clause</b>	<b>Numerical Standard</b>	<b>Numerical Proposal</b>	<b>T</b>	<b>O</b>	<b>N</b>
<b>Preliminary</b>					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	N
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification		Refer to Part 5 of this report.	Y	Y	N
3.5 Building code of Australia			Y	Y	Y
3.6 State Environmental Planning Policies		Refer to individual assessments within Part 7.2 of this report.	Y	Y	N
3.7 Designated development			-	-	-
4.1 Integrated Development: Water Supply, Water Use and Water Activity			-	-	-
4.2 Integrated Development: Rivers, Streams and Foreshores			-	-	-
4.3 Integrated Development: Fisheries Management			-	-	-
4.5 Integrated Development: Bushfire			Y	Y	Y
4.6 Integrated Development: Aboriginal Places of Heritage Significance and Aboriginal Objects			-	-	-
4.7 Integrated Development - Protection of the Environment			-	-	-
4.8 Integrated Development - Roads			-	-	-
5.1 Referral to RMS under SEPP (Infrastructure) 2007			-	-	-
5.2 Referral to the NSW Police Service			-	-	-
5.3 Referral to NSW Office of Environment and Heritage			-	-	-
<b>Section A Shaping Development in Pittwater</b>					
<b>A1 Introduction</b>					
A1.7 Considerations before consent is granted			Y	Y	Y
<b>A4 Localities</b>					
A4.10 Newport Locality			Y	Y	N
<b>Section B General Controls</b>					
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014			-	-	-
B1.2 Heritage Conservation - Development in the vicinity of heritage			-	-	-

items, heritage conservation areas, archaeological sites or potential archaeological site					
B1.3 Heritage Conservation - General			-	-	-
B1.4 Aboriginal Heritage Significance		<b>Natural Environment comment:</b> "No apparent issues." <b>Assessing officer comment:</b> Subject to recommended conditions.	Y	Y	Y
B2.2 Subdivision - Low Density Residential Areas			N	Y	N
B3.1 Landslip Hazard		Refer to assessment within Part 7.4 of this report	Y	Y	N
B3.2 Bushfire Hazard			Y	Y	N
B3.3 Coastline (Beach) Hazard			-	-	-
B3.4 Coastline (Bluff) Hazard			-	-	-
B3.6 Contaminated Land and Potentially Contaminated Land		Refer to SEPP 55 assessment within Part 7.2 of this report.	Y	Y	Y
B3.13 Flood Hazard - Flood Category 1 - Low Hazard - Shop Top Housing, Business and Industrial Development			-	-	-
B3.19 Flood Hazard - Flood Category 1 - High Hazard - Other Development			-	-	-
B3.22 Flood Hazard - Flood Category 3 - Overland Flow Path - Major			-	-	-
B3.23 Climate Change (Sea Level Rise and Increased Rainfall Volume)			-	-	-
B3.25 Flood Hazard - Flood Emergency Response planning			-	-	-
B4.17 Littoral Rainforest - Endangered Ecological Community		Refer to the assessment within Part 7.4 of this report.	N	Y	N
B4.22 Preservation of Trees or Bushland Vegetation		Refer to the assessment within Part 7.4 of this report.	Y	Y	N
B5.1 Water Management Plan			Y	Y	N
B5.3 Greywater reuse			-	-	-
B5.4 Stormwater Harvesting			-	-	-
B5.5 Rainwater Tanks - Business, Light Industrial and Other Development			-	-	-
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential			-	-	-
B5.10 Stormwater Discharge into Public Drainage System			Y	Y	N
B5.11 Stormwater Discharge into Waterways and Coastal Areas			-	-	-
B5.12 Stormwater Drainage Systems and Natural Watercourses			Y	Y	N
B5.13 Development on Waterfront Land			-	-	-
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)			-	-	-
B6.1 Access driveways and Works on the Public Road Reserve			Y	Y	N
B6.2 Internal Driveways			Y	Y	N
B6.3 Off-Street Vehicle Parking Requirements	<b>Required number of car-parking spaces:</b> None (individual parking provisions are subject to future applications for residential development on approved lots)	<b>Proposed number of car-parking spaces:</b> Two (2) visitor car parking spaces proposed within the eastern side of the modified driveway  Residential parking would be subject to future assessment(s).	Y	Y	N

B6.6 On-Street Parking Facilities			-	-	-
B6.7 Transport and Traffic Management			Y	Y	N
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management		Subject to standard conditions irrespective of submissions.	Y	Y	N
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
B8.6 Construction and Demolition - Traffic Management Plan		Not deemed to be applicable by the applicant but addressed by recommended conditions in the event that 100m <sup>3</sup> + of material requires importation and/or removal/ to/from the site.	Y	Y	Y
<b>Section C Development Type Controls – C1 Design Criteria for Residential Development</b>					
C1.3 View Sharing		Not applicable, however issues within submissions are discussed within Part 5 of this report.	-	-	N
C1.13 Pollution Control			-	-	N
<b>Section C Development Type Controls – C4 Design Criteria for Subdivision</b>					
C4.1 Subdivision - Protection from Hazards			Y	Y	N
C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities			Y	Y	N
C4.3 Subdivision - Transport and Traffic Management			Y	Y	N
C4.4 Subdivision - Public Roads, Footpath and Streetscape			-	-	-
C4.5 Subdivision - Utility Services			Y	Y	N
C4.6 Service and delivery vehicle access in subdivisions			Y	Y	N
C4.7 Subdivision - Amenity and Design			Y	Y	N
C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots			-	-	-
<b>Section D Locality Specific Development Controls – D10 Newport Locality</b>					
D10.1 Character as viewed from a public place			Y	Y	N

## **7.5B - Detailed assessments of relevant provisions within Pittwater 21 DCP**

**NOTE:** Sections of the DCP relating to biodiversity and geotechnical hazards are assessed within Part 7.4D of this report.

### **A4.10 Newport Locality**

Most desired character requirements relate to residential development that is not proposed by the subject application. The proposed development would satisfy relevant character requirements as follows:

- Ensuring that future allotments would be serviced by adequate infrastructure;
- Designing allotments that would be safe from hazards; and
- Siting residential allotments in a location that would allow future designs to be integrated with the landscape.



**Figure 3:** A photograph of the subject site and surrounding area as viewed from the eastern side of Burke Street, Newport. For reference, the dwelling at 87 Hillside Road is outlined by the red box.

It is unlikely that proposed and/or future development would have a significant visual impact on the area, despite concerns within numerous submissions. The proposed development and/or future residential development would not be visible from existing public areas above the site (i.e. along Kanimbla Crescent and Wollombi Road). Further, while the designs of future dwellings would be subject to future assessments, the proposed subdivision would not front any public road reserve; visual impacts from surrounding public areas would likely be mitigated by the following:

- The large dwelling and associated landscaping at 87 Hillside Road would largely screen proposed/future development from the Hillside Road road reserve (refer to Figure 2); and
- Vegetation both on and around the subject site would at least partially screen future development from public areas downhill and towards the southeast (i.e. Porter Reserve and Newport Rugby Club; refer to figure 4).

### B2.2 Subdivision - Low Density Residential Areas

The areas of each allotment have been assessed within Part 7.4C of this report. Subdivision controls within Part B2.2 of the DCP that apply to the proposal are assessed within the following table:

Control	Comment	Compliance
Any lot (or lots) to be created by a subdivision of an existing lot (or lots) shall have a minimum lot depth of 27 metres.	All allotments would have proposed depths of at least 35m.	YES
Any lot (or lots) to be created by a subdivision of an existing lot (or lots) on land identified as Area 1 on the Landscaped Area Map shall have a minimum lot width at the building line of 16 metres.	All allotments would have proposed width at respective front building lines of at least 24m	YES
Any lot (or lots) to be created by a subdivision of an existing lot (or lots) on land identified as Area 2 or 3 on the Landscaped Area Map shall have a minimum lot width at the building line of 15 metres.	Not applicable; the site is within Landscaped Area 1.	N/A
Any lot (or lots) to be created by a subdivision of an	Not applicable.	N/A

existing lot (or lots) shall have a minimum lot width at the building line of 9 metres at the waterfrontage.		
Any lot (or lots) are to be capable of providing for the construction of a building which is safe from hazards, does not unreasonably impact on the natural environment, does not adversely affect heritage, and can be provided with adequate and safe access and services.	As assessed within Part 7.4 of this report, the proposed subdivision would not propose unreasonable impacts on the natural environment and would be designed to be safe from hazards. Further, the proposed subdivision would provide adequate access and services to all proposed allotments. Aboriginal heritage considerations would be subject to recommended conditions.	<b>YES</b>
A person shall not subdivide land if the allotment(s) intended to be created have a slope in excess of 16.7 degrees (30%), measured between the highest and lowest points on any such allotment(s).	Variation proposed; refer to assessment below.	<b>NO</b>
The minimum area for building shall be 175m <sup>2</sup>	All proposed allotments contain 200m <sup>2</sup> building envelopes; development within such areas would contain side and rear setbacks that would comply with P21 DCP Part D controls.	<b>YES</b>

As indicated above, the proposed development would satisfy most development controls, however the applicant proposes a variation to requirements which seek to limit the slope of new allotments to 16.7 degrees (30%), as measured between the highest and lowest points of the slope. Justifications provided by the applicant are summarised as follows:

- The slope within proposed development footprint are less than 30%;
- All proposed allotments are consistent with both the desired character of the Newport locality and the subdivision layout of the surrounding area;
- The geotechnical assessment concludes that associated risks are acceptable;
- Adequate bushfire measures can be implemented to mitigate bushfire risks;
- The slopes would not be an impediment to stormwater drainage and disposal;
- Despite the slope, the proposed subdivision would be capable to providing adequate services and access to the proposed allotments; and
- A sloping site could enhance visual amenity from public areas, as retained vegetation and rock outcrops could enhance landforms and environmental features

The proposed noncompliance is associated with the heavily sloped topography of the area; while the applicant acknowledges that the slope of the proposed allotments would exceed 30%, they indicate the proposed building envelopes (i.e. allocated areas that would accommodate any future dwellings) would contain a slope of less than 30%. Each of these 200m<sup>2</sup> building envelopes would account for a relatively small area (i.e. between 9.8%-15.7%) of each allotment, therefore the majority of the area to be subdivided (i.e. areas containing the largest/most significant slopes) would not contain residential development.

An assessment of the slopes for each allotment and respective building envelopes is as follows:

Allotment	Maximum proposed slope of each allotment (measured between the highest and lowest points of each lot, rounded to one decimal place)		Average gradient under the building footprint of each allotment (rounded to one decimal place)	
	Grade (degrees)	Grade (percent)	Grade (degrees)	Grade (percent)
<b>1a</b>	27.2 degrees	51.4%	17.9 degrees	32.5%
<b>1b</b>	23.5 degrees	43.6%	15.5 degrees	27.9%
<b>1c</b>	17.1 degrees	30.8%	15.3 degrees	27.4%
<b>1d</b>	21.4 degrees	39.1%	15.4 degrees	27.6%

This assessment largely concurs with the applicant's claims, finding that three of the four proposed building envelopes would contain an average slope of less than 30%; while the average 32.5% envelope within proposed allotment 1a would not comply, it is considered to be a relatively minor (i.e. 8.3%) variation to the 30% slope requirement.

With regard to the above, the proposed development would still be capable of satisfying the outcomes of Part B2.2 as follows:

- Where applicable, the proposal would be consistent with desired locality characteristics;
- The existing natural environment would be largely maintained;
- Due to the locations of the proposed building envelopes in relation to the locations/heights of surrounding allotments, the proposed subdivision and future development would not obstruct views nor significantly affect vistas from public areas and/or residential sites;
- The built form (as currently proposed) would not dominate the natural setting; and
- The proposed subdivision would not significantly increase local population density in a manner that would exceed the capacity of local infrastructure and services.

Further, assessments by Council staff and the RFS have indicated that the proposed development would be capable of addressing site hazards (i.e. geotechnical and bushfire issues) irrespective of the noncomplying slopes. Comments from Council's Development Engineer also indicate that slopes of the allotments would not be an impediment to future development, as there are locations on the proposed allotments that would permit the construction of residential development, subject to consent.

Numerous submissions object to a lack of information about future residential development in relation to the slope of the site, specifically:

- Dwelling design and construction that would appropriately address applicable hazards;
- The influence that the slope of the site may have upon the design and appearance of future residential development and the subsequent impacts (i.e. character, height/bulk/scale, view loss, etc.) associated with such development.

As no residential development is proposed, such issues are not able to be considered within this assessment; any future proposals(s) for such development would however be required to satisfy such requirements. The height standard for residential areas within the locality is 8.5m; noting this and the very substantial elevation change (i.e. 25+m) between the proposed building envelopes and adjoining properties along Kanimbla Crescent and Wollombi Road, it is highly unlikely that future residential development on the allotments would adversely affect views from surrounding areas on Bilgola Plateau towards the ocean and Newport locality.

In summary, the proposed development would broadly comply with applicable development controls within Part B2.2 of the DCP. While the proposed slopes of the allotments would not comply with the DCP, the development would still be capable of satisfying the outcomes of Part B2.2 and would be unlikely to facilitate future residential development that would adversely affect the surrounding locality. For such reasons, the noncompliance is considered to be supportable.

### B3.2 Bushfire Hazard

Contrary to issues raised within submissions, a bushfire protection assessment (Report Ref. A15164, prepared by Travers Bushfire & Ecology, dated 18 May 2016) was submitted with the subject application. As indicated within Part 6 of this report, the subject application was referred to the NSW RFS; comments from this organisation confirmed that the proposal is satisfactory, subject to recommended conditions; Council's Natural Environment Officer has confirmed that such conditions are consistent with those recommended by Council staff. Recommended conditions would include title restrictions, and any future development proposal on the proposed allotments would need to consider such restrictions in addition to other relevant controls.

#### B5.1 Water Management Plan, B5.10 Stormwater Discharge into Public Drainage System and B5.12 Stormwater Drainage Systems and Natural Watercourses

The subject application proposes that stormwater would be discharged from the driveway and proposed allotments to the main drainage depression via energy dissipating outlets (Drainage points from some sections of the driveway would remain unchanged from those approved by Development Consent No. N0274/09). An assessment of this proposal by Council's Development Engineers indicates that such an arrangement is satisfactory, subject to recommended conditions.

Numerous submissions have raised concerns regarding the proposed stormwater management plan and impacts associated with future development. The design and specifications of stormwater systems within each allotment would depend on the final design of future dwellings, therefore it is not possible for onsite stormwater systems to be designed and constructed at the subdivision stage. Council's Development Engineer has advised that that design of stormwater systems for residential development would be subject to more onerous requirements, as the design of such systems would require appropriately designed reuse tanks and Onsite Stormwater Detention (OSD) systems. Future development on the allotments would require OSD systems to capture and release larger volumes of water into the drainage depression, however this would be mitigated by:

- Progressive releases of water over longer durations;
- Measures that would reduce runoff velocities during future residential construction; and
- Measures to maintain the quality of water for the life of the development.

In summary, the proposed development would be capable of satisfying the controls and outcomes of Parts B5.1, B5.10 and B5.12 of the DCP. It is not possible for residential stormwater systems to be designed at the subdivision stage, however the future design of such systems would be subject to more onerous requirements

#### B6.2 Internal Driveways, B6.3 Off-Street Vehicle Parking Requirements, B6.7 Transport, Traffic Management, C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities and C4.6 Service and delivery vehicle access in subdivisions

Submissions have objected to the proposal on the following parking and traffic-related grounds;

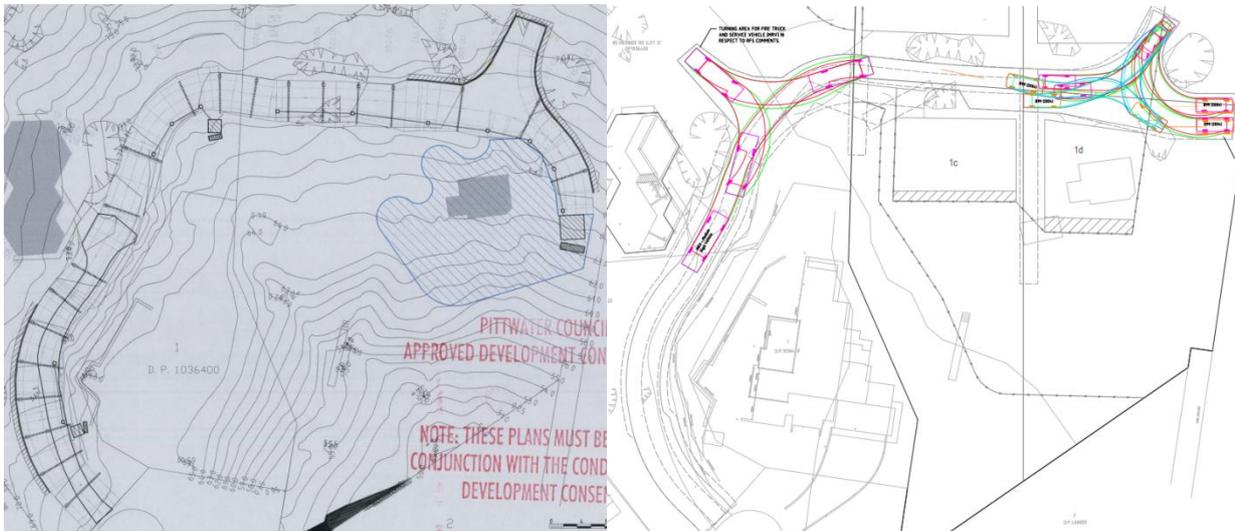
- There is insufficient parking within Hillside Road;
- Hillside Road does not have the ability to carry additional traffic;
- There would be issues with vehicles entering/exiting the driveway; and
- Parked vehicles within the Hillside Road road reserve would prevent service/emergency vehicles from obtaining access to the proposed subdivision.

An assessment by Council's Development Engineers has not identified any traffic-related issues associated with the proposed subdivision; further, trip data indicates that the development would have minimal impacts on travel. As indicated by Part 7.3 of this report, the proposal does not constitute "Traffic Generating Development" (as defined by Schedule 3 of SEPP (Infrastructure) 2007) and has therefore not been referred to RMS for comment.

It is noted that submissions refer to issues with large vehicles accessing Hillside Road due to parked vehicles, however such an issues issue would a matter associated with existing parking arrangements and is not an issue that would be created by development within the subject site.

Off-street parking facilities are not required as no residential development is proposed, however two off-street visitor car parking spaces are proposed within the "Y" turning head at the end of the driveway. On-site car parking facilities (i.e. a minimum of two per dwelling) associated with future dwellings would need to be in accordance with the DCP, though the size of the building

envelopes suggests that there would be sufficient space for such facilities to be provided by future development proposals.



**Figure 4:** Extracts of the approved plans from Development Consent No. N0274/09 (left) and proposed driveway plans (right) comparing the differences between the approved driveway and proposed modifications.

In response to concerns about road safety, the individual actions and movements of drivers and vehicles within public road reserves is not a matter that is capable of being assessed within the scope of the subject application; the suitability of the driveway crossover's location is also not capable of being assessed as it would remain unchanged from that approved by Development Consent No. N0274/09. The addition of new/modified internal turning bays (refer to figure 5) have been designed to permit manoeuvring of vehicles (including Medium Rigid Vehicles (MRVs)) within the subject site, thereby allowing the forward entry/exit of such vehicles without the need to manoeuvre within the cul-de-sac turning head; recommended conditions would also require that:

- The driveway be capable of accommodating the weight of MRVs, including fully loaded fire-fighting vehicles; and
- The applicant enter a waste service agreement with Council allowing for Council's waste collection contractor to collect bins within the proposed subdivision. This requirement would address concerns raised by residents about the placement of bins from future dwellings within the cul-de-sac turning head).

Further, to address concerns regarding parking and associated manoeuvring/safety issues within the cul-de-sac turning head, Council's Development Engineer has recommended a condition requiring that:

- "No Parking" zones be imposed between the driveways at 81 and 87 Hillside Road; and
- Kerbs and gutters (with sealed pavements) be constructed between the driveways at 81 and 87 Hillside Road

The proposed development otherwise addresses applicable development controls and outcomes within Parts B6.2, B6.3 and B6.7 of the DCP and is considered to be satisfactory.

### C1.3 View Sharing

Part C1.3 of the DCP is not applicable to residential subdivisions, however view impacts associated with future residential development on the proposed allotments were raised within submissions. Future residential development would be subject to future assessments, however due to:

- The 8.5m height standard; and

- Significant elevational changes between the proposed building envelopes and properties along Kanimbla Crescent and Wollombi Road, it is highly unlikely that future residential development would obstruct views from surrounding areas on Bilgola Plateau towards the ocean, foreshore areas and the Newport locality.

### C1.13 Pollution Control

Part C1.13 of the DCP is not applicable to the subject application, however pollution associated with runoff from any future gardens within the proposed allotments was raised within submissions. Conditions regarding air/land/water pollution are recommended regardless, and it is expected that similar such conditions would be recommended should future residential development be approved on the lots.

### C4.5 Subdivision - Utility Services

All proposed utility services are to be situated underground in accordance with the development controls; there are no overhead utility services within the road reserve in front of the site, therefore the requirement to underground such services is not applicable. A condition is recommended that would require the design of any driveway lighting to minimise impacts on surrounding residences and environmentally sensitive areas.

### C4.7 Subdivision - Amenity and Design

In addition to the controls within Part B2.2 of the DCP, development controls within Part C4.7 of the DCP also apply to the proposal and have been assessed within the following table:

Control	Comment	Compliance
<b>Subdivision design</b>		
Subdivision should be designed to ensure that:		
a) all properties, both existing and proposed, achieve/retain a level of amenity commensurate with the locality and the desired character of the area;	As indicated within the assessments of Parts A4.10 and A10.1 of the DCP, the proposed design of the subdivision would be consistent with development in the surrounding area.	<b>YES</b>
b) the impact on the environment of the completed development (including buildings to be constructed on the proposed lots) has an acceptable impact on the environment.	As assessed elsewhere within this report, any impacts on the natural environment by the proposed works are considered to be acceptable.	<b>YES</b>
A comprehensive site analysis taking into account the following characteristics is to be carried out as part of the subdivision design process. This analysis should take into account the final development which will occur on the site as a result of the subdivision. The analysis and resultant subdivision design should address the following issues:- <ul style="list-style-type: none"> <li>• the slope, topography and any natural features (e.g. creeklines);</li> <li>• trees and vegetation (particularly trees worthy of retention);</li> <li>• viewlines from within the proposed lots and from adjoining properties;</li> <li>• solar access to the subdivision site;</li> </ul> <ul style="list-style-type: none"> <li>• the side, rear and front setbacks of future dwellings and structures in relation to the proposed new boundaries and development on adjoining properties;</li> </ul>	An assessment of the of the listed characteristics is as follows:: <ul style="list-style-type: none"> <li>• Refer to assessments within Parts 7.5 and 7.4 of this report.</li> <li>• Refer to the assessment within Part 7.4 of this report.</li> <li>• Refer to assessments within Part 7.5 of this report.</li> <li>• Solar access is obtainable to the subdivision, however specific impacts would be subject to the assessment of future application(s) for development on the proposed lots.</li> <li>• The proposed setbacks of the building envelopes would ensure that future development complies with side and rear setbacks requirements.</li> </ul>	<b>YES</b>

<ul style="list-style-type: none"> <li>the visual impact of built development which will occur as a result of the subdivision process (building height, bulk and scale, visual impact of buildings);</li> <li>the provision of vehicular access to the future buildings on the proposed lots;</li> <li>the provision of landscaping and/or recreation space for each proposed lot;</li> <li>the provision of onsite car parking on each proposed lot;</li> <li>the provision of services to each lot, including sewerage, water, electricity, communications and gas (where available);</li> <li>the provision of emergency services to each (bushfire, fire brigade, ambulance).</li> </ul>	<ul style="list-style-type: none"> <li>The proposed development would not have any significant visual impacts from public areas. Refer to assessments within Part 7.5 which relates to the appearance of the site from public areas.</li> <li>Refer to the assessment within Part 7.5 of this report.</li> <li>Provision of landscaped/POS area would be subject to future assessment of residential development, though such development would be capable of complying with relevant Part D controls.</li> <li>Subject to future assessment, though such development would be capable of complying with relevant Part C controls.</li> <li>Complies; to assessment within Part 7.5 of this report.</li> <li>Complies; to assessment within Part 7.5 of this report.</li> </ul>	
<p>In order to address these issues, a building envelope area is to be nominated on each proposed lot within which any future building is to be contained. The application should clearly demonstrate that a building envelope can be built on site that has regard for the following:</p> <ul style="list-style-type: none"> <li>retention of trees and bushland,</li> <li>vehicular access,</li> <li>provision of services,</li> <li>provision of emergency services,</li> <li>and safety from hazard,</li> <li>A building which achieves the desired character of the area and is commensurate with the amenity standards of surrounding development, and does not overly impact on the environment, and can be erected within that envelope.</li> </ul> <p>In this regard, an assessment of the buildings which will be erected as a result of the proposed subdivision is to be carried out demonstrating that the requirements and outcomes of the controls in this DCP which will apply to those buildings will be able to be complied with.</p>	<p>The proposed building envelopes have been assessed against relevant assessable criteria as follows:</p> <ul style="list-style-type: none"> <li>57 trees are proposed to be removed from the site. An assessment deems such works to be satisfactory, subject to conditions; refer to Part 7.4 of this report.</li> <li>Complies; refer to assessment within Part 7.5 of this report.</li> <li>Complies; refer to assessment within Part 7.5 of this report.</li> <li>Complies; refer to assessment within Part 7.5 of this report.</li> <li>Complies; refer to assessments within Parts 7.4 and 7.5 of this report.</li> <li>The proposed building envelopes would be appropriately sited to accommodate residential development that should be consistent with the character of the area. Where applicable, the proposed development would be consistent with the desired development characteristics for the locality; refer to relevant assessments within Part 7.5 of this report.</li> </ul> <p>The design of dwellings on the proposed allotments would be subject to a separate assessment(s). The layout of the proposed allotments and building envelopes could however accommodate future development capable of complying with applicable development standards, controls and associated outcomes.</p>	<b>YES</b>
<b>Usable Site Area</b>		
<p>Where a right-of-carriageway to another lot is provided over a lot, the width of that right-of-carriageway shall not be more than 20% of the required minimum width of the lot over which it is located.</p>	<p>Not applicable</p>	<p>N/A</p>

Where an allotment has a boundary dimension of 6.5 metres or less to a road, then the site area of the allotment shall be increased by 20% over that required for the area.	Not applicable	N/A
---	----------------	-----

In summary, the proposed development satisfies the applicable development controls and outcomes of Part C4.7 of Pittwater 21 DCP.

D10.1 Character as viewed from a public place

The proposed development would satisfy controls requiring that general services be situated underground; other controls within Part 10.1 of the DCP are not applicable and/or capable of being assessed, as no residential building works are proposed. Most outcomes are also not applicable as they are not capable of being assessed within the context of the subject application. As indicated within the assessment of Part A4.10 of the DCP (see above), the proposed subdivision layout is consistent with the desired character of the area, as the layout of the proposed allotments are similar with that of the surrounding area, the design of the allotments would be safe from hazards and the proposed placement of the building envelopes would facilitate development consistent with applicable development standards and controls.

**8.0 CONCLUSION**

The Development Application has been assessed in accordance with the provisions of applicable planning legislation, planning instruments and policies as listed within Part 7.1 of this report. Twenty four submissions were received which objected to the proposed development; comments and issues raised within these submissions have been addressed within Parts 5 and 7 of this report.

This assessment has found that proposed development is mostly consistent with the relevant statutory and policy controls and outcomes. It is acknowledged that the site forms part of an environmentally sensitive area, however the building envelopes within the proposed allotments would be situated within an area of the subject site that is already highly disturbed; this assessment has found that impacts associated with the proposed development would be acceptable, provided that demolition/construction works and ongoing management of the proposed allotments are undertaken in accordance with recommended conditions of consent. A referral to the Department of Energy and the Environment has confirmed that the proposal would not constitute a “controlled action” pursuant to S75 of the *Environmental Protection and Biodiversity Conservation Act 1999*.

While the slope of the proposed allotments would exceed the maximum requirements stipulated by the DCP, the layouts of the allotments would not be inconsistent with other residential development within the locality. Any future development on the proposed allotments (if approved) would be subject to future assessment(s) under applicable statutory and policy controls and outcomes; the size and slope of the proposed building envelopes could reasonably accommodate future residential development and associated utilities that would be consistent with the desired characteristics of the locality and which would be capable of satisfying applicable development standards, controls and outcomes. Further, assessments by Council officers and the NSW Rural Fire Service concluded that hazards affecting the site could be appropriately managed, subject to recommended conditions attached below. For these reasons and due to the otherwise high level of compliance with other development controls, the noncomplying slope of the proposed allotments should not warrant the refusal of the subject development application.

In summary, the proposal is consistent with the relevant statutory and policy controls and outcomes (refer to relevant assessments above). The impacts associated with the proposed

subdivision are considered to be acceptable and supportable subject to recommended conditions. The application is therefore recommended for approval.

---

## **RECOMMENDATION OF PLANNER**

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 **approve** Development Application N0317/16 for the subdivision of 62 Hillside Road into 4 residential lots plus civil and landscaping works to 62 and 85 Hillside Road to facilitate the subdivision at 62 and 85 Hillside Road, Newport (Lot 1, DP 408800 and Lot 2, DP 1036400), subject to the recommended conditions attached to this report.

### **Report prepared by**

Tyson Ek-Moller  
**PRINCIPAL PLANNER**  
**PLANNING AND ASSESSMENT**

## Conditions of Approval

This consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

**Note:** Persons having the benefit of development consent may appoint either a council or an accredited certifier as the principal certifying authority for the development or for the purpose of issuing certificates under Part 4A of the Environmental Planning and Assessment Act. When considering engaging an accredited certifier a person should contact the relevant accreditation body to ensure that the person is appropriately certified and authorised to act in respect of the development.

### A. Prescribed Conditions:

1. This development consent does not approve and/or regularise any new development on the site that is not indicated on the approved plans and/or subject to conditions within this consent. Consent shall be sought for any development on approved Lots 1a, 1b, 1c and 1d that is not:
  - Approved by this consent; and/or
  - Exempt development.
2. All works are to be carried out in accordance with the requirements of the Building Code of Australia.
3. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
4. A sign must be erected in a prominent position onsite only showing:
  - A. The name, address and telephone number of the Principal Certifying Authority for the work, and
  - B. The name of the principal contractor or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
  - C. That unauthorised entry to the work site is prohibited.

The sign must 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.

5. 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:
  - A. in the case of work for which a principal contractor is required to be appointed:
    - i. The name and licence number of the principal contractor, and
    - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
  - B. in the case of work to be done by an owner-builder:
    - i. The name of the owner-builder, and

- ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
  - C. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under a or b above 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
6. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) 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.
7. This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve.
8. Any building work in relation to the development consent is to be carried out in accordance with the requirements of the Building Code of Australia.

**B. Matters to be incorporated into the development and maintained over the life of the development:**

1. Any power lines and/or electricity infrastructure within the site shall be located underground. New electrical connections to the site are to be carried out using underground cabling.
2. Any lighting for the driveway shall be designed as follows:
  - Lighting is to illuminate the driveway only, and shall be designed/shielded to prevent light being projected up/into vegetated areas;
  - Any lighting is to be designed and/or shielded to prevent disturbance to surrounding residential properties.
3. Any retaining wall associated with the subdivision and/or driveway that are visible from public areas are to be constructed with sandstone and/or sandstone-like external materials and finishes.
4. 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.
5. The landowner must comply with all aspects of the approved Vegetation Management Plan and Sub-plans (Cumberland Ecology, June 2016 and November 2016) and over the life of the development.
6. Prior to the completion of works, all declared noxious weeds are to be removed/controlled in accordance with the Noxious Weeds Act 1993. Environmental weeds are to be removed and controlled. Refer to Council website [http://www.pittwater.nsw.gov.au/environment/noxious\\_weeds](http://www.pittwater.nsw.gov.au/environment/noxious_weeds) for noxious/environmental weed lists.

7. No environmental weeds are to be planted on the site. Refer to Council website [http://www.pittwater.nsw.gov.au/environment/noxious\\_weeds](http://www.pittwater.nsw.gov.au/environment/noxious_weeds) for environmental weed lists.
8. In accordance with Part B4.22 (Protection of Trees and Bushland Vegetation) of Pittwater 21 Development Control plan, all existing trees as indicated in the approved Arborist Report shall be retained (except where Council's prior written consent has been obtained for trees that stand within the envelope of approved development areas and removal is approved through an arborist report). For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers.
9. Any new fencing (with the exception of swimming pool fencing) is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide x 100mm high at ground level spaced at 6 metre intervals.
10. Fencing is to be erected along the boundary line between Management Zone 1 and 3 for those lots identified as Lot 1a and 1b.
11. Any vegetation planted onsite outside of any approved landscape zone is to be consistent with:
  - Species listed in the Vegetation Management Plan
  - Species listed from the Endangered Ecological Community
12. No water pollution shall result from the operation of any plant or equipment or activity carried out.
13. No emissions of air pollution shall be created by the operation of any plant or equipment or any procedure carried out at the premises.
14. The operation of any plant or equipment or any procedure carried out at the premises shall not cause land pollution.
15. All utility services including overhead power supply and communication cables to service the lots to be created are to be placed underground.
16. Fire hydrants are to be provided in all proposed roads and adjoining public road reserves in accordance with the requirements of Sydney Water and the NSW Rural Fire Service.
17. Street lighting facilities to the development street frontages of the site and to the existing Public Road reserve adjacent to the development site are to be provided at the full cost of the developer and in accordance with the requirements of Energy Australia.
18. Where relevant, all appropriate infrastructure is to be provided to service the proposed lots, including roads and accessways, drainage facilities, water management facilities, reticulated water, reticulated sewerage, electricity, gas and telecommunication services.

**C. Matters to be satisfied prior to the issue of the Construction Certificate:**

**Note:** All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications / details cannot be accepted.

1. Submission of construction plans and specifications and documentation which are consistent with the approved Development Consent plans, the requirements of Building Code of Australia and satisfy all conditions shown in Part B above are to be submitted to the Principal Certifying Authority.
2. The Principal Certifying Authority must be provided with a copy of plans that a Quick Check agent/Sydney Water has stamped before the issue of any Construction Certificate.
3. The applicant is to consult with Sydney Water to establish whether there are any Section 73 Compliance Certificate requirements for this proposal, under the provisions of the *Sydney Water Act, 1994*. A copy of any Notice of Requirements letter which may be issued by Sydney Water, is to be provided to the Private Certifying Authority with the Construction Certificate application.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

4. The person having the benefit of this consent is required to notify the Principal Certifying Authority to ensure that the following critical stage inspections are undertaken, as required under clause 162A(4) of the Environmental Planning and Assessment Regulation 2000:
  - A. after excavation for, and prior to the placement of, any footings, and
  - B. prior to pouring any in-situ reinforced concrete building element, and
  - C. prior to covering of the framework for any floor, wall, roof or other building element, and
  - D. prior to covering waterproofing in any wet areas, and
  - E. prior to covering any stormwater drainage connections, and
  - F. after building work has been completed and prior to any occupation certificate being issued in relation to the building.

To allow a Principal Certifying Authority to carry out critical stage inspections, at least 48 hours notice must be given before building work is commenced and prior to further work being undertaken.

5. Construction works approved by this consent must not commence until:
  - A. Construction Certificate has been issued by a Principal Certifying Authority
  - B. a Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment, and
  - C. at least 2 days notice, in writing has been given to Council of the intention to commence work.
6. In accordance with section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the

prescribed rate of 0.0035 of the total cost of the work to either the Long Service Payment Corporation or Council for any work costing \$25,000 or more.

7. A contribution of **\$60,000** is payable to Northern Beaches Council for the provision of public infrastructure and services pursuant to the Pittwater Section 94 Contributions Plan for Residential Development.

The contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate (whichever occurs first) or prior to the issue of the Subdivision Certificate where no Construction Certificate is required.

The proponent may negotiate with Council for the direct provision of facilities and services specified in the Section 94 Plan, the dedication of land or another material public benefit in lieu of full or partial payment of the monetary contribution. Any agreement shall be in accordance with the Pittwater Section 94 Contributions Plan for Residential Development. The agreement must be finalised, formally signed and in place prior to payment being due.

The Pittwater Section 94 Contributions Plan for Residential Development may be inspected at Council's Mona Vale office, 1 Park Street Mona Vale or on Council's website.

Cashier Codes:

SOPS – \$24,000

SLEL – \$6000

SCSF – \$10,500

SVSS – \$19,500

8. 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.
9. Drainage plans including specifications and details showing the site stormwater management are to be submitted to the Accredited Certifier with the Construction Certificate application. Such details are to be accompanied by a certificate from (as appropriate) either a Licensed plumber or qualified practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field, that the stormwater management system complies with the requirements of section 3.1.2 Drainage of the Building Code of Australia Housing Provision and AS/NZS 3500.3.2 - Stormwater Drainage. The details shall include disposal of site stormwater (if the site is in a known slip area the stormwater disposal system must comply with the recommendations of a Geotechnical Engineers Report).

**Note:** Where Council is the Principal Certifying Authority 3 sets of plans/specifications are to be submitted.

10. Civil engineering details of the proposed excavation/landfill are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Each plan/sheet is to be signed by a qualified practising Civil Engineer who has corporate membership of the Institution of Engineers Australia (M.I.E) or who is eligible to become a corporate member and has appropriate experience and competence in the related field.

11. Engineering plans and specifications for all roads, drainage and other civil engineering works within an existing Public Road reserve must be submitted and approved in writing by Northern Beaches Council prior to submission to the Accredited Certifier or Council of the Construction Certificate application.

Payment of the Engineering Plan Assessment fee (in accordance with Councils adopted Fees and Charges) is required prior to Council releasing the approved engineering plans.

The installation of traffic facility signs and markings, including parking signs and speed restrictions will require the approval of Council prior to commencement of installation.

12. If/where applicable, any external glazing must be of low glare and reflectivity. The reflectivity index (expressed as a percentage of the reflected light falling upon any surface) of all external glazing is to have a maximum reflectivity index of 25%. Written confirmation of the reflectivity index of the material is to be submitted with the Construction Certificate. (Note: the reflectivity index of glazing elements can be obtained from glazing manufacturers. Glass with mirrored or reflective foil finishes is unlikely to achieve compliance with this requirement. This is to ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development).

**D. Matters to be satisfied prior to the commencement of works and maintained during the works:**

**Note:** It is an offence to commence works prior to issue of a Construction Certificate.

1. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.

**Note:** This condition does not apply in relation to Crown building work that is certified, in accordance with Section 116G of the Act, to comply with the technical provisions of the States building laws.

2. Any proposed demolition works shall be carried out in accordance with the requirements of AS2601-2001 The Demolition of Structures.

Amongst others, precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:

- A. Protection of site workers and the general public.
- B. Erection of hoardings where appropriate.
- C. Asbestos handling and disposal where applicable.
- D. Any disused service connections shall be capped off.

Council is to be given 48 hours written notice of the destination/s of any excavation or demolition material. The disposal of refuse is to be to an approved waste disposal depot.

3. A stamped copy of the approved plans is to be kept on the site at all times, during construction.

4. The following facilities must be provided on the site:
  - A. toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
  - B. a garbage receptacle for food scrapes and papers, with a tight fitting lid.

Toilet facilities are to be provided in a location which will not detrimentally affect the amenity of any adjoining residents at or in the vicinity of the work site during the duration of the development.

5. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must give the owner of the adjoining property at least seven (7) days written notice of their intention to excavate below the level of the base of the footing and furnish the adjoining property owner with particulars of the proposed work.
6. Where possible, waste materials generated through any demolition, excavation and construction works are to be minimised by re-use on site, recycling or where re-use or recycling is not practical, disposal at an appropriate authorised waste facility.

All waste dockets and receipts regarding demolition, excavation and construction waste are to be retained on site to confirm which facility received the material for recycling or disposal.

7. The site must be fenced throughout demolition and/or construction works; such fencing must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
8. Where site fill material is necessary, any fill materials must:
  - A. Be Virgin Excavated Natural Material (VENM) only, as approved under the Department of Climate Change "General Resource Recovery Exemption ;and
  - B. Be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.

9. Native plants located within the zone of construction (specifically Trees 43, 44, 45, 46 as identified in the arborist report) are to be translocated by a suitably qualified person into an undisturbed area onsite where possible (based on size and viability). If an Ecological Sustainability Plan or Bushland Management Plan applies to the property, a Bushland Management Consultant is to certify that native plants have been adequately translocated prior to the commencement of works.

10. As there are existing trees to be retained within 5 metres of proposed development works, all recommendations as outlined in the supplied arborist report by Footprint Green, dated 22/6/16 are required to be complied with before and throughout the development period, particularly with regard to the following:
  - A. Works, erection/demolition of structures, excavation or changes to soil levels within 5 metres of existing trees are not permitted unless part of the development as approved, and the storage of spoil, building materials,

soil or the driving and parking of any vehicle or machinery within 5 metres of the trunk of a tree to be retained is not permitted;

- B. Where specified, tree guards are to be provided to all trees as indicated in the report, and are to be installed prior to the commencement of any work on the site. Tree guard materials and dimensions are specified in the arborist report;
  - C. All works within 5 metres of existing trees including demolition, excavation, civil works, fencing and the like must be carried out by hand and under the supervision of an experienced and suitably qualified arborist. In the event that major structural or feeder roots are encountered, the arborist is to advise the builder to carry out appropriate action to ensure the retention of the tree.
  - D. Signage is to be erected advising all contractors and visitors to the site that no works or storage are to take place within the dripline of existing trees.
  - E. Any changes or alterations made to the tree management recommendations as outlined by the arborist report due to the discovery of new structural roots or underground services during development works must be reported to the Principal Certifying Authority prior to works recommencing.
11. No storage of building materials or building waste, excavated fill or topsoil storage is to occur within the dripline of trees shown on the approved landscape working drawing(s) as being retained or within protective fenced areas.
- Drainage is to be arranged such that fill, building materials or contaminants are not washed into protective fenced areas.
12. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
13. The site must be fenced throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
14. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
15. Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.
16. Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.
17. Personnel with appropriate training, or demonstrated knowledge and experience in erosion and sediment control shall be responsible for supervising the installation and maintenance of approved erosion and sediment control measures – during and after construction and until the site has been restored to the satisfaction of council.

18. No works are to be carried out in Council's Road Reserve without the written approval of the Council.

**Note:** Separate approval is required for access driveways, paths, connections to underground services (stormwater, gas, sewer, electricity, etc.), and landscaping works within Council's Road Reserve.

19. No skip bins or materials are to be stored on Council's Road Reserve.
20. A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:
  - A. The builder's name, builder's telephone contact number both during work hours and after hours.
  - B. That no works are to be carried out in Council's Road Reserve without prior application and approval of a Road Opening Permit from Council.
  - C. That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
  - D. That no skip bins or materials are to be stored on Council's Road Reserve.
  - E. That the contact number for Northern Beaches Council for permits is 9970 1111.
21. Construction access to the property is to be via the approved driveway only.
22. If/where the volume(s) of excavated materials to be transported from the site or the importation of fill material to the site is equal to 100m<sup>3</sup> or greater, a satisfactory construction traffic management plan (CTMP) shall be prepared by a suitably qualified traffic consultant and submitted to the Private Certifying Authority prior to the commencement of any site works. The plan is to detail:
  - A. Quantity of material to be transported
  - B. Proposed truck movements per day
  - C. Proposed hours of operation
  - D. Proposed traffic routes, noting that 3 tonne load limits apply to some roads within the former Pittwater Council Local Government Area
  - E. Location of on/off site parking for construction workers during the construction period.
23. Demolition works must be carried out in compliance with *WorkCovers Short Guide to Working with Asbestos Cement* and Australian Standard AS 2601 2001 *The Demolition of Structures*. The site must be provided with a sign containing the words *DANGER ASBESTOS REMOVAL IN PROGRESS* measuring not less than 400mm x 300mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility. All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the

Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

#### **E. Matters to be satisfied prior to the issue of Occupation Certificate:**

**Note:** Prior to the issue of an Occupation Certificate the principal certifying authority is to ensure that Council's assets, including road, kerb and gutter and drainage facilities adjacent or near to the site have not been damaged as a result of the works. Where such damage has occurred, it is to be repaired to Council's written satisfaction prior to the issue of an Occupation Certificate or suitable arrangements put in place to effect those repairs at a future date to Council's written satisfaction. Should this process not be followed, Council will pursue action against the principal accredited certifier in relation to the recovery of costs to effect such works.

**Note:** It is an offence to occupy the building or part thereof to which this consent relates prior to the issue of an Occupation Certificate.

1. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.
2. A copy of the Section 73 Compliance Certificate issued under the provisions of the *Sydney Water Act, 1994*, is to be forwarded to Council or the Private Certifying Authority with the Occupation Certificate.
3. Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
4. The stormwater drainage system must be constructed and completed in accordance with the approved design and relevant Australian Standards.

A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a Licensed Plumber or qualified practicing Civil Engineer that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards must be provided.

5. Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Occupation Certificate application.

#### **F. Matters to be satisfied prior to the issue of Subdivision Certificate:**

##### **1. Asset Protection Zones**

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

- A. At the issue of a subdivision certificate, a positive covenant and restriction to the land use shall be created over the proposed lots pursuant to Section 88 of the *Conveyancing Act 1919*. The instruments shall prohibit the construction of residential dwellings outside the proposed building

envelopes and require land to be managed as an inner protection area (IPA) as indicated on the drawing titled *Schedule 1 - Bushfire Protection Measures* prepared by Travers bushfire Bushfire & Ecology dated 19/05/2016 (Issue 2). The IPA shall be managed as outlined within Section 4.1.3 and Appendix 5 of *Planning for Bush Fire Protection 2006* and the NSW Rural Fire Service's document *Standards for asset protection zones*. Northern Beaches Council shall be nominated as the prescribed authority for variation or removal of the instruments.

- B. At the issue of a subdivision certificate, a restriction to the land use shall be placed on adjoining Lot 2/1036400 to the west of the subject site requiring the provision of asset protection zones (APZs) to the west and north west of the proposed building envelope on proposed Lot 1(a), as indicated on the drawing titled *Schedule 1 - Bushfire Protection Measures* prepared by Travers bushfire Bushfire & Ecology dated 19/05/2016 (Issue 2). These APZs shall be maintained as outlined within Section 4.1.3 and Appendix 5 of *Planning for Bush Fire Protection 2006* and the NSW Rural Fire Service's document *Standards for asset protection zones*. Northern Beaches Council shall be nominated as the prescribed authority for variation or removal of the covenant.
- C. At the issue of a subdivision certificate, a positive covenant pursuant to Section 88 of the *Conveyancing Act 1919* shall be placed on the proposed lots which requires the ongoing implementation of the measures proposed in the vegetation management plan prepared by Cumberland Ecology referenced 15023RP and dated June 2016 for the site. Northern Beaches Council shall be nominated as the prescribed authority for variation or removal of the covenant.

## 2. **Water and Utilities**

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

- A. New water, electricity and gas services shall comply with Section 4.1.3 of *Planning for Bush Fire Protection 2006*.

## 3. **Access**

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. To achieve this, the following conditions shall apply:

- A. Proposed road(s) shall comply with the following requirements of Section 4.1.3(1) and Section 4.1.3(2) of *Planning for Bush Fire Protection 2006*:
- Road(s) shall be two wheel drive, all weather roads, with a carriageway 6.5 metres minimum kerb to kerb.
  - Any construction of the minimum carriageway width, due to existing site constraints, shall be no less than 3.5 metres for no greater than 30m along the access road.
  - Passing bays shall be 20 metres long by 2 metres wide, making a minimum trafficable width of 6 metres at the passing bay.
  - Dead end roads shall be clearly signposted as dead end and direct traffic away from the hazard.
  - Dead end roads shall incorporate the proposed 'Y' tuning head as indicated on the drawing titled *Schedule 1 - Bushfire Protection Measures* prepared by Travers bushfire Bushfire & Ecology dated 19/05/2016 (Issue 2).

- Roads shall have a cross fall not exceeding 3 degrees.
  - Curves of roads (other than perimeter roads) shall provide a minimum inner radius of 6 metres.
  - the minimum distance between inner and outer curves shall be 6 metres.
  - Maximum grades for sealed roads shall not exceed 15 degrees and an average grade of not more than 10 degrees of other gradient specified by road design standards, whichever is the lesser gradient.
  - The capacity of road surface and bridges shall be sufficient to carry fully loaded fire fighting vehicles (approximately 25 tonnes for areas with reticulated water, 28 tonnes or 9 tonnes per axle for all other areas).
  - Roads directly interfacing the bush fire hazard vegetation shall be provided with roll top kerbing to the hazard side of the road.
  - A minimum vertical clearance of 4 metres shall be provided to any overhanging obstruction, including tree branches.
4. Prior to the commencement of construction works, all tree protection recommendations in particular the establishment of tree protection zone fencing as specified in the approved Arborist Report (Footprint Green, 22/6/16) are to be certified by the consulting arborist as being adequate and in accordance with the specifications of AS 4970 ~ 2009 Protection of Trees on Construction Sites. Certification is to be provided to the certifying body prior to the issue of the Subdivision Certificate.
  5. The Bushland Management Consultant to certify that:
    - A. Native plant selection and planting as per Plan (Vegetation Management Plan and sub-plans, Cumberland Ecology, June and November 2016) has been completed,
    - B. All actions prescribed in the approved Vegetation Management Plan and sub-plans have been undertaken fully and where relevant completed and that an appropriate program of regeneration and maintenance has been entered into to comply with requirements of the Plan, and
    - C. That areas/features requiring protection have been adequately protected and are in an acceptable condition.
  6. A positive covenant as proposed in the letter from Cumberland Ecology (November 2016) on restriction on the use of land is to be created prior to the issue of the Subdivision Certificate.
  7. At the issue of a subdivision certificate, a positive covenant and restriction to the land use shall be created. The instrument shall prohibit domestic pet animals from entering wildlife habitat areas and areas identified as Management Zone 1 in the vegetation management plan at all times. Dogs and cats are to be kept in an enclosed area or on a leash such that they cannot enter areas of bushland, unrestrained, on the site or on surrounding properties or reserves. Ferrets and rabbits are to be kept in a locked hutch/run at all times.
  8. A Certificate is to be submitted to the Principal Certifying Authority with the Subdivision Certificate application by a qualified practising Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field confirming to the satisfaction of the Private

Certifying Authority that the driveway has been constructed in accordance with the approved plans and relevant conditions of Development Consent.

9. Prior to the issue of any subdivision certificate, a detailed design plan showing the following works within the public road reserve shall be submitted to, and approved by Council:
  - A. Replacement of the existing parking restriction signs within the turning head with standard "No Parking" signs; this zone is to be extended from the driveway at 81 Hillside Road around the kerb line to the driveway at 60 Hillside Road; and
  - B. Kerbs and gutters with sealed pavement shall be constructed to the Hillside Road turning area between the driveway at 81 Hillside Road and the existing kerb and gutter adjacent to 87 Hillside Road.
10. Prior to the issue of any subdivision certificate, the applicant shall submit to the Principle Certifying Authority a waste service agreement from Council indicating that the proposed subdivision will be serviced under a deed to indemnify the contractor for collection on the private road.
11. Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Subdivision Certificate application.
12. A plan showing details of the location of separate water, sewerage, electricity and telephone services to each lot is to be submitted to the Principal Certifying Authority, with the Subdivision Certificate application.
13. Appropriate easements are to be created where service lines or drainage lines pass through private property other than the lot which they benefit. These are created through the registration of the Plan of Subdivision.
14. A Restriction on Use of Land is to be created, burdening Lots 1a, 1b, 1c and 1d, the terms of which restrict future buildings within Lots 1a, 1b, 1c and 1d to the building envelopes and areas shown on the approved plans. Full details in this regard are to be submitted to Council on the final plan of Subdivision / and an accompanying Section 88B instrument. The creation of the Restriction on Use of Land is achieved through registration of the Plan of Subdivision.
15. Prior to the issue of any subdivision certificate, the applicant must submit a report from a practicing geotechnical engineer, such report is to address the following matters:
  - A. The classification, or - in the case of lots which have been subject to bulk filling - the reclassification of all lots on a lot by lot basis in accordance with Australian Standard AS 2870; and
  - B. Recommendation for appropriate footing systems on a lot by lot basis in accordance with Australian Standard AS 2870.
16. The following documents and payments are to be submitted to Council in a single package to ensure the efficient release of the Subdivision Certificate:-
  - A. Evidence of Payment of the Section 94 Contribution.
  - B. A copy of the Section 73 Compliance Certificate issued under the provisions of the Sydney Water Act, 1994.
  - C. Copies of the Subdivision Plans (original plus 6 copies).

- D. The Private Certifying Authority Compliance Certificate. Each component of the works as outlined above are to be certified as being carried out in accordance with the relevant plans and documentation by suitably qualified professional persons as outlined in this development consent. In particular, the construction of the Water Management System is to be supervised and certified by person(s) with appropriate experience and expertise in Environmental Science, Hydrology and Hydraulics, and must be NPER registered members of the Institution of Engineers (Australia).
- E. Where Material Public Benefits are involved, a Bank Guarantee for the difference between the value of the Material Public Benefit (MPB) and the value of the MPB works constructed for that stage.
- F. Work-as-executed plans for all structures or facilities which will be dedicated to Council or which are located within drainage easements or which will require ongoing maintenance by Council. The plans are to be in paper and electronic format (dwg or dxf file) and comprise at least the following:-
  - i. Boundary layout;
  - ii. Kerb and gutter, road pavement, footpaths, traffic devices, retaining walls;
  - iii. Signage (including type and wording), line marking;
  - iv. Easements, survey numbers and marks, reduced levels and co-ordinates;
  - v. Stormwater drainage, pipe sizes and types, pit sizes and types, subsoil drains;
  - vi. Water quality devices, ponds, creekline corridors, parkland, play equipment;
  - vii. Significant landscaping.
- G. A security deposit of a value to be determined by Council is to be made to ensure rectification of any defects during the maintenance period. A maintenance period is to apply to all works to be dedicated to Council or which will require ongoing maintenance by Council. The maintenance period will apply for six (6) months after the issue of the Subdivision Certificate. In that period the applicant will be liable for any part of the works which fail to perform in the manner required by the relevant certifications, or as would be reasonable expected under the design conditions.

**G. Advice:**

1. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.
2. Dial before you dig: Prior to excavation the applicant is advised to contact Australia's National Referral Service for Information on Underground Pipes and Cables telephone 1100 or [www.1100.com.au](http://www.1100.com.au)
3. It is the Project Managers responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.

4. In accordance with Section 95(1) of the EPA Act 1979, this development consent lapses 5 years after the date from which this consent operates if the development is not commenced.
5. To ascertain the date upon which a consent operates, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979* (as amended).
6. Should any of the determination not be acceptable, you are entitled to request reconsideration under Section 82A of the Environmental Planning and Assessment Act, 1979. Such request to Council must be made in writing, together with appropriate fees as advised at the time of lodgement of such request, within 6 months of the determination.
7. If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act, 1979, gives you a right of appeal to the Land and Environment Court within 6 months of the date of endorsement of this Consent.
8. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Waters sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to the web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then see Building Developing and Plumbing then Quick Check, or telephone 13 20 92.
9. This approval does not prejudice any action in respect of upgrading the building pursuant to the provisions of the Section 121B of the *Environmental Planning and Assessment (Amendment) Act, 1997*.
10. Littoral Rainforest Endangered Ecological Community as listed on Schedule 1 of the NSW Threatened Species Act 1995 has been recorded on or near this property. Under the TSC Act it is an offence to harm Endangered Ecological Communities, Endangered Populations or Threatened Species. No unapproved site disturbance or other activities shall be carried out on the property which adversely impacts on threatened species or EEC's.