

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/2208
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<b>Responsible Officer:</b>	Nick England
<b>Land to be developed (Address):</b>	Lot 6 DP 3632, 3 Riverview Road AVALON BEACH NSW 2107 Lot LIC 391482, 3 Riverview Road AVALON BEACH NSW 2107
<b>Proposed Development:</b>	Alterations and additions to a dwelling house including a tennis court, outbuilding and associated landscaping works
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Nicola Domazet
<b>Applicant:</b>	Nicola Domazet

<b>Application Lodged:</b>	18/11/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	30/11/2021 to 14/12/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 629,925.00
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### PROPOSED DEVELOPMENT IN DETAIL

The development consists of the following:

- construction of a tennis court / basketball court;
- associated two-storey pavilion to tennis court;
- re-construction of part of existing driveway and new road reserve crossing; and
- removal of four (4) trees.

The application was amended with new plans received by Council on 4 May 2022. These plans were

amended in response to concerns raised in correspondence by Council dated 16 March 2022 and involves the following amendments:

- deletion of entry feature adjoining the front boundary of the site
- lowering the height of the pavilion by 100mm and reducing the area of windows on the south elevation;
- lowering of front gate / fence to 1m in height; and
- deletion of the garbage storage area located within the front setback area.

An amended Statement of Heritage Impacts was also provided.

Subject to the Northern Beaches Community Participation Plan (Plan Making and Development Assessment, page 11) the application was not re-notified as the changes resulted in a reduced environmental impact.

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living

Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

Pittwater Local Environmental Plan 2014 - 7.10 Essential services

Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures

Pittwater 21 Development Control Plan - C1.16 Development ancillary to residential accommodation - Tennis Courts

Pittwater 21 Development Control Plan - D1.8 Front building line

Pittwater 21 Development Control Plan - D1.9 Side and rear building line

Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 6 DP 3632 , 3 Riverview Road AVALON BEACH NSW 2107 Lot LIC 391482 , 3 Riverview Road AVALON BEACH NSW 2107
<b>Detailed Site Description:</b>	<p>The site has a legal description of Lot 6 DP 3632, and is commonly known as 3 Riverview Road, Avalon Beach. The site slightly irregular in shape, with a 27.74m wide frontage to Riverview Road, a maximum depth of 153.96m, and a total area of 4,234m<sup>2</sup>. The site has a direct frontage to the Pittwater Waterway, with the MHWL acting to divide public and private land. The site contains an existing dwelling situated on the lower portion of the site, with a boat shed and boathouse within the foreshore area. The upper portion of the site is generally free of development with a number of existing significant canopy trees.</p> <p>The existing dwelling is identified as an item of local heritage significance. The site is located within the Coastal Zone, and is subject to estuarine and geotechnical hazards. The site is located within a low density residential area, and is surrounded by dwellings of varied age, character and architectural style.</p>

Map:



## SITE HISTORY

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

**DA2018/1616:** Development consent granted for "Alterations and Additions to a dwelling house including alterations to an existing boathouse and swimming pool" on 22 March 2019.

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to: heritage; permissible land uses; landscaped open space; front setback; and front fences. This correspondence was sent on 16 March 2022.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p>

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

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 30/11/2021 to 14/12/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>This application is for the construction of a new tennis court and pavilion as well as new landscape works.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• D1 Avalon Locality and in particular D1.14 Landscaped Area - Environmentally Sensitive Land</li> </ul> <p>The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone</p> <p><i>updated comments:</i></p> <p>The updated architectural plans remove all the structures within the front setback and delete the entry pagoda. No updated Landscape Plans are submitted. Areas of deleted structures shall be replaced with soft landscape. The landscape area of approximately 52% of the site area is less than required and is a matter for merit consideration by the Planning Assessment Officer. The landscape areas proposed are landscaped such that the LEP C4 zone Environmental Living and DCP control C1.1 is able to be satisfied.</p> <p>The landscape component of the proposal is therefore supported subject to the protection of existing trees and vegetation, as well as the completion of landscape works as proposed on the Landscape Plan provided and to all areas that are not occupied by buildings and structures, as well as the inclusive of the required species change and incorporation of additional native species as noted previously.</p> <p><i>previous comments:</i></p> <p>The Statement of Environmental Effects provided with the application notes that a number of trees are to be removed as a result of proposed works. Upon review of the Architectural Plans, it is evident a total of nine trees are proposed to be removed. For this reason, an Arboricultural Impact Assessment has been provided with the application.</p> <p>This Arboricultural Impact Assessment has identified a total of fifteen trees, two of which are located within the road reserve adjacent to the eastern boundary, one is located in the adjoining property to the north, two within the property to the south, with the remaining ten trees located within the site boundaries. Of these fifteen trees identified, nine trees are proposed to be removed including Trees No. 2, 7, 8, 9, 10, 11, 12, 13 and 14. Of these nine trees to be removed, all trees except Tree No. 14 have been identified as exempt trees either due to species or being below 5m in height, and as a result these can all be removed without Councils approval. Tree No. 14 is a significant exotic</p>

Internal Referral Body	Comments
	<p>tree, however considering the Landscape Plan provided proposes a number of compensatory tree plantings, the removal of Tree No. 14 is supported.</p> <p>Of those trees to be retained, Trees No. 3 is not anticipated to be impacted at all, with Trees No. 1, 4, 5, 6 and 15 having a varying amount of Tree Protection Zone (TPZ) encroachment. All levels of TPZ encroachment are expected to be below 10%, and as a result are deemed minor in accordance with AS4970-2009. For this reason, no major concerns are raised regarding the impacts of works on trees to be retained as these trees are deemed to be viable for retention. The retention of these trees is vital to satisfy the C4 Environmental Living zone and DCP controls B4.22.</p> <p>The Landscape Plan submitted proposes the in-ground planting of trees, shrubs, accents, grasses and groundcovers, as well as the on-slab planting of trees, accents and groundcovers. Concern is raised regarding the use of <i>Pennisetum 'Nafray'</i> as this has been identified as an environmental weed and is known to self-seed into bushland reserves within the Northern Beaches. For this reason, it is recommended that this species be substituted for a locally native alternative.</p> <p>Furthermore, it is noted the Biodiversity Referral Team has recommended that all new planting is to incorporate at least 80% native species, which is particularly important considering the presence of Pittwater Spotted Gum Endangered Ecological Community that is found within the site. The completion of these proposed landscape works, inclusive of the species change and incorporation of additional native species, is necessary to satisfy control C1.1 and D1.14 as key objectives of this control seek to ensure "vegetation is retained and enhanced to visually reduce the built form", "landscaping reflects the scale and form of development", as well as "landscaping retained and enhances Pittwater's biodiversity by using locally native plant species".</p> <p>The landscape component of the proposal is therefore supported subject to the protection of existing trees and vegetation, as well as the completion of landscape works as proposed on the Landscape Plan provided, inclusive of the required species change and incorporation of additional native species.</p>
NECC (Bushland and Biodiversity)	<p>The application seeks approval for alterations and additions to an existing dwelling, including the construction of a new tennis court with pavilion, driveway alterations and associated landscaping.</p> <p>Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p><b>Biodiversity Conservation Act 2016 (BC Act)</b></p>

Internal Referral Body	Comments
	<p><b>State Environmental Planning Policy (Coastal Management) 2018</b></p> <ul style="list-style-type: none"> <li>Coastal Environment Area</li> </ul> <p><b>Pittwater Local Environmental Plan (PLEP)</b></p> <ul style="list-style-type: none"> <li>7.6 Biodiversity Protection</li> </ul> <p><b>Pittwater Development Control Plan (PDCP)</b></p> <ul style="list-style-type: none"> <li>B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community</li> </ul> <p>The application seeks to remove nine (9) trees (T. 2, 7, 8, 9, 10, 11, 12, 13 &amp; 14). All trees are exempt based on species or height (&lt;6m), or are otherwise exotic species. Therefore no objection is raised by Council's Natural Environment Unit - Biodiversity subject to proposed replanting detailed within the submitted Landscape Plan (Dangar Barin Smith 2021).</p> <p>Recommendations of the Arboricultural Impact Assessment Report (Jacksons Nature Works 2021) are to be implemented, to prevent construction or long-term impacts to all retained trees, in particular Tree 5 and 6.</p> <p>Minor amendment is required to the submitted landscape plan in accordance with B4.7 of the PDCP which states:</p> <ul style="list-style-type: none"> <li>Development shall ensure that at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Pittwater Spotted Gum Endangered Ecological Community).</li> </ul> <p>It is noted that the current revision (E) proposes 51% natives, however these must from the Pittwater Spotted Gum Forest Community.</p> <p><a href="https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/2013-2015/pittwater-and-wagstaffe-spotted-gum-forest-endangered-ecological-community-listing">https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/2013-2015/pittwater-and-wagstaffe-spotted-gum-forest-endangered-ecological-community-listing</a></p> <p>The application does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
NECC (Coast and Catchments)	The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal



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	<p>Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p><b>State Environmental Planning Policy (Coastal Management) 2018</b> The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Andrew Martin Planning Pty. Ltd. dated September 2021, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b></p> <p><b>Estuarine Risk Management</b></p> <p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Andrew Martin Planning Pty. Ltd. dated September 2021, the ground floor level for</p>

Internal Referral Body	Comments					
	<p>the proposed additions and alterations is far above the applicable EPL for the site. The proposed development is therefore able to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p><b>Development on Foreshore Area</b></p> <p>A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The DA proposes no works on the foreshores area and hence, the DA does not require to satisfy the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p>					
NECC (Development Engineering)	<p>The proposal does not require OSD and connection of stormwater to the existing system is acceptable. The proposed driveway crossing and internal driveway are acceptable. The submitted Geotechnical report addresses the relevant DCP controls.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>					
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The application meets the requirements of the relevant Environmental Planning Instruments and policies.</p>					
Strategic and Place Planning (Heritage Officer)	<table border="1"> <tr> <td data-bbox="520 1447 1437 1480"><b>HERITAGE COMMENTS</b></td> </tr> <tr> <td data-bbox="520 1480 1437 1514">Discussion of reason for referral</td> </tr> <tr> <td data-bbox="520 1514 1437 1697"> <p>The proposal has been referred to Heritage as the subject property is a heritage item</p> <p><b>Little House ("Yoorami") - 3 Riverview Road, Avalon Beach</b></p> </td> </tr> <tr> <td data-bbox="520 1697 1437 1731">Details of heritage items affected</td> </tr> <tr> <td data-bbox="520 1731 1437 2136"> <p>Details of the item as contained within the Pittwater inventory is as follows:</p> <p><u>Statement of Significance</u>            Little House (Yoorami) at 3 Riverview Road, Clareville, built c1965 to a design by the architect Douglas Snelling, has historic and aesthetic significance as an early example of Late Twentieth-Century Sydney Regional architecture showing direct influences by Frank Lloyd Wright. Typical modernist features include: horizontal emphasis in the structure, free asymmetrical massing, flat roof, clerestory windows, timber deck, exposed structure, retention and</p> </td> </tr> </table>	<b>HERITAGE COMMENTS</b>	Discussion of reason for referral	<p>The proposal has been referred to Heritage as the subject property is a heritage item</p> <p><b>Little House ("Yoorami") - 3 Riverview Road, Avalon Beach</b></p>	Details of heritage items affected	<p>Details of the item as contained within the Pittwater inventory is as follows:</p> <p><u>Statement of Significance</u>            Little House (Yoorami) at 3 Riverview Road, Clareville, built c1965 to a design by the architect Douglas Snelling, has historic and aesthetic significance as an early example of Late Twentieth-Century Sydney Regional architecture showing direct influences by Frank Lloyd Wright. Typical modernist features include: horizontal emphasis in the structure, free asymmetrical massing, flat roof, clerestory windows, timber deck, exposed structure, retention and</p>
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	<p>adaptation to the natural setting and use of natural materials. The residence portrays the early stages of a significant movement by Sydney architects to adapt the International style and design theory to a local, regional language.</p> <p><u>Physical Description</u> The house is located on a terraced sloped site covered with large rocks, trees and ferns with scenic views over Pittwater. The view from the street is screened by luxuriant vegetation creating a natural bush setting. It is not possible to see it from the public domain.</p> <p>The house is a one-storey, skillion roof building organised around a central patio with a pool. A little stream of water runs below the house that is gently adapted on the sandstone rocks facing the water. The property has four double bedrooms, five bathrooms, a billiard room, cellar, commercial kitchen, in-ground pool and guest/staff accommodation. It also includes boating facilities with a two-storey boat house, landing ramp, slipway and deepwater jetty with two mooring pens.</p> <p>Typical modernist features include: horizontal emphasis in the structure, free asymmetrical massing, flat roof, clerestory windows, timber deck, exposed structure, retention and adaptation to the natural setting and use of natural materials.</p>	
	<p><b>Other relevant heritage listings</b></p>	
	<p>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</p>	<p>No</p>
	<p>Australian Heritage Register</p>	<p>No</p>
	<p>NSW State Heritage Register</p>	<p>No</p>
	<p>National Trust of Aust (NSW) Register</p>	<p></p>
	<p>RAIA Register of 20th Century Buildings of Significance</p>	<p>Yes</p>
	<p>Other</p>	<p></p>
	<p><b>Consideration of Application</b></p> <p>This proposal for a new tennis court and associated facilities has been referred for heritage comment as it involves development within the site and setting of a house which is listed as a Heritage Item. The property has been the subject of a recent application for extensive alteration works, negotiated to an approval with Council staff. The proposed tennis court and facilities must be assessed for their impact on the significance of the property.</p>	

Internal Referral Body	Comments
	<p>The house at No. 3 Riverview Road is known (and of heritage interest) as “Yoorami” or the Little House, and was designed for the owner and builder, Mr. Arthur Little, by the architect Douglas Snelling. A high profile, prominent and successful architect of prestigious homes in the 1960s and 70s, Snelling competed with other, well recognised architects of his time – Harry Seidler, Peter Muller, and Bruce Rickard, and employed others who subsequently became prominent, such as Vivian Fraser who documented the Little House for construction. He looked beyond Australia and having worked overseas, returning to Sydney at several stages of his career, brought wide-ranging international influences to Sydney, beyond Frank Lloyd Wright who influenced his contemporaries.</p> <p>In previous comment upon the property for the earlier application (DA 2018/1616) made to Council for changes to the house and integrated outbuildings on the waterfront Pittwater Sound side of the property, the significance was commented on in more detail. In her PhD thesis on Snelling, and subsequent biography (obtained in research for this referral) Dr. Davina Jackson ranked the house as one of Snelling’s major works.</p> <p>The application is supported by a Statement of Heritage Impact which concludes that the proposal retains the significance of the Item and its setting ; that the existing curtilage and visual setting of the house will not be affected ; that the design intent of the original architect is not diminished, and that the high architectural merit of the proposal will “enhance the understanding of the heritage item by creating a valuable contemporary layer executed in a cohesive manner with the work of the original architect Douglas Snelling”. These conclusions are not agreed with.</p> <p>The present site characteristics of the property are not acknowledged in the report, nor helpfully interpreted. There is no front fence because it would appear, quite intentionally, none was built – in keeping with the “ill-defined” but intentional absence of fenced boundaries. The “street frontage-foreground” of the property appears to have always been grassed lawns, and remains so.</p> <p>What appears obvious is that the house was intentionally set to the western waterfront side of the property and is effectively set behind a spatially luxurious, landscaped foreground, screening the house from view. There are no fences or gates. As noted, a hint of what is on the site is provided only by the exotically detailed “pagoda” letterbox beside the driveway entrance. The approach driveway crests before sweeping around to enter the vehicle forecourt and carport, from where the house itself is revealed. The absence of development in the eastern area of the site (apparent in successive aerial photos of the site) and an emphasis on spacious open, landscaping, appear intentional. In my opinion, this is consistent with the Californian Modernism with which Snelling was familiar.</p>

Internal Referral Body	Comments
	<p>This perspective suggests that development in the foreground area of the site should be carefully scaled, reticent, and not dominant of the approach and arrival experience of the house. The works will occasion the removal of the present entry drive and roundel, and the relocation of the original letterbox – which obviously should be retained as is proposed. It should not in my understanding, be sited on public land as shown.</p> <p>The proposed palisade front fence and super-scaled entry arbour are not in my opinion, consistent with the significance and characteristics of the property, and will unreasonably change and dominate the presentation of the property to the street and the arrival experience to it. Landscaping could and should conceal the presence of fencing and of the proposed masonry base structure to the court. The overall character – form, materials, and shape of the proposed ground floor of the envisaged tennis pavilion owe little to the house proper, and do not defer to it, which it should. In my opinion it should not have large glazed openings presented to the approach drive.</p> <p>While there will be a planning assessment of the proposal, considering amongst other things the impact of the proposal on the amenity of neighbours to the site, in heritage terms, for the introduction of a tennis court and services to be acceptable it is submitted that it must defer to the strong heritage values of the site and how these can be minimally affected by the facility. A more reticent design which responds to the characteristics of the property and respects its importance would have a greater chance of support. This is not a suggestion that the “style” of the pavilion should be consistent with the house ; it is the scale, bulk, materials and character of the pavilion that should avoid diminishing conflict and competition.</p> <p>It is suggested that with regard to the court itself, the treatment of the masonry base which provides a level court surface plane, should be simple and avoid any fenestration to the approach drive. The arbour or pergola frame should be omitted from the proposal, and the court fence should be as simple in materials and construction as possible. Landscaping and particularly vegetation should act to conceal both the base and the court fence.</p> <p>With regard to the pavilion, the upper floor should have a reduced presence, having a thin-edged roof and see-through walls to yield a minimal presence. The building should be seen behind the screening landscaping which is suggested to minimize the presence of the court. It should not make a statement which detracts from the house to which it is auxiliary, for this risks conflict with the significance and design statement which the heritage listed residence makes.</p> <p>The location and treatment of the proposed bin store and of the</p>

Internal Referral Body	Comments
	<p>front fence should also be reconsidered, so as to retain as much as possible, the apparent open-ness of the site. An alternative location for the bin store should not be difficult and avoid more built elements in the property frontage area. If envisaged for site security reasons, a suitable fence should be possible further into the property.</p> <p>In summary, while the concept of a court and pavilion can be supported, the clear potential for conflict with heritage significance means that the design of the current proposal cannot be supported, and should be reconsidered and amended in response to the comments above.</p> <p>In heritage terms, the proposal in its current form cannot be supported, without amendments for a better heritage outcome. These should be readily achievable, and may be assisted by further discussion with Council officers.</p> <p>Is a Conservation Management Plan (CMP) Required? No. The significance of this property is such that it could have been requested.          Has a CMP been provided? No.          Is a Heritage Impact Statement required? Yes.          Has a Heritage Impact Statement been provided? Yes.</p> <p><b>Comments on Amended Plans - 9 May 2022</b></p> <p>I prefaced my initial comments on the proposal in the following terms :</p> <p><i>“The application is supported by a Statement of Heritage Impact which concludes that the proposal retains the significance of the Item and its setting ; that the existing curtilage and visual setting of the house will not be affected ; that the design intent of the original architect is not diminished, and that the high architectural merit of the proposal will “enhance the understanding of the heritage item by creating a valuable contemporary layer executed in a cohesive manner with the work of the original architect Douglas Snelling”.</i>  <i>These conclusions are not agreed with.”</i></p> <p>I remain of those views, but acknowledge that amendments have been made in order to address, to some extent, the concerns that were conveyed. I have read Mr. Kovacs’ comments, and acknowledge my misassumption that the letterbox was to be relocated – and of course I support its retention in its current location. With regard to the amendments :</p> <ul style="list-style-type: none"> <li>• the deletion of the harbour is most welcome and helpful ;</li> </ul>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• the relocation of the bin space is similarly positive ;</li> <li>• the reduction in size of the lower pavilion area windows, south elevation, is positive but I suggest they may helpfully hold more rigour and simplicity if all the same height and size (enlarge the smaller one);</li> <li>• the reduction in height of the entry gate and street fence to 1000mm is welcome and helpful in reducing its intrusion ;</li> <li>• the upstand of the upper pavilion level roof has been reduced by 100mm and is helpful,  but the upper level of the pavilion will remain intrusive considering the qualities and  significance of the front garden and landscape areas, in my opinion. A further and beneficial  mitigation would be achieved by reducing the ceiling height, and thus the relative roof  height, of the upper level which at almost 4.0metres internally, is very high and arguably  capable of a significant reduction, at least 500mm, without harm to internal amenity.</li> </ul> <p>Approaching a conclusion on this matter, what might be seen as the saving characteristics of the site of “Yoorami” in the considering this proposal are its topography and the substantial separation of the new facility from the house. Opinions will vary on the success of the new pavilion in heritage and design terms, and the acceptability of its impact upon the existing important house, but its impact will at least be in part mitigated by the size of the site and the separation from the house.</p> <p>In heritage terms, the impact of the proposal has been mitigated in part by the amendments adopted. A further beneficial change would be a reduction in the overall and ceiling heights of the pavilion’s upper level, after which the proposed facility could be accepted while acknowledging the impacts upon the setting of “Yoorami” as being of a level of minor harm.</p>

Internal Referral Body	Comments
	<p>COMPLETED BY: Robert Moore</p> <p>DATE: 11 March 2022, Amended 9 May 2022</p> <p><i>Planners Note: A detailed discussion on this advice is discussed on the section of this report relating to Clause 5.10 Heritage conservation of Pittwater Local Environmental Plan 2014.</i></p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	NSW Aboriginal Heritage Office has no objections to the proposed development.
NSW Department of Planning (SEPP 71 - Coastal)	The NSW Department for Planning Industry and the Environment have advised that no comment is required.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

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

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

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

### SEPP 55 - Remediation of Land

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

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

A BASIX certificate has been submitted with the application (see Certificate No.1224240S\_02). The BASIX Certificate indicates that the development will achieve the sustainability requirements of the SEPP.



## **SEPP (Infrastructure) 2007**

### Ausgrid

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

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

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

## **SEPP (Coastal Management) 2018**

The site is classified as land within the coastal environment area / land within the coastal use area under the State Environmental Planning Policy (Coastal Management) 2018. Accordingly, an assessment under the SEPP has been carried out as follows:

### **13 Development on land within the coastal environment area**

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) coastal environmental values and natural coastal processes,*
  - (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) Aboriginal cultural heritage, practices and places,*
  - (g) the use of the surf zone.*

Comment: The proposal will not adversely effect the values so listed in Clause 13 (1) of the SEPP.

- (2) *Development consent must not be granted to development on land to which this clause applies*

unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment: The proposal will not adversely effect the values so listed in Clause 13 (1) and (2) of the SEPP.

**14 Development on land within the coastal use area**

- (1) (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
  - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
  - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
  - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
  - (iv) Aboriginal cultural heritage, practices and places,
  - (v) cultural and built environment heritage, and
- (b) is satisfied that:
  - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
  - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment: The proposal will not adversely effect the values so listed in Clause 14 of the SEPP.

**15 Development in coastal zone generally—development not to increase risk of coastal hazards**

*Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

Comment: The proposed development will not result in any likelihood of an increase in coastal hazards.

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

**Pittwater Local Environmental Plan 2014**

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

zone objectives of the LEP?	Yes
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#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.3m	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes
Schedule 5 Environmental heritage	Yes

#### Detailed Assessment

##### Zone C4 Environmental Living

In previous correspondence to the applicant it was advised:

*"The size and layout of the proposed pavilion is considered to be a prohibited land use within the C4 Environmental Living zone of the Pittwater Local Environmental Plan 2013, in which the land is located. The estimated floor space on both the lower and upper level is estimated to be in excess of 200m<sup>2</sup> and the internal layout includes all the necessary rooms and functions that would exist within a dwelling house.*

*Whilst "secondary dwellings" (in conjunction with an existing principal dwelling) are permitted in the C4 zone, any building that: exceeds 60m<sup>2</sup> in floor area, and; has a floor layout that would allow it to be used a dwelling, must then be considered as a separate dwelling to the one that already exists on site.*

*Hence, the land use definition of the development that is proposed is considered to be a "dual occupancy (detached)". This form of development is prohibited in the subject zone and hence Council cannot support the development in its current form."*

The applicant has not provided any response on this matter. Notwithstanding, a condition of consent is recommended to ensure that the pavilion is not to be used as a separate dwelling. On operation of this condition, the proposal is therefore considered to be works ancillary to an existing dwelling house, which is permissible in the C4 Environmental Living zone.

##### 5.10 Heritage conservation

The site has the presence of an item of local environmental heritage, being the "Little House

("Yoorami"). This dwelling dates from 1965 and was designed by prominent Sydney architect Douglas Snelling, and has historic and aesthetic significance as an early example of Late Twentieth-Century Sydney Regional architecture.

Council Strategic and Place Planning (Heritage Officer) has provided commentary on both the original and amended plans, and in both instances, does not support the proposal. Key extracts from the revised advice (dated 9 May 2022) is provided below:

*"With regard to the amendments:*

- *the deletion of the arbour is most welcome and helpful;*
- *the relocation of the bin space is similarly positive;*
- *the reduction in size of the lower pavilion area windows, south elevation, is positive but I suggest they may helpfully hold more rigour and simplicity if all the same height and size (enlarge the smaller one);*
- *the reduction in height of the entry gate and street fence to 1000mm is welcome and helpful in reducing its intrusion ;*
- *the upstand of the upper pavilion level roof has been reduced by 100mm and is helpful, but the upper level of the pavilion will remain intrusive considering the qualities and significance of the front garden and landscape areas, in my opinion. A further and beneficial mitigation would be achieved by reducing the ceiling height, and thus the relative roof height, of the upper level which at almost 4.0metres internally, is very high and arguably capable of a significant reduction, at least 500mm, without harm to internal amenity.*

*Approaching a conclusion on this matter, what might be seen as the saving characteristics of the site of "Yoorami" in the considering this proposal are its topography and the substantial separation of the new facility from the house. Opinions will vary on the success of the new pavilion in heritage and design terms, and the acceptability of its impact upon the existing important house, but its impact will at least be in part mitigated by the size of the site and the separation from the house.*

*In heritage terms, the impact of the proposal has been mitigated in part by the amendments adopted. A further beneficial change would be a reduction in the overall and ceiling heights of the pavilion's upper level, after which the proposed facility could be accepted while acknowledging the impacts upon the setting of "Yoorami" as being of a level of minor harm. "*

This advice is generally concurred with, specifically the observation that the proposed works have a significant distance from the heritage item (estimated at 65m) to mitigate its impact on the setting of the item. To summarise the further amendments suggested, these centre on:

- standardising the size of the windows on the pavilion; and
- lowering the height of the pavilion by at least 0.5m.

The suggestion to reduce the overall height of the pavilion by 0.5m is concurred with and considered to

be reasonable to apply as condition of consent.

Hence, a condition of consent is recommended to lower the height of the pavilion by 0.5m (maximum height of RL 38m AHD). In operation of this condition, the application will then demonstrate compliance with the objectives of Clause 5.10 of PLEP 2014.

## 7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

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

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

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

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

*(f) the likelihood of disturbing relics*

Comment: The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

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

Comment: The site is not located in the Coastal zone, adjoining the Pittwater waterway. No adverse impact is likely on this sensitive coastal environment.

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

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

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

Comment: The site is identified as a local item of environmental heritage. A detailed assessment of the potential impact of the proposed development on this item is provided elsewhere in this report. In summary, the excavation required for the proposed development will not result in any adverse impact on the heritage item, nor on any potential archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## 7.6 Biodiversity protection

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

*(a) whether the development is likely to have:*

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

Comment:

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

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development. Before granting development consent, this clause also requires the consent authority to be satisfied that:

*(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*

*(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*

*(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

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

## **7.7 Geotechnical hazards**

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

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

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

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

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

Comment:

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

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

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

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

## **7.10 Essential services**

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access.

Comment:

The site is suitably serviced by utilities infrastructure that will support the proposed development.

**Pittwater 21 Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	6.2m - 7.3m (tennis court)	5%	No
Rear building line	N/A (foreshore building line)	N/A	N/A	N/A
Side building line	2.5m (north)	2m (tennis court) 2m - 4.6m (pavilion)	20% 20%	No No
	1m (south)	9.2m	N/A	Yes
Building envelope	3.5m (north)	Within envelope	N/A	Yes
	3.5m (south)	Within envelope	N/A	Yes
Landscaped area	60%	2,146m <sup>2</sup> or 51%	15%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.16 Development ancillary to residential accommodation - Tennis Courts	Yes	Yes
C1.23 Eaves	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	No	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.16 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

### Detailed Assessment

#### **C1.14 Separately Accessible Structures**

The proposed pavilion will have a significant area of floor space (in excess of 200m<sup>2</sup>) and has a layout and facilities that would enable it to be used as a separate dwelling. In order to prevent this, a condition of consent is recommended that the pavilion not be used as a separate dwelling. Subject to condition, the proposal will therefore be able to demonstrate compliance with this control.

#### **C1.16 Development ancillary to residential accommodation - Tennis Courts**

Adequate colour (black) is proposed on the tennis / basketball court fencing and no lighting is proposed. A condition is also recommended that no illumination of the courts be provided, for the ongoing life of the development.

#### **D1.8 Front building line**

### **Description of Non-compliance**

The tennis court is located between 6.2m to 7.3m from the front boundary, which on the south-east corner is within the 6.5m front setback control. This represents a 5% variation with the control.

### **Consideration of the Outcomes of the control**

An assessment of the non-compliance is provided below:

*To achieve the desired future character of the Locality. (S)*

Comment: The extent of the variation is relatively minor (5%) and only relates to the south-eastern corner of court, with the majority of the structure further behind the minimum setback. In this regard, the proposal can achieve the desired future character of the locality.

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

Comment: This is not applicable to the proposed development.

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

Comment: The amended proposal has removed the garbage structure from the front setback, which provides greater opportunity to enhance vegetation in this area. A condition of consent is recommended that an amended landscape plan be provided to ensure the front setback is properly landscaped to mitigate the visual impact of the proposed sports court.

*Vehicle manoeuvring in a forward direction is facilitated. (S)*

Comment: Sufficient space is provided on-site to permit forward entry and exit from the site.

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

Comment: As stated previously, the non-compliance is minor and only occurs on the south-eastern corner of the court. Hence, an adequate visual presentation to the street is provided to achieve this Outcome.

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

Comment: The proposal (as amended) will provide a sufficient response to the spatial characteristics of existing development along Riverview Road and therefore this Outcome is achieved.

In summary, despite the non-compliance, the Outcomes of the control are achieved and hence the non-compliance does not warrant refusal of the application under the particular circumstances of the application.

## **D1.9 Side and rear building line**

### **Description of Non-compliance**

The proposed sports court and associated pavilion is located at its closest point, 2m from the side (north) boundary. This represents a 20% variation to the minimum 2.5m boundary which would be required on this boundary.

### **Consideration of the Outcomes of the control**

*To achieve the desired future character of the Locality. (S)*

Comment: The extent of the variation does not result in a the visual scale or amenity impact that is inconsistent with the desired future character of the Locality. Hence, this Outcome is achieved.

*The bulk and scale of the built form is minimised. (En, S)*

Comment: The sports court is a transparent structure and a 2m landscaped setback to the north boundary is provided. The pavilion building is setback 2m at the ground floor and 4.6m for the upper level. In this regard, the proposed development will have a minimal visual impact and is able to achieve this Outcome.

*Equitable preservation of views and vistas to and/or from public/private places. (S)*

Comment: The extent of the variation is unlikely to result in the loss of any views or vistas that are enjoyed from any adjoining public or private spaces. Hence, this Outcome is achieved.

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

Comment: As stated previously, the non-compliance is unlikely to result in the loss of any views and therefore an adequate sharing of views is ensured to meet this Outcome.

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

Comment: The extent of the non-compliance is not likely to result in the unreasonable loss of privacy, any adverse overshadowing or any other adverse amenity impact on adjoining residential properties is not likely as a result of the proposed non-compliance.

*Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)*

Comment: There are sufficient areas of landscaped open space around the site to achieve this Outcome.

*Flexibility in the siting of buildings and access. (En, S)*

Comment: The proposed location of the new structures are considered an appropriate location, based on the attributes of the site.

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

Comment: The vegetation proposed to be removed is insignificant and not of a value worthy of retention. The proposed structures are limited in their visual impact. In this regard, this Outcome is achieved.

*A landscaped buffer between commercial and residential zones is achieved.(En,S)*

Comment: No applicable to the proposed development.

In summary, the proposal has demonstrated a consistency with the Outcomes of the control and hence the non-compliance does not warrant refusal of the application under the particular circumstances of the application.

#### **D1.14 Landscaped Area - Environmentally Sensitive Land**

##### **Description of Non-compliance**

A total of 2,146m<sup>2</sup> or 51% of the site, is set aside as landscaped open space. This is short of the 60% requirement that applies in the C4 zone. This represents a 15% variation to the control.

##### **Consideration of the Outcomes**

An assessment of the proposal against the Outcomes of the control is provided below:

*Achieve the desired future character of the Locality. (S)*

Comment: Central to the desired future character is the requirement to place structures amongst the trees and native vegetation. The proposed works are sited in a manner that works around the significant native vegetation on the land and provides a low-key built form that integrates into the natural surroundings. Hence, this Outcome is achieved.

*The bulk and scale of the built form is minimised. (En, S)*

Comment: The proposed structures are built in a manner that mitigates their visual impact. The sports court is at ground level, transparent and will be supported by a landscaping scheme that will integrate it into the surrounding landscape. The ground floor of the pavilion is mostly located in an excavated level that will be below the natural ground level of the site. Hence, the built form is minimal and can easily achieve this Outcome.

*A reasonable level of amenity and solar access is provided and maintained. (En, S)*

Comment: As stated above, the proposed works are low-key and as such, will have a limited amenity impact on adjoining residences. Hence, this Outcome is achieved.

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

Comment: The proposed development will minimise the vegetation required to be removed and provide an open form of development that supports the natural bushland character of the area.

*Conservation of natural vegetation and biodiversity. (En)*

Comment: Council's Landscape Officer and Biodiversity Officer have supported the proposal, which demonstrates that this Outcome can be achieved.

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

Comment: Council's Development Engineer has supported the proposal, which demonstrates that this Outcome can be achieved.

*To preserve and enhance the rural and bushland character of the area. (En, S)*

Comment: The works proposed (as amended) are low-key and will integrate aspects of landscaped

open space that will preserve the bushland character of the area.

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

Comment: Sufficient stormwater management measures have been provided to ensure that this Outcome has been achieved.

In summary, the proposed development will achieve the Outcomes of the control and hence the non-compliance does not warrant refusal of the application under the particular circumstances of the application.

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

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

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

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2021**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$6,299 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$629,925.

### **CONCLUSION**

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

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

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

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

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

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

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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/2208 for Alterations and additions to a dwelling house including a tennis court, outbuilding and associated landscaping works on land at Lot 6 DP 3632, 3 Riverview Road, AVALON BEACH, Lot LIC 391482, 3 Riverview Road, AVALON BEACH, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>	
<b>Drawing No.</b>	<b>Dated</b>
DA-0101 Revision 9	28 March 2022
DA-0200 Revision 9	28 March 2022
DA-0201 Revision 9	28 March 2022
DA-0202 Revision 9	28 March 2022
DA-0501 Revision 9	28 March 2022
DA-0502 Revision 9	28 March 2022
DA-0503 Revision 9	28 March 2022
DA-0601 Revision 9	28 March 2022
DA-0602 Revision 9	28 March 2022
DA-6001 Revision 8	30 August 2021

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA-C01.01 Revision 1	25 August 2021	Northrop
DA-C02.01 Revision 2	27 August 2021	Northrop
DA-C02.11 Revision 1	25 August 2021	Northrop
DA-C04.01 Revision 2	27 August 2021	Northrop

<b>Reports / Documentation – All recommendations and requirements contained within:</b>
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Report Title / No.	Dated	Prepared By
Aboricultural Impact Assessment Report	3 September 2021	Jacksons Nature Works
Geotechnical Assessment 5803-2-G1	23 September 2021	Bloc Constructions (NSW)
BASIX Certificate No.1224240S-02	26 July 2021	Integreco Consulting Pty Ltd

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
-	30 August 2021	Nicola Domazet

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

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

## 2. **Approved Land Use**

Nothing in this consent shall authorise the use of the pavilion as a dwelling.

A "dwelling" is defined as:

"means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile."

(development is defined by the Pittwater Local Environmental Plan 2014 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

## 3. **Prescribed Conditions**

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

hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

- A. the name and licence number of the principal contractor, and
- B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

- A. the name of the owner-builder, and
- B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

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

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

Reason: Legislative requirement.

#### 4. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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



Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
  - (ii) Swimming Pools Amendment Act 2009
  - (iii) Swimming Pools Regulation 2018
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$6,299.25 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$629,925.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

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

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

## 6. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

### 7. **Amended Landscape Plan**

An Amended Landscape Plan shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:

- i) adequate planting within the front setback to mitigate the visual impact of the tennis / basketball court.

Certification shall be provided to the Certifying Authority that these amendments have been documented.

Reason: Landscape amenity.

8. **On Slab Landscape Works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as applicable:

- i) 300mm for lawn and groundcovers
- ii) 600mm for shrubs
- iii) 1m for small trees

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

9. **Stormwater Disposal**

The applicant is to submit Stormwater Management Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, proposed buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the existing system.

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Assetgeoenviro dated 23 September 2021 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Tree Protection Measures**

All tree protection measures as recommended within the submitted Arboricultural Impact Appraisal and Method Statement (Jacksons Nature Works 2021) are to be adhered to.

Details demonstrating compliance must be prepared by the Project Arborist and submitted to the Principal Certifying Authority prior to any commencement.

Reason: To protect biodiversity values.

12. **Amendment of Landscape Plans**

The submitted Landscape Plan is to be amended in accordance with the following:

- Provision of at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Pittwater Spotted Gum Endangered Ecological Community).

<https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Scientific-Committee/Determinations/2013/pittwater-wagstaffe-spotted-gum-forest-nsw-scientific-committee-final-determination.pdf?la=en&hash=95E95CC5FFA86592227BE0A6B42614F597BCE468>

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

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

13. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

14. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval

prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

15. **Amendments to the approved plans**

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

- the total height of the pavilion is to be reduced by 500mm and have a height not exceeding RL 38m AHD.

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

Reason: To ensure development minimises unreasonable impacts upon the adjoining item of environmental heritage.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

17. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradients in accordance with AS/NZS2890.1:2004. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

18. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and

(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

19. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

20. **Compliance with Standards**

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

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

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

21. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

## CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

22. **Project Arborist**

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

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

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including:

i) all demolition, excavation and construction work within the TPZ's and SRZ's of trees to be retained.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

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

Reason: Tree protection.

### 23. **Tree Removal Within the Property**

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

i) *Cedrus deodora*, located along the northern boundary adjacent to the proposed pavilion, Tree No. 14.

Note:

- i) Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.
- ii) Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

Reason: To enable authorised building works.

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

### 24. **Protection of Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.



All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Tree protection.

**25. Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

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

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, as listed in the following sections:

- i) Section 3 - Discussions,

- ii) Section 4 - Recommendations,
- iii) Annexure D - Tree Protection Details.

The Certifying Authority must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
- e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

26. **Road Reserve**

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

Reason: Public safety.

27. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

28. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To demonstrate the proposal complies with the approved plans.

29. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be

adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

30. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

31. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

32. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-33302/ NH and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to kerb and gutter and grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

33. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection.

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

**34. Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive of the following conditions:

- i) substitute the proposed *Pennisetum 'Nafray'* with a locally native alternative, minimum 140mm pot size. Suggested species include: *Imperata cylindrica*, *Lomandra longifolia* or *Themeda australis*.
- ii) any area not occupied by buildings and structures shall contain soft landscaping.

The submitted Landscape Plan planting scheme shall be adjusted to ensure the following is satisfied:

- iii) provision of at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Pittwater Spotted Gum Endangered Ecological Community).

Prior to the issue of an Occupation Certificate, details (from a landscape architect or landscape designer) shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

**35. Condition of Retained Vegetation - Project Arborist**

Prior to the issue of an Occupation Certificate, a report prepared by the project arborist shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

**36. Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

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

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

**37. Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans (Dangar Barin Smith 2021) and these conditions of consent.

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

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

**38. New Vegetation Planting**

Landscaping is to incorporate a minimum 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant

section of the Native Gardening Booklet available on Council's website.

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

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

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

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

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

40. **Reinstatement of Kerb**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

42. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

For all new on slab landscape works, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

43. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

44. **Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

45. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

46. **Illumination of Tennis Court / Basketball court**

There is to be no illumination of either the tennis court or the basketball court.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

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

**Signed**



**Nick England, Planner**

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



**Phil Lane, Acting Development Assessment Manager**