

REVIEW OF DETERMINATION ASSESSMENT REPORT

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| Application Number: | REV2021/0020 |
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| Responsible Officer: | Adam Croft |
| Land to be developed (Address): | Lot 1 DP 827733, 316 Hudson Parade CLAREVILLE NSW 2107 |
| Proposed Development: | Review of Determination of Application DA2020/1591 for alterations and additions to a dwelling house and garage |
| Zoning: | E4 Environmental Living |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Delegation Level: | DDP |
| Land and Environment Court Action: | No |
| Owner: | Tony Brian Walls |
| Applicant: | Baxter & Jacobson Architects Pty Ltd |

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| Application Lodged: | 08/06/2021 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Refer to Development Application |
| Notified: | 15/06/2021 to 29/06/2021 |
| Advertised: | Not Advertised |
| Submissions Received: | 1 |
| Clause 4.6 Variation: | 4.3 Height of buildings: 9.88% |
| Recommendation: | Approval |

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| Estimated Cost of Works: | \$ 2,005,146.00 |
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EXECUTIVE SUMMARY

The subject application is made under Section 8.3 of the EPA Act, and seeks review of the determination of DA2020/1591 for alterations and additions to the existing dwelling house, which was approved by Council under staff delegation on 4 May 2021. Specifically, the application seeks review of the imposition of conditions that required amendment of the western windows/balustrade, roof, internal amenities and configuration of the proposed gym/studio.

Minor amendments to the proposal were made to address concerns in relation to the proposed gym/studio. The amendments adequately address these concerns and the previously imposed condition 10 can be removed.

The application is referred to the Development Determination Panel (DDP) for determination in accordance with the DDP Charter.

The proposal includes a maximum building height of 9.34m, resulting in a variation of 9.88% to the height of buildings development standard. The breach relates to a small portion of the upper floor roof located centrally within the site and will not result in any unreasonable visual bulk or amenity impacts. An assessment of the proposed building height breach and the accompanying Clause 4.6 written request is undertaken within this report and is found to be satisfactory.

One submission was received in response to the notification of the application, and has been addressed within the assessment.

No further assessment issues are raised and the proposal is recommended for approval based on the detailed assessment within this report.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks review of the approval of DA2020/1591, which sought consent for alterations and additions to the existing dwelling house and extension of the existing detached double garage and workshop for use as a gym/studio.

The proposal, as submitted, included works as follows:

Dwelling

- Internal reconfiguration of lower ground floor to provide a robe to bed 4, a new bathroom, wine cellar and lift access
- Internal reconfiguration of level 1 to provide a main entry, kitchen, dining & living room, balcony, laundry, WC, and bedrooms 1 & 2 with ensuites
- Extension of attached garage
- New upper floor addition to accommodate a master bedroom with robe, ensuite and west facing deck
- New windows, doors and copper roof

Detached Garage & Gym/Studio

- Eastern addition containing a ground floor store, upper floor bathroom and entry stair
- Demolition of internal walls and new wet bar
- Enclosure of western balcony, new windows and doors
- New roof
- Use of the upper floor as a gym/studio

External Works

- Demolition of retaining walls and construction of new retaining walls and stairs
- Outdoor pavilion and pond feature

Amendments to proposal

Following lodgement of the review application, further amendments to the detached gym/studio building were made as follows:

- Enclosure of balcony deleted and existing western wall location retained
- Southern side setback to balcony increased to 1.55m
- Western balcony eave overhang reduced by 520mm to 600mm
- Bathroom dimensions reduced
- Changes to proposed windows to suit amendments

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

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation

Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils

Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area

Pittwater 21 Development Control Plan - B3.1 Landslip Hazard

Pittwater 21 Development Control Plan - B5.15 Stormwater

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

Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan

Pittwater 21 Development Control Plan - C1.1 Landscaping

Pittwater 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
Pittwater 21 Development Control Plan - D3.7 Side and rear building line
Pittwater 21 Development Control Plan - D3.9 Building envelope
Pittwater 21 Development Control Plan - D3.11 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

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| Property Description: | Lot 1 DP 827733 , 316 Hudson Parade CLAREVILLE NSW 2107 |
| Detailed Site Description: | <p>The subject site consists of a large, irregular shaped allotment located on the western side of Hudson Parade, adjoining the Pittwater Waterway to the west.</p> <p>The site has frontage of 20.6m along Hudson Parade with a depth of 49.68m. The site has a surveyed area of 1902m².</p> <p>The site is located within the E4 Environmental Living zone under PLEP 2014 and accommodates a large split level, brick dwelling, detached double garage, and in-ground swimming pool. The site benefits from pedestrian access from the land to the waterway to the west.</p> <p>The site slopes steeply to the west away from Hudson Parade and towards the Pittwater Waterway with a fall of approximately 17m and slope of 34.2%.</p> <p>The site is characterised by a densely vegetated front setback to Hudson Parade with a mix of vegetation types, including native canopy trees, while the remaining site is characterised by predominantly established garden beds and lawn areas.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by large dwellings set within a low-density residential, landscaped setting.</p> |

Map:



SITE HISTORY

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

- BA 924/84 - Upper floor extension to the existing garage for use as a workshop - 2 April 1984. Conditions restricted the use / adaption of the upper floor to habitable accommodation.
- T0348/16 - Development Application (Tree removal application) - 17 August 2016.
- T0481/16 - Development Application (Tree removal application) - 15 November 2016.
- CDC0202/16 - Repairs and restorations of existing marine structures - 25 November 2016.
Note: This consent (twice modified since its original approval) was surrendered on 26 April 2020.
- DA2020/1591 - Alterations and additions to a dwelling house and garage - Approved 16 December 2020
- DA2020/1762 - Demolition works and construction of boatshed, ramp, slipway, jetty & steps - Under assessment.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Assessment

| 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 | Draft State Environmental Planning Policy (Remediation of Land) |

| Section 4.15 Matters for Consideration' | Comments |
|---------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| of any draft environmental planning instrument | 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)(iia) – Provisions of any planning agreement | None applicable. |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&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&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&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&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> |
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| Section 4.15 Matters for Consideration' | Comments |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> |
| Section 4.15 (1) (c) – the suitability of the site for the development | The site is considered suitable for the proposed development. |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on “Notification & Submissions Received” in this report. |
| Section 4.15 (1) (e) – the public interest | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

Section 8.3 Assessment

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

As the development application was determined within the 'prescribed period', the review must be lodged and determined within 12 months of the date of determination of the development application. The prescribed period is the period commencing on 25 March 2020 and ending on 25 March 2022, which was included in the *COVID-19 Legislation Amendment (Emergency Measures - Miscellaneous) Bill 2020* to provide additional measures to mitigate the impacts of the current pandemic. To meet this requirement, noting that the development application was determined on 4 May 2021, the subject review application must be determined before 4 May 2022.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Proposed Development in Detail' section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. It is concluded that the amended scheme is substantially the same as the original proposal. It is considered that the proposal satisfies the requirement of Section 8.3 (3) of the

Act

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 15/06/2021 to 29/06/2021 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 process council is in receipt of 1 submission/s from:

| Name: | Address: |
|----------------------------------------------|---------------------------------------|
| Mr Samuel Nicholas Wallrock Lucy Wallrock | 318 Hudson Parade CLAREVILLE NSW 2107 |
| Mr Samuel Nicholas Wallrock Lucy Wallrock | 318 Hudson Parade CLAREVILLE NSW 2107 |

The matters raised within the submissions are addressed as follows:

- **Western extension of proposed gym/studio**

Concern is raised in relation to the overlooking impacts from the western end of the gym/studio and the visual bulk of the proposed new roof.

The amended proposal retains the existing balcony location and glazing/wall line, with an increased southern side setback to the western blade wall. Whilst the proximity to the adjoining property is acknowledged, the primary outlook from the gym/studio is to the west towards the available views, and any view lines to the adjoining property are at an acute downward angle over the side boundary. The amended proposal is considered to provide an appropriate response to the site context and will not result in unreasonable overlooking impacts. Similarly, the proposed gable roof will not result in adverse visual impact as it is located above and to the east of the private open space area of the adjoining property. The roof extension will be visible from other areas including within the dwelling of 318 Hudson Parade, however these areas are further separated from the gym/studio structure.

- **Internal bathroom and wet bar**

Concern is raised with the bathroom size, potential for inclusion of cooking facilities and subsequent use as a secondary dwelling.

The amended design includes a reduction to the bathroom size. Despite the inclusion of a wet bar, the application specifies that no cooking facilities are proposed and suitable conditions of consent are imposed in this regard. This prohibition on cooking facilities is satisfactory to ensure the structure is not used as a secondary dwelling and is enforceable by Council.

- **Use of the shared driveway for construction access**

Concern is raised in relation to the use of the shared driveway by construction vehicles,

potential safety impacts and damage to the driveway.

A condition is imposed requiring the preparation of a Construction Traffic Management Plan in relation to the use of the shared driveway. Any potential damage to the existing driveway as a result of the works is not a relevant consideration that would warrant refusal of the application and is a civil matter between the users/owners of the driveway.

REFERRALS

| Internal Referral Body | Comments |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Landscape Officer | <p>No objection, subject to previously imposed conditions.</p> <p>The Review of Determination application seeks deletion of Condition 10 of the consent for works.</p> <p>No landscape elements are affected by the deletion of the condition.</p> <p>No objections are raised to the review application with regards to landscape issues.</p> |
| NECC (Bushland and Biodiversity) | <p>No objection, subject to previously imposed conditions.</p> <p>The Review of Determination application seeks deletion of Condition 10 of the consent for works.</p> <p>Impacts on the biodiversity are not altered by deletion of Condition 10.</p> <p>No objections are raised to the review application with regards to Bushland and Biodiversity issues.</p> |
| NECC (Coast and Catchments) | <p>No objection.</p> <p>The Review of Determination application seeks deletion of Condition 10 of the approval of the DA2020/1591 dated 4 May 2021.</p> <p>A Review report seeking deletion of the Condition 10 has been prepared by Symons Goodyer Pty. Ltd. dated 25 May 2021.</p> <p>Deletion of the Condition 10 has no relevance on coastal issues.</p> <p>No objections are raised to the review application</p> |
| Parks, reserves, beaches, foreshore | <p>No objection.</p> <p>The Review of Determination application seeks deletion of Condition 10 of the consent for works.</p> <p>Impacts on the reserve are not altered by deletion of Condition 10.</p> <p>No objections are raised to the review application with regards to PR&F issues.</p> |

| External Referral Body | Comments |
|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ausgrid: (SEPP Infra.) | <p>No objection, subject to conditions.</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p> |

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. A398970 dated 25 November 2020).

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 with suitable conditions recommended.

SEPP (Coastal Management) 2018

The site is subject to SEPP 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 development is sited, designed and appropriately conditioned to mitigate any adverse impacts in relation to the above matters.

- (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 proposed works are generally sited within the existing development footprint of the site. As such, the proposal is unlikely to adversely impact the natural environment, coastal processes, foreshore access or cultural heritage.

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 proposed development will not adversely impact foreshore access or the amenity and scenic qualities of the surrounding foreshore areas. No Aboriginal sites are identified in the vicinity of the site, however suitable conditions are included in this regard. No objection to the development was raised by Council's Coastal Officer.

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

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 proposal is unlikely to result in increased risk of coastal hazards on the site or surrounding land.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

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|--|--|--|--|--|

| Standard | Requirement | Proposed | % Variation | Complies |
|----------------------|-------------|----------|-------------|----------|
| Height of Buildings: | 8.5m | 9.34m | 9.88% | No |

Compliance Assessment

| Clause | Compliance with Requirements |
|---------------------------------------------|------------------------------|
| 2.7 Demolition requires development consent | Yes |
| 4.3 Height of buildings | No |
| 4.6 Exceptions to development standards | 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 |
| 7.8 Limited development on foreshore area | Yes |
| 7.10 Essential services | Yes |

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

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|--------------------------------------|---------------------|
| Development standard: | Height of buildings |
| Requirement: | 8.5m |
| Proposed: | 9.34m |
| Percentage variation to requirement: | 9.88% |

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment: Clause 4.3 - Height of Buildings development standard is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment: The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The building generally complies with the building height control, with the variation relating only to a small part of the roof ridge.*
- *The variation to the building height control is located centrally within a relatively large site. As a result, the distance of the roof ridge from the neighbouring properties, the street and the foreshore mitigate potential impacts such as impacts on views, overshadowing, streetscape, and impacts related to the bulk and scale of buildings.*
- *The proposed variation occurs because the building has been designed to maintain the existing gabled roof form so as to maintain the character of the building and its contribution to the character of the area. A different roof form could be adopted that would comply with the control (eg: a hipped or flat roof form) but this would have no identifiable environmental benefit and would be to the detriment of the character of the area and the architectural consistency of the building.*

Comment: The proposed building height breach is limited to a small portion of the upper floor roof, and is located centrally within the site. The positioning of the non-compliant element of the dwelling ensures adequate separation is maintained to the adjoining properties and foreshore area to mitigate any impact in relation to views, sunlight access and visual bulk. The proposed gable roof form maintains a consistent appearance with the dwelling and is considered to result in minimal visual impact. Based on the location and minor extent of the breach, consistency with the character and landscaped setting of the locality is achieved.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design and amenity, satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b), and the consent authority can be satisfied that the applicant's written request has adequately

addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment: In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the PLEP 2014 are:

(1) The objectives of this clause are as follows:

a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment: Despite the proposed building height breach, the development maintains consistency with surrounding residential development and the desired character of the locality. The siting of the dwelling below street level and the minor extent of the breach ensures an appropriate height and scale in the context of the site.

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

Comment: The proposed building height is largely compliant with the control and is compatible with the heights of surrounding development.

c) to minimise any overshadowing of neighbouring properties,

Comment: The proposed height breach will not result in any material overshadowing of neighbouring properties.

d) to allow for the reasonable sharing of views,

Comment: The proposed roof ridge remains significantly below the level of Hudson Parade and will not unreasonably impact views from adjoining properties or the public domain.

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

Comment: The proposal is appropriately stepped in response to the topography of the site.

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

Comment: The proposal maintains sufficient landscaping and canopy trees on the site to minimise visual impact in relation to the natural environment. The proposal will not adversely impact any heritage conservation areas or items.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment: The development provides for low-impact residential development.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment: The proposal is sited and designed to avoid adverse impact on the ecological, scientific and aesthetic values of the area.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment: The proposal provides for a low density development that is proportionate to the site area and compatible with the landform and landscape.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment: The proposal will not adversely impact riparian and foreshore vegetation or wildlife corridors.

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 Environmental Living zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

Cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard can be assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

5.10 Heritage conservation

The site does not include a heritage item, is not within a heritage conservation area or in close proximity to a heritage item. The site is mapped as moderate potential for Aboriginal sites. However, given the level of prior disturbance, the development area is unlikely to contain items of indigenous heritage. Suitable conditions are included in the event that any sites are discovered during works.

7.1 Acid sulfate soils

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

The proposed works will be within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum, however the watertable is unlikely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land. An Acid Sulphate Soils Management Plan is therefore not required.

7.6 Biodiversity protection

The subject site is identified as "Biodiversity" on the Biodiversity Map. An assessment against cl. 7.6 is provided below:

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

(a) whether the development is likely to have:

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

Comment:

Council's Biodiversity Officer raised no objection to the proposal, subject to the recommended conditions of consent including the provision of a landscape plan and replacement native planting. As such, Council is satisfied that the development will not adversely impact the biodiversity and habitat values of the site.

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

Comment:

The proposal will incorporate appropriate measures to avoid, minimise or mitigate the impacts of the development, subject to the included conditions of consent.

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

The site is mapped as Geotechnical Hazard H1 and a geotechnical report has been prepared in relation to the development. The report confirms that the development is suitable for the site and the included recommendations are incorporated into the conditions of consent.

7.8 Limited development on foreshore area

Clause 7.8 Limited Development on Foreshore Area states that *Development consent must not be granted for development on land in the foreshore area except for the following purposes:*

- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- (b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The proposed dwelling additions will not extend the building footprint further into the foreshore area. The erection of the swimming pool barrier is considered to form part of a swimming pool and its encroachment into the foreshore area is therefore acceptable.

An assessment against cl 7.8 is completed below:

(3) Development consent must not be granted under this clause unless the consent authority is satisfied that:

- (a) the development will contribute to achieving the objectives for the zone in which the land is*
- (b) the appearance of any proposed structure, from both the waterway and adjacent foreshore*
- (c) the development will not cause environmental harm such as:*
 - (i) pollution or siltation of the waterway, or*
 - (ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and*
 - (iii) an adverse effect on drainage patterns, or*
 - (iv) the removal or disturbance of remnant riparian vegetation, and*
- (d) the development will not cause congestion or generate conflict between people using open*
- (e) opportunities to provide continuous public access along the foreshore and to the waterway*
- (f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic sign*
- (g) in the case of development for the alteration or rebuilding of an existing building wholly or p*
- (h) sea level rise, coastal erosion and recession, or change of flooding patterns as a result of c*

Comment:

The proposed development is consistent with the objectives of the E4 zone and the appearance of the development will be consistent with the surrounding area as viewed from the waterway and foreshore areas. Suitable conditions are included to mitigate environmental harm in relation to pollution, surrounding uses and biodiversity values, drainage patterns and vegetation removal/disturbance. The proposed works are separated from the immediate foreshore area and will not generate congestion or conflict between people using open space, the waterway or foreshore area. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The alterations to the dwelling will not adversely impact the amenity or appearance of the foreshore. The proposed development will not impact upon sea level rise,

coastal erosion or recession, or change flooding patterns.

(4) In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

- (a) continuous public access to and along the foreshore through or adjacent to the proposed development
- (b) public access to link with existing or proposed open space,
- (c) public access to be secured by appropriate covenants, agreements or other instruments registered
- (d) public access to be located above mean high water mark,
- (e) the reinforcing of the foreshore character and respect for existing environmental conditions.

Comment:

The proposed development will retain continuous public access to and along the foreshore. The proposed development does not impact upon any public access. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

Pittwater 21 Development Control Plan

Built Form Controls

| Built Form Control | Requirement | Proposed | % Variation* | Complies |
|---------------------|-----------------------------|-----------------------------------------------------|--------------|----------|
| Front building line | 6.5m | 11.5m | N/A | Yes |
| Rear building line | N/A - FBL applies | N/A | N/A | N/A |
| Side building line | N: 2.5m | 2.16m | 13.6% | No |
| | S: 1m | 0.9m | 10% | No |
| Building envelope | N: 3.5m | Within envelope | N/A | Yes |
| | S: 3.5m | One proposed breach: - Up to 300mm, length 870mm | 6.7% | No |
| Landscaped area | 60% 1141.2m ² | 46.7% 888.9m ² | 22.17 | No |

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

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---------------------------------------------------------------------|------------------------------|-----------------------------|
| A1.7 Considerations before consent is granted | Yes | Yes |
| A4.3 Bilgola Locality | Yes | Yes |
| B1.4 Aboriginal Heritage Significance | Yes | Yes |
| B3.1 Landslip Hazard | Yes | Yes |
| B3.6 Contaminated Land and Potentially Contaminated Land | Yes | Yes |
| B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community | Yes | Yes |
| B4.19 Estuarine Habitat | Yes | Yes |
| B5.15 Stormwater | Yes | Yes |
| | | |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---------------------------------------------------------------------|------------------------------|-----------------------------|
| B6.2 Internal Driveways | Yes | Yes |
| B6.3 Off-Street Vehicle Parking Requirements | Yes | Yes |
| B8.1 Construction and Demolition - Excavation and Landfill | Yes | Yes |
| B8.3 Construction and Demolition - Waste Minimisation | Yes | Yes |
| B8.4 Construction and Demolition - Site Fencing and Security | Yes | Yes |
| B8.6 Construction and Demolition - Traffic Management Plan | Yes | Yes |
| C1.1 Landscaping | 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 |
| C1.17 Swimming Pool Safety | Yes | Yes |
| C1.23 Eaves | Yes | Yes |
| C1.25 Plant, Equipment Boxes and Lift Over-Run | Yes | Yes |
| D3.1 Character as viewed from a public place | Yes | Yes |
| D3.2 Scenic protection - General | Yes | Yes |
| D3.3 Building colours and materials | Yes | Yes |
| D3.6 Front building line | Yes | Yes |
| D3.7 Side and rear building line | No | Yes |
| D3.9 Building envelope | No | Yes |
| D3.11 Landscaped Area - Environmentally Sensitive Land | No | Yes |
| D3.13 Fences - Flora and Fauna Conservation Areas | Yes | Yes |
| D3.14 Construction, Retaining walls, terracing and undercroft areas | Yes | Yes |
| D3.15 Scenic Protection Category One Areas | Yes | Yes |

Detailed Assessment

B3.1 Landslip Hazard

The site is mapped as Geotechnical Hazard H1 and the recommendations of the geotechnical report are incorporated into the conditions of consent.

B5.15 Stormwater

Suitable stormwater management conditions are imposed in accordance with the approval of DA2020/1591.

B6.3 Off-Street Vehicle Parking Requirements

The development provides a compliant number of car parking spaces.

B8.6 Construction and Demolition - Traffic Management Plan

A Construction Traffic Management Plan (CTMP) is required to be prepared in relation to the development prior to the issue of a construction certificate and provided to all owners who benefit from the driveway. The CTMP is to detail parking and access for trades and service vehicles, management of the shared driveway and storage of goods and materials.

C1.1 Landscaping

Suitable conditions are included to ensure compliance with the relevant landscaping requirements.

C1.4 Solar Access

Compliance with control

Control C1.4 requires the retention of a minimum of 3 hours of sunlight to private open space areas and principal living area windows of adjoining properties.

At 9am there is minor additional overshadowing of the northwestern terrace of 318 Hudson Parade and partial overshadowing of an upper floor bedroom window. At 10am there is minor shadowing of the terrace and ground floor living room window. At 11am there is minor shadowing of the terrace and partial shadowing of the ground floor kitchen window. By 12pm and throughout the afternoon there is negligible additional impact to the terrace and living room windows.

Despite the relatively minor impact throughout the morning, the proposal will also result in an approximately equivalent increase in sunlight access to the terrace area of No. 318 and will maintain a compliant level of solar access in accordance with this control.

C1.5 Visual Privacy

Compliance with control

The amended design of the gym/studio and balcony maintains sufficient privacy to the adjoining property 318 Hudson Parade. Despite the proximity of the balcony to the southern boundary, the overall balcony size is reduced and an increased side setback is provided in comparison to the existing. As a result, the proposal will reduce opportunities for overlooking of the adjoining property and will maintain an equivalent level of privacy to the existing development. It is critical to note that the primary outlook from the gym/studio is to the west towards the available water views, and the southern blade wall to the balcony further restricts angled downward view lines towards the private open space of No. 318, particularly from internal areas within the gym/studio and from the southern side of the balcony.

Based on the above assessment, the proposal is considered to comply with the control and is supported.

C1.14 Separately Accessible Structures

DA2020/1591 Assessment

The approved development DA2020/1591 imposed the below condition 10 *"In order to address*

potential amenity concerns and ensure that the space is used as a non-habitable studio / gym in compliance with the control conditions".

10. Amendments to the approved plans

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

- *The sliding doors on the west elevation of the "Gym/Studio" shown on Drawing No DA 20.00 are to be replaced with windows with fixed and angled privacy screens. The glass balustrade is to be deleted.*
- *The roof over the detached garage structure shall be reduced in length by 1m to the west where it extends over the existing balcony.*
- *The change wet area shall be reduced in size and comprise a WC and shower only.*
- *There shall be no kitchen, cooking facilities or wet bar.*

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 surrounding land.

Amendment of proposal:

The subject Review of Determination application seeks the deletion of this condition. Following lodgement of the application and a preliminary assessment by Council, the applicant provided amended plans to include the following changes:

- Adjusted western wall/door line to retain the balcony area as existing
- Increased southern setback to the balcony
- 520mm reduction to western eave (from 1120mm to 600mm beyond balcony line)
- Internal reconfiguration to delete bath and reduce bathroom size

Merit consideration

The amendments to the design are noted and are considered to minimise the resulting bulk and amenity impacts to the adjoining property. The roof pitch maintains a consistent appearance with the dwelling and the 600mm eave extension will not result in unreasonable bulk as viewed from the adjoining property or foreshore. The retention of the existing balcony location and provision of an increased southern side setback is considered to maintain an equivalent level of privacy to the existing development. The proposed wet bar provides amenity but does not comprise any cooking facilities or enable the use of the structure as a secondary dwelling. The imposition of a condition prohibiting the provision of cooking facilities or use of the gym/studio for separate habitation is sufficient to ensure consistency with this control.

Based on the above considerations and the amendments to the proposal, the previously imposed condition 10 is not considered necessary.

D3.7 Side and rear building line

Description of non-compliance

The control requires a minimum setback of 2.5m to one side and 1m to the other side. The proposal includes a northern setback of 2.16m and a southern setback of 0.9m.

The variations to D3.7 stipulate that where alterations and additions to existing buildings are proposed,

maintenance of existing setbacks less than as specified may be considered where it is shown that the outcomes of this clause are achieved.

Merit Assessment

With regard to the consideration for a variation, the development is considered against the underlying outcomes of the control as follows:

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

The proposal has adequate regard for the desired future character of the locality and maintains consistency with surrounding development.

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

The northern side setback breach relates to the unenclosed single-storey outdoor pavilion, and will not result in excessive bulk or scale. The additions to the existing detached garage are designed to minimise the built form through previous revisions to lower the proposed roof height and pitch. The subject application has been amended to provide an increased side setback to the existing western balcony and a reduction to the previously proposed roof line above.

- *Equitable preservation of views and vistas to and/or from public/private places.*

The proposed setback non-compliances will not give rise to any unreasonable view impacts to or from surrounding land.

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

The proposed works are appropriately sited to maintain views.

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

The proposed studio includes no windows to the southern boundary and the proposed side setback increase to the western balcony will improve privacy and reduce opportunities for overlooking of the adjoining property. The proposal maintains compliance with the solar access control despite the side setback breach.

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

The proposed studio additions result in a minor increase to the existing detached garage footprint and will not adversely impact mature canopy trees or the streetscape.

- *Flexibility in the siting of buildings and access*

The proposal generally maintains the existing non-compliant southern side setback in accordance with the variations to this control, which is considered to be appropriate in this case.

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

The proposed studio will not adversely impact significant vegetation, and additional canopy trees are required by condition.

- *To ensure a landscaped buffer between commercial and residential zones is established.*

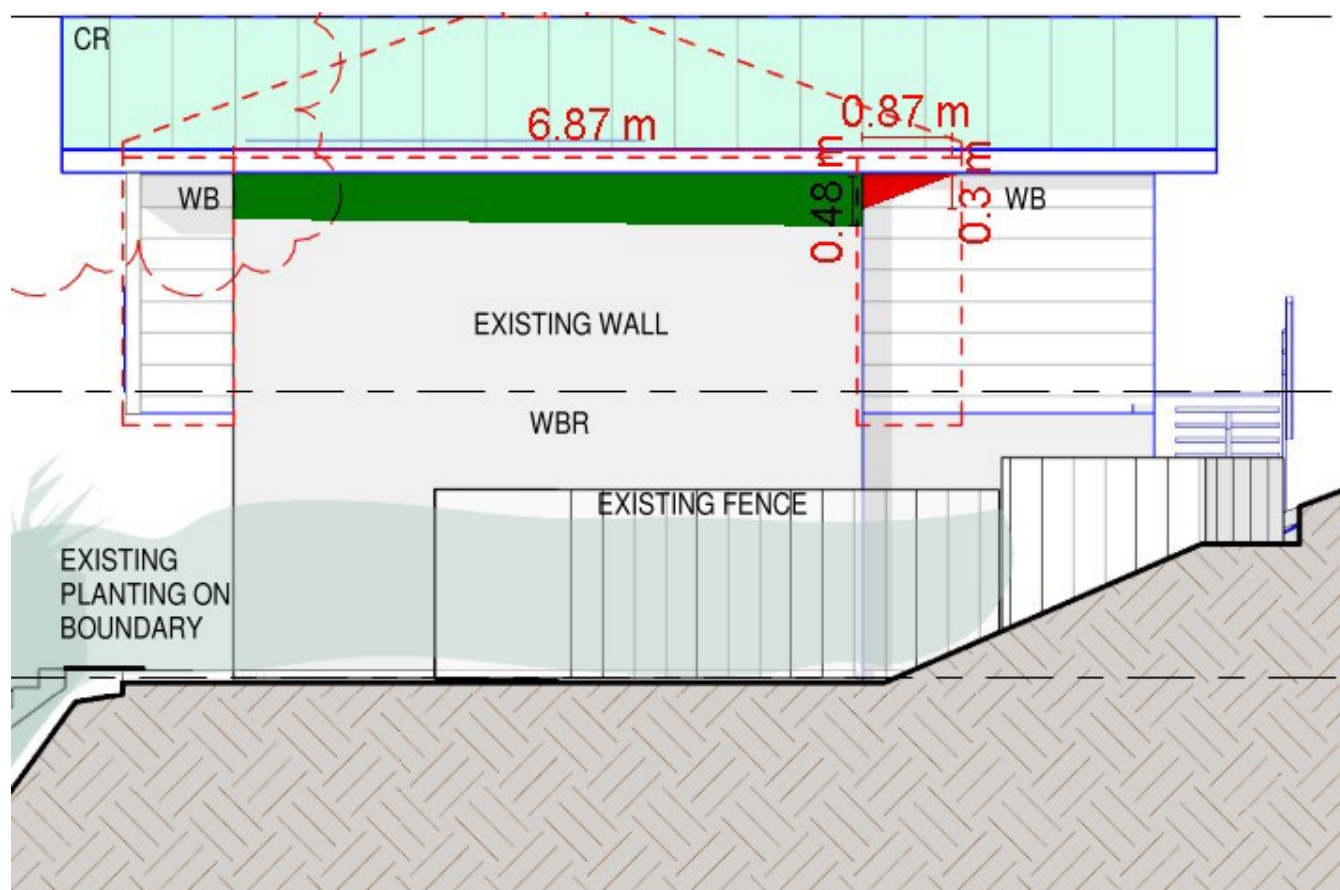
N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this control and the proposal is supported in this particular circumstance.

D3.9 Building envelope

Description of non-compliance

The proposal includes a building envelope breach at the southern elevation of the detached gym/studio. The proposed breach is limited to a maximum of 300mm for a length of 870mm (red) as indicated on the below plan. The existing southern wall and associated breach (green) remains unchanged.



Merit Assessment

With regard to the consideration for a variation, the development is considered against the underlying outcomes of the control as follows:

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

The proposal maintains an appropriate relationship with surrounding development and achieves

the desired future character of the locality.

- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

The proposed envelope breach is substantially separated from the street frontage, below the tree canopy and will not adversely impact the streetscape.

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

The proposed design has adequate regard for the characteristics of the site and the natural environment.

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

The proposed non-compliance is minor in extent and will not result in excessive bulk or scale. The overall bulk of the studio/gym is minimised as a result of the amended plans that increase the balcony side setback and reduce the western eave overhang.

- *Equitable preservation of views and vistas to and/or from public/private places.*

The proposal will maintain views and vistas to and from surrounding land.

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

The proposal will provide an adequate level of privacy, amenity and solar access to the development site and adjoining properties. A full assessment of solar access and privacy is completed under C1.4 and C1.5.

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

The proposed breach will not adversely impact existing vegetation and conditions are imposed to provide new native tree planting.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this clause and the proposal is supported in this particular circumstance.

D3.11 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

The proposed landscaped area of 46.7% is non-compliant with the 60% control, resulting in a shortfall of 252.3m².

Clause D3.11 permits a variation to the minimum landscaped area where the outcomes of the control are achieved. This variation allows for up to 6% of the total site area to be provided as impervious landscape treatments providing these areas are for outdoor recreational uses. Including such areas, a total of 138.2m² may be included as part of the landscaped area calculation.

Merit Assessment

With regard to the consideration for a variation, the development is considered against the underlying outcomes of the control as follows:

- *Achieve the desired future character of the Locality.*

The development achieves the desired future character of the locality and maintains the low-density landscaped setting of the site.

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

The proposed additions are appropriately designed to minimise the bulk and scale of the built form.

- *A reasonable level of amenity and solar access is provided and maintained.*

Adequate amenity and solar access are provided to the subject site and adjoining properties.

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

The proposal includes the removal of four trees, two of which are assessed as being high retention value. The remaining trees are to be retained and protected, and compensatory native tree planting is required by condition to reduce the visual impact of the development.

- *Conservation of natural vegetation and biodiversity.*

Council's Landscape and Biodiversity Officers raised no objection to the development, subject to the conditions of consent including new native planting to offset the proposed tree removal.

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

The proposed reduction to the landscaped area will not unreasonably impact stormwater management, soil erosion or natural drainage channels.

- *To preserve and enhance the rural and bushland character of the area.*

Additional tree planting is required by conditions of consent to enhance the bushland character of the site and surrounding area.

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

Adequate landscaped area is maintained to allow for water management on the site, noting the relatively large site area.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this clause and the proposal is supported in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

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 \$20,051 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,005,146.

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed

to be carried out.

The review application has been lodged with respect to Condition 10, which required changes to the design of the garage and gym/studio structure to restrict the potential use of the structure for separate habitation and to address associated privacy concerns with the neighbouring property. The application was supported by amended plans which in part adopt the requirements of Condition 10, or reasonably address the concerns raised, such that Condition 10 is no longer warranted.

The key planning issues considered within the assessment are the proposed building height development standard variation, built form non-compliances and amenity impacts.

Notwithstanding the proposed building height variation of 9.88%, the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain.

One submission was received generally relating to the privacy, sunlight access and visual bulk impacts of the proposal, and is addressed within the report.

The assessment of the application against the Pittwater LEP and DCP finds that the amended development is suitable in the context of the site, and is recommended for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to REV2021/0020 for Review of Determination of Application DA2020/1591 for alterations and additions to a dwelling house and garage on land at Lot 1 DP 827733, 316 Hudson Parade, CLAREVILLE, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|------------------------------------------------------------|------------------------|--------------------------------|
| Drawing No. | Dated | Prepared By |
| DA2.00 Site Plan | Issue 4, 10 March 2021 | Baxter and Jacobson Architects |
| DA2.01 Site Cover / Waste Management | Issue 3, 10 March | Baxter and Jacobson |

| | | |
|----------------------------------------------|----------------------------|--------------------------------|
| | 2021 | Architects |
| DA2.02 Site Analysis | Issue 3, 10 March 2021 | Baxter and Jacobson Architects |
| DA10.00 Existing / Demolition - Level 1 | Issue 3, 10 March 2021 | Baxter and Jacobson Architects |
| DA10.01 Existing / Demolition - Lower Ground | Issue 1, 25 November 2020 | Baxter and Jacobson Architects |
| DA10.03 Proposed Floor Plan - Level 1 | Issue 2, 10 March 2021 | Baxter and Jacobson Architects |
| DA10.04 Proposed Lower Ground Floor | Issue 1, 25 November 2020 | Baxter and Jacobson Architects |
| DA10.05 Proposed Plan - Garage / Studio | Issue 7, 13 September 2021 | Baxter and Jacobson Architects |
| DA10.06 Roof Plan - House and Pavilion | Issue 2, 10 March 2021 | Baxter and Jacobson Architects |
| DA10.07 Roof Plan - Studio | Issue 1, 27 November 2020 | Baxter and Jacobson Architects |
| DA10.08 Master Bedroom Level | Issue 1, 25 November 2020 | Baxter and Jacobson Architects |
| DA20.00 Elevation West | Issue 7, 13 September 2021 | Baxter and Jacobson Architects |
| DA20.01 Elevation South | Issue 7, 13 September 2021 | Baxter and Jacobson Architects |
| DA20.02 Elevations East | Issue 7, 13 September 2021 | Baxter and Jacobson Architects |
| DA20.03 Elevations North | Issue 7, 13 September 2021 | Baxter and Jacobson Architects |
| DA30.03 House - Section | Issue 2, 27 November 2020 | Baxter and Jacobson Architects |
| DA30.05 Long Site Section | Issue 4, 10 March 2021 | Baxter and Jacobson Architects |
| DA30.11 Section - Pavilion - AA & BB | Issue 1, 25 November 2020 | Baxter and Jacobson Architects |
| DA30.20 Section - Garage / Studio CC & DD | Issue 7, 13 September 2021 | Baxter and Jacobson Architects |

Reports / Documentation – All recommendations and requirements contained within:

| Report No. / Page No. / Section No. | Dated | Prepared By |
|--------------------------------------------|------------------|--------------------------|
| Arboricultural Impact Assessment | 26 November 2020 | Naturally Trees |
| Geotechnical Assessment, Ref: J2990 | 27 November 2020 | White Geotechnical Group |
| BASIX Certificate No. A398970 | 25 November 2020 | Leith Schmidt Architect |

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 |
| Waste Management Report | 25 November 2020 | Mark Baxter |

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. **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.

3. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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

4. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$20,051.46 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 \$2,005,146.00.

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

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.

5. **Security Bond**

A bond (determined from cost of works) of \$10,000 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).

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

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

6. Tree Root Investigation

Prior to the issue of a Construction Certificate a tree root mapping investigation as recommended in the Arboricultural Impact Assessment shall be conducted for the existing tree identified as tree number 1 (Grey Gum). The tree root investigation shall be undertaken along the edge of alignment of excavation works within the site to locate any woody structural roots and provide recommendations for tree sensitive measures to be implemented.

An Arborist with minimum AQF Level 5 in arboriculture shall supervise the works to verify tree root locations. A non-destructive root investigation shall be conducted complying with clause 3.3.4 of AS 4970-2009 Protection of Trees on Development Sites.

The root investigation shall map existing roots of significance that must not be impacted by construction works. The tree root investigation shall be conducted to confirm the following data to be used for the location/alignment of any new proposed works:

- i) confirmation of the location of any tree roots at or >25mm (Ø) diameter to areas that require excavation for proposed works. Alternative alignment of proposed works shall be provided as necessary to avoid major roots, and
- ii) mapping of the suitable location/alignment of proposed works.

The Tree Root Map shall be issued to a qualified Structural Engineer as a basis for structural design, and for determining the final location/alignment and construction methodology of proposed works within the tree protection zone (TPZ).

Prior to the issue of a Construction Certificate, the Arborist shall provide certification to the Certifying Authority that the tree root investigation and arboricultural recommendations have been adequately addressed in the Construction Certificate plans.

Reason: To ensure protection of vegetation proposed for retention or adjacent to the site.

7. Landscape Plan

A Landscape Plan is to be prepared which includes a minimum of 80% locally native species as a proportion of the total number of plants. Locally native species are to be consistent with Pittwater Spotted Gum Forest - Endangered Ecological Community found here: <https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/1996-1999/pittwater-spotted-gum-forest-endangered-ecological-community-listing#:~:text=The Scientific Committee, established by,Schedule 1 of the Act.>

Planting is to include at least three (3) *Eucalyptus punctata* to offset proposed tree removal associated with the DA.

The Landscape Plan is to be prepared by a suitably 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.

8. **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.

9. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- i "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- i Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

10. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's WATER MANAGEMENT FOR ENGINEERING DEVELOPMENT POLICY. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification 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 development.

11. **Geotechnical Report Recommendations have been Incorporated into Designs and**

Structural Plans

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White geotechnical report dated 27 November, 2020 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.

12. Vehicle Driveway Gradients. parking and vehicular turning area

The Applicant is to ensure driveway gradients, vehicular turning area and parking within the private property are to be designed in accordance with AS/NZS 2890.1:2004. A Civil Engineer certify compliance with the Australian standards.

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.

13. Construction Traffic Management Plan

The Applicant is to submit an Construction Traffic Management Plan ('CTMP') to Council for approval prior to issue of the Construction Certificate. The CTMP shall be prepared by an appropriately certified person and is to detail:

- i Parking of trades and service people,
- i Size, weight, dimensions and frequency of truck movements along the driveway,
- i Management of driveway, noting shared use of the driveway,
- i Storage of goods and materials.

Once approved, copies of the CTMP are to be furnished to all property owners who benefit from the driveway for their records. This is to occur at least 7 days prior to the commencement of any works on site.

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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. 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 near existing tree numbers 1, 10, 19 and 20, and in particular:

- i) appendix 7 - schedule of works and responsibilities,
- ii) appendix 8 - tree management plan

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.

15. 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) tree 11, Grey Gum
- ii) tree 14 - Native Frangipani
- iii) tree 17 - Grey Gum, subject to tree replacement
- iv) tree 18 - Red Bloodwood, subject to tree replacement

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.

Reason: To enable authorised building works.

16. Dead or Injured Wildlife

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

17. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing

Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. 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.

The Certifying Authority must ensure that:

- d) 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.

19. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- i Work Health and Safety Act;
- i Work Health and Safety Regulation;
- i Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- i Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- i Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- i The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

20. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and

disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

21. 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.

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

22. Required Tree Planting

Trees shall be planted in accordance with the following:

1 x Eucalyptus punctata (Grey Gum) at 75 litre container size

1 x Corymbia gummifera (Red Bloodwood) at 75 litre container size

Tree planting shall be located within a 9m² deep soil area wholly within the site and be located a minimum of 3 metres from existing and proposed buildings and other trees. Tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight or where the proposed tree location may impact upon significant views.

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

Reason: To maintain environmental amenity.

23. Certification of Landscape Plan

Landscaping is to be implemented in accordance with the approved Landscape Plans 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.

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

No Priority or environmental weeds 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.

25. **Stormwater Disposal**

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

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

26. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite 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. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life (DACPLF09)

27. **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

28. **Replacement of Canopy Trees**

Tree replacement plantings required under this consent are to be retained for the life of the development and/or for their safe natural life.

Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: To replace locally native trees.

29. **Geotechnical Report**

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 complied with in perpetuity.

Reason: To ensure geotechnical risk is mitigated appropriately.

30. **Gym/Studio**

The 'Gym/Studio' and all other associated areas located on the Studio Plan are not to be used for the purposes of separate habitation (i.e. secondary dwelling or similar). The use of cooking facilities, including an oven and stove are prohibited.

Reason: To ensure consistency with the approved development and stamped plans.

31. **Noise from use of gym / studio**

Noise associated with the use of the studio / gym is not to be offensive as defined by the Protection of the Environment Operations Act 1997.

Reason: To maintain the amenity of surrounding properties.