

DEVELOPMENT APPLICATION ASSESSMENT REPORT

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| Application Number: | DA2021/1863 |
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| Responsible Officer: | Nick England |
| Land to be developed (Address): | Lot 17 DP 219898, 24 Capua Place AVALON BEACH NSW 2107 |
| Proposed Development: | Alterations and additions to a home office for use as a secondary dwelling |
| 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: | David Rex Crossley Corinne Elizabeth Marie Canter |
| Applicant: | Vaughan Milligan Development Consulting Pty Ltd |

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| Application Lodged: | 12/10/2021 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Alterations and additions |
| Notified: | 28/10/2021 to 11/11/2021 |
| Advertised: | Not Advertised |
| Submissions Received: | 1 |
| Clause 4.6 Variation: | 4.3 Height of buildings: 11.3% |
| Recommendation: | Approval |

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| Estimated Cost of Works: | \$ 24,950.00 |
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Executive Summary

The application consists of the conversion of an existing two-storey studio and garage to a secondary dwelling on the 1st floor.

Physical works consist of internal works to provide bathroom and kitchen. Other external works include a new roof and additional windows on the north-west and south-west elevations.

The application is referred to the Development Determination Panel (DDP) as the 1st floor of the structure which is to be occupied by the proposed secondary dwelling will exceed the Height of Buildings development standard that applies to such development, by more than 10%.

PROPOSED DEVELOPMENT IN DETAIL

The application consists of the following:

- conversion of an existing 1st floor home office, for a secondary dwelling, approximately 27m² in area;
- demolition of existing internal stairs and small deck on north elevation;
- construction of new external stairs and access deck on west elevation;
- new door and windows on south, west and east elevations; and
- new roof.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - C1.11 Secondary Dwellings and Rural Worker's Dwellings
Pittwater 21 Development Control Plan - D1.8 Front building line
Pittwater 21 Development Control Plan - D1.9 Side and rear building line

SITE DESCRIPTION

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|-----------------------------------|--|
| Property Description: | Lot 17 DP 219898 , 24 Capua Place AVALON BEACH NSW 2107 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the northern side of Capua Place, Avalon.</p> <p>The site is irregular in shape with a frontage of 15.85m along</p> |

Capua Place and variable depths of up to 52.5m. The site has a surveyed area of 1,215m².

A right-of-carriageway for the properties at No.22 Capua and No.37 Riviera is located through the centre of the site, north of the existing principal dwelling.

The site is located within the E4 Environmental Living zone and accommodates a two storey dwelling and detached two-storey garage and studio building.

The site has a southerly aspect with a steep slope rising up from the Capua Place frontage.

The site possesses vegetation and is located adjoining allotments that have significant remnants of Pittwater Spotted Gum ecological community.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by dwelling houses.

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:

N0354/08: Development consent granted for "A new home office addition to the existing detached garage" on 30 October 2008. This consent included the construction of an external set of stairs on the western elevation, to access the approved home office / studio on the 1st floor above the garage.

CC2008/3117: A construction certificate (CC) relating to N0354/08 is issued by Insight Building Certifiers on 10 December 2008. On the approved plans for the CC, the stairs to the 1st floor have been located internally. A site visit has confirmed that the external stairs on the west elevation have not been constructed.

PLM2021/0138: An application for written-only pre-lodgement advice was provided by Council on 29 June 2021. The applicant sought advice on whether the conversion of the home office on the 1st floor to a secondary dwelling was supported. Council advised that the proposal was supported, subject to a Clause 4.6 written request be provided, relating to the 5.5m height standard that applies to secondary dwellings.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

| Section 4.15 Matters for Consideration | Comments |
|---|--|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument | See discussion on “Environmental Planning Instruments” in this report. |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk. |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan | Pittwater 21 Development Control Plan applies to this proposal. |
| Section 4.15 (1) (a)(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> |

| Section 4.15 Matters for Consideration | Comments |
|--|--|
| | <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> |
| 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. |

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 28/10/2021 to 11/11/2021 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: |
|--------------------------|--------------------------------------|
| Mrs Jennifer Mary Cullen | 26 Capua Place AVALON BEACH NSW 2107 |

One (1) submission was received from an adjoining property during the notification period. The submission states that there is no overall objection to the proposed development. The issues raised in the submission have been summarized and are addressed below:

- Council's Biodiversity Officer has correctly noted the biodiversity value of the subject land and adjoining properties, particularly on the upper areas of the site. The recommended conditions are important to enhance these values.*

Comment: The conditions recommended by Biodiversity Officer are considered reasonable to apply and will be incorporated into the recommendations of this report.

- The owners of No.26 and adjoining properties are working together to regenerate the natural vegetation community and seek advice from Council on the best course of action to do this.*

Comment: The submitter has been advised to seek advice from Council's Bushland and Biodiversity team on how to undertake these regeneration works.

REFERRALS

| Internal Referral Body | Comments |
|--|---|
| Building Assessment - Fire and Disability upgrades | <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p> |
| NECC (Bushland and Biodiversity) | <p>The application seeks approval for alterations and additions to an existing dwelling, including change of use of an existing home office to a secondary dwelling. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> |

| Internal Referral Body | Comments |
|------------------------|--|
| | <p>Biodiversity Conservation Act 2016 (BC Act) Biodiversity Conservation Regulation 2017 Pittwater Local Environmental Plan (PLEP)</p> <ul style="list-style-type: none"> • 7.6 Biodiversity Protection <p>Pittwater Development Control Plan (PDCP)</p> <ul style="list-style-type: none"> • B4.6 Wildlife Corridors <p>The rear (northeast) of the site is located within the Department of Planning, Industry and Environment's (DPIE) Biodiversity Values Mapping. Any removal of native vegetation from within mapped areas will trigger the Biodiversity Offset Scheme (BOS). The proposal involves the conversion of an existing home office into a secondary dwelling. As the proposal is located wholly within the existing footprint, and does not require the removal of prescribed trees or vegetation, nor is it likely to impact on soft open space or nearby biodiversity values, the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls and the BOS is not triggered.</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 (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 2: Secondary dwellings

Clause 19: Definition

Development for the purposes of a secondary dwelling includes the following:

- (a) the erection of, or alterations or additions to, a secondary dwelling,
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

Note: The standard instrument defines secondary dwelling as follows:

"secondary dwelling means a self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the principal dwelling), and*
- (b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling."*

Comment:

The proposed works and conversion of the existing 1st floor studio will be located on the same allotment as the principal dwelling and separate to this dwelling. In this respect, the proposed use is consistent with the definition of secondary dwelling contained within under PLEP 2013.

Clause 20: Land to which this Division applies:

| Requirement | Comment |
|--|--|
| This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but <i>only if</i> development for the purposes of a dwelling house is permissible on the land: | |
| (a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential. | Consistent. The site is located within the E4 Environmental Conservation zone, which is equivalent to the zones specified in (a) and (b). As such, the proposed use is permissible with consent under PLEP 2013. |

Clause 21: Development to which this Division applies

| Requirement | Comment |
|---|---|
| This Division applies to development, on land to which this Division applies, for the purposes of a secondary dwelling. | Consistent. The development involves the construction of a secondary dwelling, as defined by the Standard Instrument. Therefore, this Division applies. |

Clause 22: Development may be carried out with consent

Development to which this Division applies may be carried out with consent.

| Requirement | Comment |
|---|---|
| (2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling. | The proposal will only result in both a principle dwelling (detached from the garage) and secondary dwelling, located above the garage. The proposal is hence consistent with this requirement. |
| (3) A consent authority must not consent to development to which this Division applies unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and (b) the total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area. | The floor space of the proposed secondary dwelling is estimated at 26.8m ² , which is consistent with this requirement. |
| (4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds: (a) site area if: (i) the secondary dwelling is located within, or is attached to, the principal dwelling, or (ii) the site area is at least 450 square metres. (b) parking if no additional parking is to be provided on the site. | The area of the subject land exceeds 450m ² . No formal parking space is set aside for the proposed secondary dwelling. The requirements of Council's off-street parking policies are discussed elsewhere in this report. In summary, despite no extra car space being provided, the refusal of the application is not recommended on these grounds. Hence, the application is consistent with this requirement. |

Note: A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).

Clause 24: No subdivision

| Requirement | Comment |
|---|--|
| A consent authority must not consent to a development application that would result in any subdivision of a lot on which development for the purposes of a secondary dwelling has been carried out under this Division. | Consistent. This application does not propose any subdivision of the existing allotment. |

Conclusion

Based on the assessment provided above, the development is consistent with the objectives and requirements of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A429731 dated 2 September 2021).

The BASIX Certificate indicates that the development will achieve the sustainability requirements of the SEPP.

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

| Standard | Requirement | Proposed | % Variation | Complies |
|----------------------|----------------------------|----------|-------------|----------|
| Height of Buildings: | 5.5m (secondary dwellings) | 6.2m | 11.3% | No |

Compliance Assessment

| Clause | Compliance with Requirements |
|--|------------------------------|
| 1.9A Suspension of covenants, agreements and instruments | Yes |
| 4.3 Height of buildings | No |
| 4.6 Exceptions to development standards | Yes |
| 5.4 Controls relating to miscellaneous permissible uses | No |
| 7.1 Acid sulfate soils | Yes |
| 7.2 Earthworks | Yes |
| 7.6 Biodiversity protection | Yes |
| 7.7 Geotechnical hazards | Yes |

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

| | |
|--------------------------------------|---------------------|
| Development standard: | Height of buildings |
| Requirement: | 5.5m |
| Proposed: | 6.2m* |
| Percentage variation to requirement: | 11.3% |

*the written request provided with the application states that the maximum height will be 6.4m, however estimates made from the plans determine this is likely to be 6.2m

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 (2FA) - 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 proposed works utilize an existing building and the non-compliance with the Height of Buildings development standard relates to an existing approved structure;

- the bulk and scale of the proposed works will make no effective change to the existing built form character on Capua Place;
- there will be no site disturbance, excavation or vegetation loss; and
- no adverse amenity impact is likely to adjoining properties as a result of the non-compliance with the standard.

The reasons provided in the written request are considered to be valid and make pertinent justifications to demonstrate that under the circumstances it would be both unnecessary and unreasonable to strictly apply the development standard.

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 that will reasonably protect and improve the amenity of the surrounding built environment, therefore 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).

Therefore, Council is 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: It has been stated previously that the proposed works / use are located within an existing structure and that the resulting bulk and scale will make no substantive change to the existing built form in Capua Place. Whilst this valid, it is worthwhile to consider the proposal in the context of being in effect a new structure and considering the impacts on the surrounding area in this manner.

The proposed variation is at its highest point 700m above the maximum standard and this only occurs on the south-eastern corner of the structure. In effect, the majority of the upper level of the structure will be consistent with the standard. In this regard, it is considered that the proposal is of a bulk and scale not so dissimilar to the new development that is expected under the current policies of Council.

Hence, the proposal can easily demonstrate that it is consistent with the objective of having a bulk and scale that is consistent with the desired future character of the locality.

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

Comment: Existing dwellings in the vicinity of the subject site are typically up to two stories in height. In this regard, the proposed works are of a compatible scale to surrounding and nearby development and the proposal is consistent with this objective.

c) to minimise any overshadowing of neighbouring properties,

Comment: Based on the shadow diagrams provided with the application, there will be no adverse overshadowing on neighbouring properties.

d) to allow for the reasonable sharing of views,

Comment: The proposed variation to the development standard is unlikely to result in any loss of any existing views enjoyed from adjoining properties.

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

Comment: The existing building's footprint will not be modified by the proposed works. The extension to the roof will only in part breach the height standard and in this context it is considered that the proposal responds adequately to the natural 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 will not cause any loss of vegetation or disruption to the existing biodiversity values of the land.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are considered below:

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

Comment: The extent of the proposed works and additions to the existing building are relatively minor and easily fit into the category of low-impact residential development, as described by this objective.

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

Comment: As stated above, the proposed works are low-impact and will be consistent with the ecological values of the subject land and the zone.

- *To provide for the continuance of a limited range of existing small-scale water-related business and leisure uses.*

Comment: This objective is not relevant to the proposal.

- *To ensure that development, by way of its character, design, location and materials of construction, is integrated into the site and natural surroundings, complements and enhances the natural environment and has minimal visual impact.*

Comment: The proposed works make minor modifications to an existing, small-scale structure that has already been designed to integrate with the natural character of the area. The proposal is hence consistent with this objective.

- *To protect and enhance the natural landscape by conserving remnant bushland and rock outcrops and by encouraging the spread of an indigenous tree canopy.*

Comment: No remnant bushland, rock outcrops or indigenous tree canopy will be effected by the proposed development.

Conclusion:

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, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house / secondary dwelling (Class 1 building).

Pittwater 21 Development Control Plan

Built Form Controls

| Built Form Control | Requirement | Proposed | % Variation* | Complies |
|---------------------|-------------|--|--------------|-----------|
| Front building line | 6.5m | 1.7m (from eaves of new roof) 3m (secondary dwelling within existing structure) | 73% N/A | NO N/A |
| Rear building line | 6.5m | 24m | N/A | Yes |
| | | | | |

| | | | | |
|--------------------|-------------|---|------------|-----------|
| Side building line | 2.5m (east) | 8.8m | N/A | Yes |
| | 1m (west) | 0.2m (external stairs) 1.3m (secondary dwelling within existing structure) | 80% N/A | NO N/A |
| Building envelope | 3.5m | Within envelope (east) | N/A | Yes |
| | 3.5m | Within envelope (west) | N/A | Yes |
| Landscaped area | 50% | 799m ² or 62% | N/A | Yes |

***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 |
| A4.1 Avalon Beach Locality | Yes | Yes |
| B3.1 Landslip Hazard | Yes | Yes |
| B3.6 Contaminated Land and Potentially Contaminated Land | Yes | Yes |
| B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor | Yes | Yes |
| B5.15 Stormwater | Yes | Yes |
| B6.3 Off-Street Vehicle Parking Requirements | No | Yes |
| B8.3 Construction and Demolition - Waste Minimisation | Yes | Yes |
| B8.4 Construction and Demolition - Site Fencing and Security | Yes | Yes |
| C1.1 Landscaping | Yes | Yes |
| C1.2 Safety and Security | Yes | Yes |
| C1.3 View Sharing | Yes | Yes |
| C1.4 Solar Access | Yes | Yes |
| C1.5 Visual Privacy | Yes | Yes |
| C1.6 Acoustic Privacy | Yes | Yes |
| C1.7 Private Open Space | Yes | Yes |
| C1.11 Secondary Dwellings and Rural Worker's Dwellings | No | Yes |
| C1.12 Waste and Recycling Facilities | Yes | Yes |
| C1.13 Pollution Control | Yes | Yes |
| C1.23 Eaves | Yes | Yes |
| D1.1 Character as viewed from a public place | Yes | Yes |
| D1.4 Scenic protection - General | Yes | Yes |
| D1.5 Building colours and materials | Yes | Yes |
| D1.8 Front building line | No | Yes |
| D1.9 Side and rear building line | No | Yes |
| D1.11 Building envelope | Yes | Yes |
| D1.14 Landscaped Area - Environmentally Sensitive Land | Yes | Yes |

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

Description of Non-Compliance

The DCP requires that for secondary dwellings:

For a Secondary Dwelling a minimum of 1 space is required in addition to existing requirement for the principal dwelling (based on number of bedrooms in principal dwelling)

Based on the 1 bedroom dwelling provided, at least 1 off-street car space would be required. The site only provides 1 formal car space for the existing principal dwelling, as per the most recent approval on the land.

The application provides no car space for the proposed secondary dwelling, with the Statement of Environmental Effects suggesting that additional car spaces could be provided on the right-of-carriageway to the rear of the existing principle dwelling.

Consideration of the Outcomes of the Control

An adequate number of parking and service spaces that meets the demands generated by the development.

Comment: The proposed secondary dwelling is in effect a studio, that will generate minimal demand for parking, in contrast with a dwelling that has multiple bedrooms. Realistically any parking demand from the proposed dwelling will have to be accommodated on the road reserve on Capua Place. An examination of Capua Place demonstrates that this is a cul-de-sac with low volumes of traffic and an adequate carriageway width. Observation does not currently indicate that there is any shortfall in public parking spaces on this road that would be worsened by the accommodation of one additional car space on the road reserve. Hence, this Outcome could be achieved.

Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.

Comment: There are no reasonable areas on the site that could accommodate 1 extra car space: the existing garage has dimensions for 1 space only; the driveway leading to the garage has a grade that could not accommodate a car space consistent with the Australian Standards; and the right-of-carriageway could not be reasonably relied upon to provide both vehicular access and parking. Hence, it would not be reasonable to apply a condition to provide 1 additional car space on the site.

Safe and convenient parking.

Comment: As stated above, there is limited opportunity to provide additional car parking on the site, which would meet the relevant standards for safe and convenient access.

C1.11 Secondary Dwellings and Rural Worker's Dwellings

Description of Non-Compliance

The proposed secondary dwelling is located on the 1st floor of the existing building, which in effect is not consistent with the Control that states:

A secondary dwelling above a detached garage is not supported.

Consideration of the Outcomes of the Control

Limitation of the visual bulk and scale of development. (En, S)

Comment: As the proposed secondary dwelling is located within an existing building, this Outcome will not be compromised.

Provision of design flexibility for second storey development.

Comment: This outcome will not be compromised by the proposed conversion of the existing home office to a secondary dwelling.

Restriction of the footprint of development site. (En)

Comment: The footprint of the existing building will not be changed by the proposed works, hence this Outcome is achieved.

Retention of natural vegetation and facilitation planting of additional landscaping. (En)

Comment: There will be no loss in the existing level of landscaped open space on the site, as a result of the proposed works.

Provision of rental accommodation. (S)

Comment: Opportunities for additional rental accommodation in the surrounding area will be improved by the proposed conversion of the existing home office.

In conclusion, the proposed secondary dwelling will achieve the Outcomes of the control and the primary justification for not meeting the Control is that the dwelling will be located within an existing building. Refusal of the application based on the non-compliance with this control, would not be reasonable under the circumstances.

D1.8 Front building line

Description of Non-Compliance

The new roof for the garage / secondary dwelling building is located 1.7m from the front boundary. This represents a 73% variation with the minimum front building line control (6.5m)

Consideration of the Outcomes of the Control

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

Comment: The proposed roof will relate to an existing two-storey structure that has existed on the site for since the late 2000's. In this regard, even though the roof represents a numerical non-compliance, in effect it will not change the existing character of the built form in Capua Place. Hence this Outcome is achieved.

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

Comment: This Outcome is not applicable to the subject site.

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

Comment: No vegetation will be lost as a result of the replacement of the existing roof. Hence, this Outcome is achieved.

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

Comment: As the building footprint will remain largely unchanged, this is not relevant to the proposal.

To encourage attractive street frontages and improve pedestrian amenity.

Comment: The presentation of the existing structure will remain largely unchanged as a result of the proposed new roof and no changes are proposed at ground level to the existing pedestrian access. Hence, this Outcome is achieved.

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

Comment: As stated previously, the proposed roof relates to an existing approved structure that is already in close proximity to the front setback. The topography of the site rises up sharply from the carriageway of the Capua Place, which lessens the visual prominence of both the existing structure and the new roof that is proposed upon it. Under these circumstances, this Outcome will be achieved, despite the non-compliance with the front building line control.

In summary, the proposed development can achieve compliance with the Outcomes of the control, and approval is recommended despite the non-compliance with the numerical control.

D1.9 Side and rear building line

Description of Non-Compliance

The proposed external stairs are located between 0.2 to 1.7m from the western side boundary. This in part represents a 80% variation with the 1m minimum side setback.

Consideration of the Outcomes of the Control

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

Comment: The proposed stairs are of a transparent construction and only a small part of the stairs and the associated entry deck are within the 1m setback. The works adjoin a front setback and road reserve that is reasonably vegetated, which will mitigate the visual prominence of these stairs. Hence, this Outcome is achieved.

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

Comment: As stated previously, the works on the western elevation will be lightweight and transparent in nature, minimizing the visual impact when viewed from adjoining properties and the public domain. Hence, this Outcome is achieved.

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

Comment: It is unlikely that the non-compliance will result in the loss of any significant views that are enjoyed by surrounding properties.

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

Comment: As stated above, it is unlikely that the non-compliance will result in the loss of any significant views that are enjoyed by surrounding properties.

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

Comment: The proposed stairs and deck will not closely overlook into any habitable rooms or sensitive areas of private open space on the adjoining property to the west. Hence, this Outcome is achieved.

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

Comment: No significant vegetation will be removed as a result of the proposed stairs, therefore this Outcome is not compromised.

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

Comment: Only a small part of the stairs and deck will encroach the side setback and the breach is required to provide safe and convenient access to the 1st floor secondary dwelling. This Outcome is achieved.

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

Comment: As no vegetation is proposed to be removed, this Outcome is not relevant to the proposal.

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

Comment: This Outcome is not relevant to the subject land.

In summary, the non-compliance with the side setback control will not compromise the Outcomes of the control and strict compliance with the control is not considered necessary under the circumstances.

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

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

Examination of Council's records and a site inspection has revealed two (2) matters that relate to unauthorised works on the subject land. These are discussed below:

1. Access Stairs: In the original consent for the garage / home office, an external access stair was proposed on the side west elevation of the building. However Council's records demonstrate that the CC plans issued by the certifier have re-located these stairs internally. No modification for the original consent was sought. Site visits have confirmed that the external was not built. In effect, the subject application seeks to gain consent again for the external stairs and remove the existing internal stairs. This matter can be rectified through the current application.

2. Ground floor deck adjoining garage: A deck is currently located on the ground floor of the garage on the southern front elevation, approximately 1.7m from the front boundary at it's closest point. This deck was not part of the original development consent for the garage / home office and no other records demonstrate that this was erected with consent. A deck forward of the existing front building line would normally require development consent. As retrospective development consent cannot be granted, a condition of consent is recommended that this deck not form part of this development consent.

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 (2FA) 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.

In summary, a detailed assessment has been required for the following specific issues:

- A greater than 10% variation to the Height of Buildings development standard, as it relates to secondary dwellings;
- Secondary dwelling controls for building over garages, as it relates to P21 DCP;
- Front and side building line controls under P21 DCP; and
- Parking requirements for secondary dwellings under P21 DCP.

In regard to the development standard variation and associated built form controls non-compliances, as these relate to the conversion of an existing approved dwelling, the non-compliances can be supported and are not considered to be reasonable cause to refuse the application.

In regard to car parking, the provision of one (1) additional car space is not considered necessary and the surrounding road network will not be adversely compromised by the accommodation of the one space on the adjoining road reserve.

It is therefore recommended to DDP that the application be approved, subject to the recommended conditions.

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 DA2021/1863 for Alterations and additions to a home office for use as a secondary dwelling on land at Lot 17 DP 219898, 24 Capua Place, AVALON BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|---|-------|-------------|
| Drawing No. | Dated | Prepared By |
| | | |

| | | |
|------|----------------|-------------------------|
| DA3 | 26 August 2021 | Northern Beaches Design |
| DA4 | 26 August 2021 | Northern Beaches Design |
| DA5 | 26 August 2021 | Northern Beaches Design |
| DA6 | 26 August 2021 | Northern Beaches Design |
| DA7 | 26 August 2021 | Northern Beaches Design |
| DA8 | 26 August 2021 | Northern Beaches Design |
| DA11 | 26 August 2021 | Northern Beaches Design |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|---|-------------------|------------------------------|
| Report Title / No. | Dated | Prepared By |
| BASIX Certificate A429731 | 2 September 2021 | Evergreen Energy Consultants |
| Geotechnical Report | 16 September 2021 | White Geotechnical Group |

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 |
| - | 16 September 2021 | Vaughan Milligan Development Consulting |

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

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

2. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a secondary dwelling.

A secondary dwelling is defined as:

“a self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the principal dwelling), and
- (b) is on the same lot of land as the principal dwelling, and

(c) is located within, or is attached to, or is separate from, the principal dwelling"
(development is defined by the Pittwater Local Environment Plan 2013 (as amended)
Dictionary)

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

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

3. **No Approval for Land Use**

No approval is granted under this Development Consent for the existing ground floor deck adjoining the south-west elevation of the garage, noted as "deck" on Plan No.DA04.

Reason: To ensure retrospective consent is not granted to existing works which do not have consent.

4. **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.

5. **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

6. Security Bond

A bond (determined from cost of works) of \$1,000 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

7. No Clearing of Vegetation

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

8. **Secondary Dwelling above a 'non-appurtenant private garage**

Where building works involve a Class 1a Secondary Dwelling above a non-appurtenant private garage, fire separation works are to be carried out in accordance with Part 3.7.4 of the Building Code of Australia –'Fire separation of garage top dwellings' and NSW 1.1 Additions.

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

Reason: To ensure adequate provision is made for fire safety and for building occupant safety

9. **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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10. **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

11. **Protection of Habitat Features**

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

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

Reason: To protect wildlife habitat.

12. **New Vegetation Planting**

Any new landscaping is to incorporate a minimum 60% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the

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

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

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

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

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

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

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

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

14. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

15. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.