

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0296
Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 45 DP 8394, 52 Marine Parade AVALON BEACH NSW 2107
Proposed Development:	Construction of a secondary dwelling
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Lee Dennis Martin Helen Norma Elizabeth Martin
Applicant:	Blue Sky Building Designs Pty Ltd
Application lodged:	28/03/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	16/04/2019 to 30/04/2019
Advertised:	Not Advertised
Submissions Received:	6
Recommendation:	Refusal
Estimated Cost of Works:	\$ 114,940.00

ASSESSMENT INTRODUCTION

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

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

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - A1.7 Considerations before consent is granted
 Pittwater 21 Development Control Plan - B5.7 Stormwater Management - On-Site Stormwater Detention
 Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
 Pittwater 21 Development Control Plan - B8.2 Construction and Demolition - Erosion and Sediment Management
 Pittwater 21 Development Control Plan - B8.3 Construction and Demolition - Waste Minimisation
 Pittwater 21 Development Control Plan - C1.4 Solar Access
 Pittwater 21 Development Control Plan - D1.9 Side and rear building line
 Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 45 DP 8394 , 52 Marine Parade AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Marine Parade.</p> <p>The site is regular in shape with a frontage of 20.15m along Marine Parade and a depth of 50.52m. The site has a surveyed area of 1024m².</p> <p>The site is located within the E4 Environmentally Sensitive zone and accommodates residential dwelling.</p> <p>The site has an approximate slope of 11.3% falling in the direction from the street frontage towards the rear north-west corner.</p> <p>The site has a large turfed rear yard with some vegetation along the rear boundary, primarily in the south-western corner of the site. Multiple canopy trees are located within the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by single and double storey residential dwellings.</p> <p>A site visit was conducted on 14 June 2019.</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:

- Building Application 0686/95 for alterations and additions to an existing dwelling house; refused.
- Building Application 1145/97 for alterations and additions to an existing dwelling house. approved.

PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for the construction of a secondary dwelling.

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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development	Pittwater 21 Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration'	Comments
control plan	
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, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&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>

Section 4.15 Matters for Consideration'	Comments
	(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.
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	This assessment has found the proposal to be contrary to the relevant requirement(s) of the P21 Development Control Plan B5.7 Stormwater Management On-Site Stormwater Detention and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Mr Robert Kimsley Higgins	54 Marine Parade AVALON BEACH NSW 2107
Ms Wilga Rose	13 Urara Road AVALON BEACH NSW 2107
Mr Graham Daniel West Ms Dale Christine Kentwell	22 Coonanga Road AVALON BEACH NSW 2107
Mr Anthony David Payne Ms Michelle Elizabeth Crowe	24 Coonanga Road AVALON BEACH NSW 2107
Northern Beaches Councillors	
Councillor Rory Amon (Councillor)	Northern Beaches Council Civic Centre 725 Pittwater Road DEE WHY NSW 2099

The following issues were raised in the submissions and each have been addressed below:

- Lack of parking provided.
- Size of the proposed secondary dwelling exceeds 25% of the gross floor area of the principle dwelling.
- Preservation of vegetation and trees along the rear western boundary line.
- Privacy concerns raised by the owner of 13 Urara Road, and the owners of 22 Coonanga Road.
- Stormwater and drainage issues.
- Inconsistencies with the RL's shown on the plans drawn by Blue Sky Designs and the survey conducted by DP Surveying.
- Concern raised over the recently built retaining wall located in the rear yard of the subject site.
- Existing concrete driveway located along the northern boundary within the front setback detracting from the landscaped area requirement.
- Rear setback non-compliance.

The matters raised within the submissions are addressed as follows:

- **Due to the proposed increase in occupants to the site, concern was raised regarding the lack of parking proposed for the development.**

Comment:

Pittwater 21 Development Control Plan (P21 DCP) outlines under *Clause B6.3 Off-Street Vehicle Parking Requirement* that for a Secondary Dwelling a minimum of one (1) space is required in addition to existing requirements for the principal dwelling. However, the *State Environmental Planning Policy (Affordable Rental Housing) 2009* states that the consent authority must not refuse consent to the development on the grounds of parking; that is, if no additional parking is to be provided on the site.

The lack of parking provisions does not warrant the refusal of this application.

- **Size of the proposed secondary dwelling exceeds 25% of the gross floor area of the principle dwelling.**

Comment:

The original plans were inconsistent with the Pittwater Local Environmental Plan (PLEP) 2014 requirement with regards to the size of the secondary dwelling. The gross floor area of the principal dwelling is 248m², therefore 25% is 62m². The gross floor area of the secondary dwelling was measured to be 64.1m², and was therefore non-compliant with *PLEP 2014 5.4 (9)*.

Amended plans were received by Council on 14 May 2019 which showed a smaller Secondary Dwelling - measuring at 61.7m², which is therefore compliant with the *PLEP 2014 5.4 (9)* size requirement.

- **Concern was raised that the development will not preserve the existing vegetation and trees located along the rear western boundary line.**

Comment:

A Jacaranda Mimosifolia (common name: Jacaranda) located in the rear south-western corner is proposed to be removed. A Jacaranda is on Council's Exemption Species list which means it can be removed safely without requiring consent. The proposed development includes additional native species planting of Pinnacle Lilly Pilly's located along the rear western boundary line for a length of 16.8m at a minimum height of 1.8m. Additionally, Pinnacle Lilly Pilly's are proposed to be planted between the proposed Secondary Dwelling and the Principal Dwelling for a length of 11.4m at a minimum height of 1.8m. The proposed screen planting will

be of a native species and will provide a reasonable level of privacy for the occupants of the subject site and neighbours located at 22 Coonanga Road and 13 Urara Road.

- **Privacy concerns were raised by the owner of 13 Urara Road and the owners of 22 Coonanga Road.**

Comment:

13 Urara Road

The subject site does not have a direct shared boundary (rear or side) with 13 Urara Road. The subject site's northern and western boundaries join at the same point as 13 Urara Road's southern and eastern boundaries. The proposed Secondary Dwelling's pergola structure is located 6.6m from 13 Urara Road, and the Secondary Dwelling's north-western external wall is located 8.9m from 13 Urara Road. This is considered to be acceptable and consistent with the requirements *P21 DCP C1.5*.

22 Coonanga Road

The subject site's rear western boundary is shared with 22 Coonanga Road's eastern side boundary. The proposed hardstand space for the deck has been removed from the application, therefore minimising privacy impacts upon the rear yard of 22 Coonanga Road. Additionally, while the access point to the Secondary Dwelling is located at the rear, it is located 8.0m from the rear boundary line, therefore technically compliant with the requirements and outcomes of *P21 DCP D1.9*.

- **Concern has been raised by multiple neighbours regarding the existing and proposed stormwater drainage.**

Comment:

Council's Development Engineer reviewed the original and updated plans provided to Council. The following comments were made:

Initial comments based upon original plans (provided on 30 April 2019):

The proposed Secondary Dwelling is located within 3.0 metres from the rear boundary. The stormwater management from the existing dwelling prepared by Taylor Consultant show that an OSD and a level spreader was provided. The level spreader is located within the footprint of the proposed Secondary Dwelling. The proposed Secondary Dwelling will require provision of OSD in accordance with Clause B5.7 of Pittwater 21 DCP 2014.

As a result of the location of the proposed Secondary Dwelling, an amended stormwater management for the entire site is required. The Secondary Dwelling will require to be relocated to allow for new level spreader at least 3.0 metres clear of the rear boundary together with the provision of an additional OSD for the Secondary Dwelling.

The proposed development cannot be supported in its current form. The recommendation by Council's Development Engineer is for refusal.

Updated comments based upon amended plans (provided on 21 May 2019):

The proposed Secondary Dwelling is located 3.0m from the rear boundary. The existing dwelling has an OSD built with a level spreader as shown in Taylor Consultants stormwater plan. The Secondary Dwelling appears to be located within the area of the level spread built for the existing dwelling. As a result, the existing level spread will need relocation. The Secondary Dwelling will require to provide for OSD in accordance with Clause B5.7 of Pittwater 21 DCp 2014.

An amended Stormwater Management Plan must be submitted for provision of OSD for the Secondary Dwelling and new level spreader, 3.0m clear of any side or rear boundaries.

As a result, the proposed development cannot be supported in its current form. The recommendation by Council's Development Engineer is for refusal.

- **It was noted that there appears to be inconsistencies with the RL's shown on the plans drawn by Blue Sky Designs and the survey conducted by DP Surveying.**

Comment:

The 26.86RL, as shown on the south elevation plan provided by Blue Sky Designs, is located approximately 0.3m over the rear boundary. The 26.56RL shown on the survey provided by DP Surveying, is located approximately 0.43m from the rear south-western corner, within the subject site. These RL's are not located in the same position, therefore they cannot be the same RL.

There does, however, appear to be an inconsistency with the proposed height of the retaining wall along the rear western boundary. The RL as shown on the survey compared to that shown on the elevation plans have an approximate discrepancy of 0.79m, rather than the proposed 0.57m. This discrepancy will result in an increased retaining wall height of approximately 0.22m. It should be noted that this is a very minor discrepancy that does not result in a non-compliant building height, therefore it is unlikely to impact upon solar access and privacy to the subject site or adjoining properties, nor is it likely to result in a development with excessive bulk and scale.

- **Concern has been raised over the recently built retaining wall located in the rear yard of the subject site impacting upon water flow.**

Comment:

The Development Application does not seek consent for the recently built retaining wall that is located approximately 3.2m west of the principle dwelling. Should this retaining wall have a negative impact upon the water flow and/or boundary fence between the subject site and 24 Coonanga Road then a discussion is required with both property owners, separate to Council, as this is a civil matter. The proposed new retaining wall located along the rear western boundary is located 1.0m off the southern side boundary, therefore resulting in minimal impact to 24 Coonanga Road.

- **Concern has been raised regarding the existing concrete driveway located along the northern boundary within the front setback which further reduces landscaped area.**

Comment:

The existing hardstand surface located along the northern boundary within the front setback was not shown on the original plans. It was, however, shown on the amended plans as proposed to be removed and replaced with soft landscape treatments. The requirement for, and proposed, landscaped area is outlined within this report in the Built Form Controls table and further discussed under *Clause D1.14 Landscaped Area - Environmentally Sensitive Land*.

- **Concern has been raised with regards to the non-compliant distance to the rear boundary.**

Comment:

The proposed Secondary Dwelling is numerically non-compliant with the rear setback requirement as outlined within *P21 DCP Clause D1.9 Side and Rear Building Line*. The requirement for, and proposed, rear setback distance is outlined within this report in the Built Form Controls table and further discussed under *Clause D1.9 of P21 DCP*.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p>The proposal, in terms of landscape outcome, is acceptable subject to the protection of the existing trees and vegetation, and the completion of landscaping.</p> <p>Council's Landscape section has assessed the proposal against the following Pittwater21 DCPC controls:</p> <p>B4.22 Preservation of Trees and Bushland Vegetation C1.1 Landscaping C1.11 Secondary Dwelling D1 Avalon Locality</p> <p>No Arboricultural Impact Assessment report is provided in accordance with DA Lodgement Requirements, and conditions of consent shall be imposed to protect existing trees and vegetation.</p> <p>No Landscape Plan is provided. Planting to soften the proposed built form and provide boundary screening is shown on the Site Plan, and conditions of consent shall be imposed to protect existing trees and vegetation.</p>
NECC (Bushland and Biodiversity)	<p>The proposal includes construction of a secondary dwelling and removal of one exempt tree species. Biodiversity raises no issues.</p>
NECC (Coast and Catchments)	<p>12 Development on land within the coastal vulnerability area</p> <p><i>Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:</i></p> <p>(a) <i>if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and</i></p> <p>(b) <i>the proposed development:</i></p> <p>(i) <i>is not likely to alter coastal processes to the detriment of the natural environment or other land, and</i></p> <p>(ii) <i>is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and</i></p> <p>(iii) <i>incorporates appropriate measures to manage risk to</i></p>

Internal Referral Body	Comments
	<p><i>life and public safety from coastal hazards, and</i></p> <p>(c) <i>measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.</i></p> <p><u>Comment:</u></p> <p>The subject land has not been included on the Coastal Vulnerability Area Map under State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) and in regard to CM SEPP the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.</p> <p>As such, it is considered that the application does/does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p>
NECC (Development Engineering)	<p>The proposed granny flat is located within 3.0 metres from the rear boundary. The stormwater management from the existing dwelling prepared by Taylor Consultant show that an OSD and a level spreader was provided. The level spreader is located within the footprint of the proposed secondary dwelling. The proposed secondary dwelling will require provision of OSD in accordance with clause B5.7 of Pittwater 21 DCP 2014.</p> <p>As result of the location of the proposed granny flat an amended stormwater management for the entire site is required. The second dwelling will require to be relocated to allow for new level spreader at least 3.0 metres clear of the rear boundary together with the provision of an additional OSD for the granny flat.</p> <p>The proposed development cannot be supported in its current form.</p> <p>Dated 21/05/2019</p> <p>The propose granny flat is located 3.0 metres from the rear boundary. The existing dwelling has an OSD built with a level spreader as shown in Taylor Consultants stormwater plan. The granny flat appears to be located within the area of the level spreader built for the existing dwelling. As result the existing level spreader will need relocation. The granny flat will require to provide for OSD in accordance with clause B5.7 of Pittwater 21 DCP 2014.</p> <p>An amended stormwater management plan must be submitted for provision of OSD for the granny flat and new level speeder, 3.0 metres clear of any side or rear boundaries.</p> <p>As result the proposed development cannot be supported in its current form.</p>

Internal Referral Body	Comments
NECC (Riparian Lands and Creeks)	This application is approved with conditions. The onsite dispersal of stormwater achieves the objectives of Pittwater 21 DCP B5.8 Water Quality. Erosion and sediment controls must be installed prior to any work on site and maintained until work is complete and groundcover re-established.

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

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 Secondary Dwelling is consistent with the definition of a 'Secondary Dwelling' as it appears under the PLEP 2014.

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 Living zone and, as such, the proposed use is permissible with consent under PLEP 2014.

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.	There is currently one (1) dwelling on the subject site. The erection of a Secondary Dwelling will result in two (2) dwellings on the site. Therefore this Division applies and is complied with.

<p>(3) A consent authority must not consent to development to which this Division applies unless:</p> <p>(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</p> <p>(b) the total floor area of the secondary dwelling is no more than 60m² 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.</p>	<p>The proposed Secondary Dwelling is measured from 25% of the gross floor area of the principle dwelling which is 62.2m². The proposed Secondary Dwelling has a gross floor area of 61.7% and is therefore compliant.</p>
<p>(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:</p> <p>(a) site area if:</p> <p>(i) the secondary dwelling is located within, or is attached to, the principal dwelling, or</p> <p>(ii) the site area is at least 450 square metres.</p> <p>(b) parking if no additional parking is to be provided on the site.</p>	<p>The proposed Secondary Dwelling is detached from the principle dwelling; the site area is greater than 450m² (measuring at 1024m²). No additional parking is proposed within this application.</p>

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
<p>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.</p>	<p>Consistent. This application does not propose any subdivision of the existing allotment.</p>

Conclusion

The proposed Secondary Dwelling is appropriate and consistent with the relevant controls under SEPP (ARH) 2009 and PLEP 2014, and is therefore acceptable.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 990942S on 28 March 2019).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	51

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

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:

10 Development on certain land within coastal wetlands and littoral rainforests area

- (1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
- the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
 - the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
 - the carrying out of any of the following:*
 - earthworks (including the depositing of material on land),*
 - constructing a levee,*
 - draining the land,*

- (iv) *environmental protection works,*
- (d) *any other development.*

Comment:

This is not relevant to the subject site.

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
 - (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

This clause is not relevant to the subject site.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
 - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes*

and
current
and
future
coastal
hazards.

Comment:

This clause is not relevant to the subject site.

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:

This clause is not relevant to the subject site.

- (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:

This clause is not relevant to the subject site.

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:

This clause has been assessed against the subject site and proposed development. No issues were raised in relation to the proposed development and the land being within the Coastal Use Area.

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:

This clause has been assessed against the subject site and it is determined the proposed development will not result in an increased risk to coastal hazards.

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	5.5m	4.4m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.9 Preservation of trees or vegetation	Yes
5.9AA Trees or vegetation not prescribed by development control plan	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	37.1m	N/A	Yes
Rear building line	6.5m	3.4m	47.6%	No
Side building line	2.5m (northern)	5.3m	N/A	Yes
	1m (southern)	2.8m	N/A	Yes
Building envelope	3.5m	Within envelope	N/A	Yes
	3.5m	Within envelope	N/A	Yes
Landscaped area	60% (616.8m ²)	55% (565.4m ²)	8.3%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.1 Avalon Beach Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	No	No
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6.3 Off-Street Vehicle Parking Requirements	No	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	No	Yes
B8.3 Construction and Demolition - Waste Minimisation	No	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	No	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	Yes	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
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

A1.7 Considerations before consent is granted

A request for withdrawal letter was sent to the applicant on 8 May 2019. The applicant provided amended plans on 14 May 2019. Upon review of the amended plans Council's Development Engineer provided their comments which have remained consistent with their initial refusal comments.

B5.7 Stormwater Management - On-Site Stormwater Detention

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B5.7 Stormwater Management - On-Site Stormwater Detention of the Pittwater 21 Development Control Plan.

B6.3 Off-Street Vehicle Parking Requirements

Clause B6.3 of P21 DCP states that for a Secondary Dwelling a minimum of one (1) parking space is required in addition to the existing requirement for the principal dwelling. The existing site has have a

garage and hardstand surface which accommodates two (2) vehicles. However, the proposed development does not include the provision of one (1) additional parking space and is therefore non-compliant with this control.

Merit Consideration

With regard to the consideration of a variation, the development is considered against the underlying objectives of the Control as follows:

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

Comment:

The proposal will maintain the existing parking arrangement which is adequate to service the existing principle dwelling. The State Environmental Planning Policy (Affordable Rental Housing) 2009 does not allow the consent authority to refuse an application where additional parking provisions have been proposed. The site provides an adequate number of parking spaces to meet the demands generated by the development.

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

Comment:

The proposal will maintain the existing parking arrangement and will not create additional rainwater runoff or adverse visual or environmental impacts. Additionally, the proposal will not impact upon pedestrian or vehicle safety.

- *Safe and convenient parking.*

Comment:

The existing parking arrangement is considered to be safe and convenient.

While the proposal is numerically non-compliant with the parking provisions, it is, however, considered to be consistent and appropriate with the outcomes of this Clause. Therefore, the variation is applicable and supported.

B8.2 Construction and Demolition - Erosion and Sediment Management

An Erosion and Sediment Control fence has not been reflected on the site plan.

B8.3 Construction and Demolition - Waste Minimisation

A Northern Beaches Council Waste Management Plan was not provided with this application.

C1.4 Solar Access

Shadow diagrams were not provided with the application. However, as the proposed Secondary Dwelling is single storey and compliant with the building height control, it is determined that the structure will result in minimal impact upon solar access to the subject site and adjoining properties.

D1.9 Side and rear building line

Non-compliant Rear Setback

Requirement:

6.5m

Proposed:

3.4m

The proposed development is numerically non-compliant with the minimum requirement for the rear setback with a variation of 46.1% to the 6.5m setback control. Council may consider this variation if the outcomes of the control can be achieved.

Merit Consideration

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

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

Comment:

Under A4.1 of P21 DCP the proposal is consistent with the objectives of the desired future character of Avalon Beach through establishing secondary dwellings in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing. The proposed Secondary Dwelling is modest in bulk and scale given the structure is well under the building height control. Additionally, the proposal includes the provision of screen planting of native species thus integrating the natural environment with the development.

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

Comment:

The proposal is considered to be of minimal bulk and scale as it adheres to the maximum gross floor area as outlined under *Clause 5.4 (9) of PLEP 2014*, as well as the remaining below the maximum building height as outlined under *Clause 4.3 (2FA) of PLEP 2014*. Further, the proposed planting of native species, to reach a minimum height of 1.8m, along the rear western boundary line and between the proposed Secondary Dwelling and existing principle dwelling, will reasonably minimise the built form when viewed from neighbouring properties.

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

Comment:

Any views currently obtained by neighbouring properties will not be impacted by the proposed Secondary Dwelling.

- *To encourage view sharing through complimentary siting of buildings, response design and well-positioned landscaped*

Comment:

The proposed Secondary Dwelling is in keeping with the design of the principle dwelling. Additionally, screen planting of native vegetation along the rear western boundary line will ensure a reasonable level of privacy and amenity can be achieved for the occupants of the subject site, and those of adjoining properties. As mentioned above, any views that are currently obtained by adjoining properties will not be impacted by the proposed Secondary Dwelling.

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

Comment:

A reasonable level of amenity will be maintained and enhanced through the provision of screen planting of native vegetation along the rear western boundary. As the proposed Secondary Dwelling is a single storey development with a maximum height of 4.4m, it is unlikely to unreasonably impact upon the solar access of the subject site and adjoining properties.

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

Comment:

No significant vegetation is proposed to be removed to facilitate the proposed Secondary Dwelling. Additional screen planting of native species is proposed to be planted along the rear western boundary to ensure privacy is achieved for the occupants of neighbouring sites as well as the occupants of the subject site. Furthermore, the proposed Secondary Dwelling is to be located within the rear setback being screened from the streetscape by the existing principle dwelling.

- *Flexibility in the siting of buildings and access*

Comment:

No unreasonable amenity impacts are considered likely to arise as a result of the proposed Secondary Dwelling. The proposed development will not impact upon the current access to the site.

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

Comment:

As outlined above, no significant vegetation is proposed to be removed to facilitate the proposed Secondary Dwelling. Additional planting of native species is proposed along the rear western boundary which will assist in visually reducing the built form.

- *A landscaped buffer between commercial and residential zones is achieved*

Comment:

The subject site is not adjacent to a commercial zone, therefore this outcome is not relevant to the proposed development.

While the rear setback is numerically non-compliant, it is, however, considered to be consistent and appropriate with the outcomes of this Clause. Therefore the variation is applicable and supported.

D1.14 Landscaped Area - Environmentally Sensitive Land

Required

616.8m² or 60%

Existing

610.1m² or 59.3%

Proposed

565.4m² or 55%

This Control allows for variation to be applied where the objectives of this Control can be achieved, that allows for 6% of the total site area to be impervious landscape treatments providing these areas are for outdoor recreation purposes only. Once the variation is applied, the landscaped area of the site would equate to 61%.

Merit Consideration

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

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

Comment:

Under A4.1 of P21 DCP the proposal is consistent with the objectives of the desired future character of Avalon Beach. The proposed development will maintain a building height well below the existing tree canopy as well as including the provision of new native vegetation. Additionally, the bulk of the built form will be minimised by the planting of native vegetation which will enhance the privacy of the subject site and neighbouring properties.

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

Comment:

The proposal is considered to be of minimal bulk and scale as it adheres to the maximum gross floor area as outlined under Clause 5.4 (9) of PLEP 2014, as well as remaining below the maximum building height as outlined under Clause 4.3 (2FA) of PLEP 2014. Furthermore, the proposed planting of native species, to reach a minimum height of 1.8m, along the rear western boundary line and between the proposed Secondary Dwelling and existing principle dwelling, will reasonably minimise the built form when viewed from neighbouring properties.

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

Comment:

A reasonable level of amenity will be maintained and enhanced through the provision of screen planting along the rear western boundary. As the proposed Secondary Dwelling is a single storey development with a maximum height of 4.4m, it is unlikely to reasonably impact upon the solar access of the subject site and that of neighbouring properties.

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

Comment:

As previously outlined within this report, no significant vegetation is proposed to be removed to facilitate the proposed development.

- *Conservation of natural vegetation and biodiversity.*

Comment:

As above. Additionally, the proposal includes the planting of native species along the rear western boundary to enhance the natural vegetation and biodiversity of the site.

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

Comment:

The removal of the concrete hardstand surface along the northern boundary within the front setback will enhance the soft surface allowing for stormwater runoff to enter the water table, thus minimising stormwater runoff and preventing soil erosion and siltation of natural drainage channels.

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

Comment:

Planting additional native vegetation will enhance the rural and bushland character of the area.

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

Comment:

The proposal includes the removal of a sizable concrete hardstand surface which is to be replaced by turf which will enhance the soft surface allowing for the infiltration of water to the water table and minimise stormwater run off and assisting with stormwater management.

While the landscaped area is numerically non-compliant, it is, however, considered to be consistent and appropriate with the outcomes of this Clause. Therefore, the variation is applicable and supported.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/0296 for the Construction of a secondary dwelling on land at Lot 45 DP 8394,52 Marine Parade, AVALON BEACH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B5.7 Stormwater Management - On-Site Stormwater Detention of the Pittwater 21 Development Control Plan.

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

Signed



Megan Surtees, Planner

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



Matthew Edmonds, Manager Development Assessments