

DEVELOPMENT APPLICATION ASSESSMENT REPORT

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| Application Number: | DA2019/0913 |
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|---|---|
| Responsible Officer: | Kent Bull |
| Land to be developed (Address): | Lot 70 DP 11067, 32 The Strand WHALE BEACH NSW 2107 |
| Proposed Development: | Demolition works and construction of a dwelling house including a swimming pool |
| Zoning: | E4 Environmental Living RE1 Public Recreation |
| Development Permissible: | Yes - Zone RE1 Public Recreation Yes - Zone E4 Environmental Living |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Delegation Level: | DDP |
| Land and Environment Court Action: | No |
| Owner: | Robert Alfred Kenneth Nugan |
| Applicant: | Robert Alfred Kenneth Nugan |

| | |
|----------------------------------|--|
| Application Lodged: | 23/08/2019 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Single new detached dwelling |
| Notified: | 05/09/2019 to 19/09/2019 |
| Advertised: | Not Advertised |
| Submissions Received: | 1 |
| Clause 4.6 Variation: | 4.3 Height of buildings: 15.94% |
| Recommendation: | Approval |

| | |
|---------------------------------|-----------------|
| Estimated Cost of Works: | \$ 2,564,125.46 |
|---------------------------------|-----------------|

EXECUTIVE SUMMARY

The development application seeks consent for the construction of a dwelling house that involves a 15.94% variation to the height of buildings development standard prescribed by clause 4.3 of *Pittwater Local Environmental Plan 2014* (PLEP 2014). As such, the development is referred to the Development Determination Panel for determination.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for demolition of existing structures and construction of a

three storey detached dwelling house with swimming pool, construction of a driveway and crossover and associated landscaping works. In particular, the works include:

Demolition and site preparatory works:

- Demolition of existing structures and
- Excavations works.

Garage - RL 17.400

- Two car garage with vehicle access from Whale Beach Road.

Upper level (Second Floor) - RL 16.290

- Dwelling entry;
- Master bedroom;
- Walk-in robe and pilates room;
- Ensuite bathroom and courtyard with void above;
- Retreat;
- Balcony to rear (east); and
- Bin store (south).

Middle level (First Floor) - RL 12.960

- Outdoor courtyard (west);
- Kitchen, Pantry, Open plan living, Dining room;
- Cellar;
- Laundry;
- Study;
- Swimming pool and terrace;
- Balcony with outdoor living area and
- Powder room;

Ground level - upper (Ground Floor) - RL 9.630

- Family/games room and
- Pool equipment storage area;

Ground level - lower (Ground Floor) - RL 8.520

- Three bedrooms;
- Two bathrooms and
- Outdoor shower and store.

Landscaping

- Gate house entry;

- Retaining walls;
- Side access stairs;
- Tree removal and
- Vegetation plantings.

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 - 4.3 Height of buildings

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 - 5.1 Relevant acquisition authority

Pittwater Local Environmental Plan 2014 - 5.1A Development on land intended to be acquired for public purpose

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater Local Environmental Plan 2014 - 7.3 Flood planning

Pittwater Local Environmental Plan 2014 - 7.5 Coastal risk planning

Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

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

Pittwater Local Environmental Plan 2014 - 7.10 Essential services

Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality

Pittwater 21 Development Control Plan - A5.1 Exhibition, Advertisement and Notification of Applications

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

Pittwater 21 Development Control Plan - C1.1 Landscaping

Pittwater 21 Development Control Plan - C1.3 View Sharing

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - C1.23 Eaves

Pittwater 21 Development Control Plan - D12.1 Character as viewed from a public place

Pittwater 21 Development Control Plan - D12.3 Building colours and materials

Pittwater 21 Development Control Plan - D12.5 Front building line

- Pittwater 21 Development Control Plan - D12.6 Side and rear building line
- Pittwater 21 Development Control Plan - D12.8 Building envelope
- Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land
- Pittwater 21 Development Control Plan - D12.11 Fences - General
- Pittwater 21 Development Control Plan - D12.14 Scenic Protection Category One Areas

SITE DESCRIPTION

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|-----------------------------------|---|
| Property Description: | Lot 70 DP 11067 , 32 The Strand WHALE BEACH NSW 2107 |
| Detailed Site Description: | The site is irregular in shape, with a primary frontage of 19.13m to Whale Beach Road, a secondary frontage of 18.29m to The Strand and a depth of 63.385m. The site has a surveyed area of 1105m ² . The site is subject to split zoning; with the western portion of the site zoned E4 Environmental Living and the eastern portion of the site zoned RE1 Public Recreation under the provisions of PLEP 2014. A single storey dwelling is located on the western portion of the site, wholly within the E4 zoned portion of the site. Vehicular and pedestrian access is currently gained via a driveway from Whale Beach Road, with pedestrian access also available to The Strand and Whale Beach. The site falls approximately 11.54m from the Whale Beach Road frontage to the The Strand frontage, with the majority of the fall occurring in the western portion of the site. The site is identified on the Geotechnical Hazard Map, Coastline Hazard Map, Flood Hazard Map, Foreshore Building Line Map and Biodiversity Map of PLEP 2014. Adjoining and surrounding development is characterised by low-density residential dwellings of varied architectural styles. |

Map:



SITE HISTORY

22 November 2018

Pre-lodgement meeting (PLM2018/0264) held to discuss the construction of a new dwelling house. Concerns were raised with regards to the proposed vehicle access from The Strand, excavation required for a lift and whether requirements for view sharing would be achieved. The concluding comments from Council detailed that the proposal was not acceptable and that a significant redesign would be required prior to the lodgement of a Development Application with Council.

27 August 2019

The subject application was lodgement with Council.

23 September 2019

Photo evidence provided to Council confirming that the notification sign had been in place during the course of the notification period.

6 September 2019

Following a request made by the previous assessing officer, amended plans detailing the Reduced Levels (RL) on elevation drawings were received by Council and accepted.

4 October 2019

Council issued a letter to the applicant, requesting that the application be withdrawn due to non-compliance with building height, the extent of excavation, the built form of the swimming pool/terrace area and for non-compliance's with the side setback control.

15 October 2019

The assessing officer undertook a site inspection.

17 October 2019

The assessing officer and the Manager of Development Assessment met with the applicant and their representatives to discuss outstanding concerns.

28 October 2019

Additional information was provided requesting that Council continue its assessment of the subject development application. In particular, the letter provided further justification with regards to building height non-compliance, extent of excavation and the side setback non-compliance.

5 November 2019

Height pole certification prepared by a Registered Surveyor provided to Council.

5 November 2019

Notification letters to three (3) additional properties along Morella Road were sent by Council. The submission close date was 25 November 2019.

22 November 2019

A reverse view sharing assessment was undertaken by the assessing officer. Refer to clause C1.3 (View Sharing) of the P21 DCP for further discussion of this assessment.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

| Section 4.15 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 control plan | Pittwater 21 Development Control Plan applies to this proposal. |
| Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement | None applicable. |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</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</p> |

| Section 4.15 Matters for Consideration' | Comments |
|---|---|
| | <p>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>Clause 143A 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> |
| <p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p> | <p>(i) 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> |
| <p>Section 4.15 (1) (c) – the suitability of the site for the development</p> | <p>The site is considered suitable for the proposed development.</p> |
| <p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p> | <p>See discussion on “Notification & Submissions Received” in this report.</p> |
| <p>Section 4.15 (1) (e) – the public interest</p> | <p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p> |

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited 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 1 submission/s from:

| Name: | Address: |
|-------|----------|
| | |

| Name: | Address: |
|-----------------------------|-----------------------------------|
| Donohoes Commercial Lawyers | PO Box A526 SYDNEY SOUTH NSW 1235 |

The issues raised in the submissions received are addressed as follows:

- **Excavation and underground drainage near boundary**

Comment: One submission was received, made on behalf of the adjoining property owner*, raising concern regarding the proposed excavation and underground drainage that is near the common side boundary with 237 Whale Beach Road. Council's Development Engineer has reviewed the submitted Geotechnical Report and the stormwater arrangement, deeming the proposal to be acceptable subject to compliance with recommended conditions. As discussed with regards to clause 7.2 of the PLEP 2014, a condition has been recommended to require the preparation of a Dilapidation Report, inclusive of a photographic survey, to be undertaken prior to the issue of a construction certificate. The placement of this condition is considered an appropriate measure to address the concerns raised.

***Note:** Donohoes Commercial Lawyers provided a submission on behalf of the property owner of 237 Whale Beach Road.

REFERRALS

| Internal Referral Body | Comments |
|----------------------------------|--|
| Landscape Officer | <p>The Arborist's Report and Landscape Plan submitted with the application are noted.</p> <p>No objections in general terms to the proposed works, however I would defer to comments from Council's Biodiversity section regarding biodiversity/environmental issues as the site is mapped as Pittwater Littoral Rainforest EEC on Council's mapping layers.</p> <p>In view of <i>Banksia integrifolia</i> to be removed in the rear yard to accommodate the proposed dwelling, it is recommended that 2 additional <i>B. integrifolia</i> be planted in the rear yard.</p> <p><u>Planner Comments 27.11.19:</u></p> <p>To ensure there are no duplicate conditions within the consent, the recommended condition for tree planting and landscape certification upon completion from Council's Landscape Officer has been removed.</p> |
| NECC (Bushland and Biodiversity) | <p>Council's Natural Environment - Biodiversity section raises no objections to the proposed development, subject to conditions.</p> <p>This application was assessed against Pittwater LEP Clause 7.6 Biodiversity and Pittwater DCP B4.17 Littoral Rainforest EEC.</p> <p>The proposal is for the demolition of the existing structures and the</p> |

| Internal Referral Body | Comments |
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| | <p>construction of a new dwelling and swimming pool. The site currently contains an existing dwelling with a mown lawn and native / exotic vegetation.</p> <p>The submitted Arboricultural Impact Assessment report (Urban Forestry Australia, June 2019) assesses 12 trees. Four of these trees are non-prescribed. Five of the 8 prescribed trees are proposed for removal. No trees to be removed were assessed as having high retention value.</p> <p>To comply with biodiversity controls, a minimum of 5 locally native canopy tree plantings are required to achieve not net loss of canopy trees within the site. The Landscape Plan will also be required to be amended as the species selection does not comply with controls.</p> |
| NECC (Coast and Catchments) | <p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>State Environmental Planning Policy (Coastal Management) 2018</p> <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 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> The subject land has been included in the 'Coastal Use Area' map but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 12, 14 and 15 of the CM SEPP apply for</p> |

| Internal Referral Body | Comments |
|------------------------|--|
| | <p>this DA. In regard to clauses 12 and 15 of the CM SEPP, the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land. As elaborated in the Statement of Environmental Effects (SEE), the DA satisfies requirements under clause 14 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>The property is located within a “Wave inundation” area designated on the Coastal Risk Planning Map (Sheet CHZ_015) that is referenced in Pittwater Local Environmental Plan 2014. The property is also mapped as being subject to coastal erosion and coastal inundation hazards on the Pittwater 21 Development Control Plan (DCP)1 Map MDCP016. Therefore, the property is subject to Chapter B3.3 of the DCP, and the Coastline Risk Management Policy for Development in Pittwater (Coastline Policy),</p> <p>The subject land is also identified under Coastline Beach Hazard Area.</p> <p>For this, a Coastline Risk Management Report by Horton Coastal Engineering Pty. Ltd, dated 9 August 2019, has been submitted with this DA application. In this report a Coastline Planning Level of 8.5m AHD has been adopted.</p> <p>In the Coastline Risk Management Policy for Development in Pittwater, it is noted that a planning period (design project life) of 100 years should be adopted unless otherwise justified. A 60-year planning period has been considered herein, The Policy allows variations between the 50 and 100 years.</p> <p>According to Coastline Risk Management Report by Horton Coastal Engineering Pty. Ltd, dated 9 August 2019, coastal erosion/recession is not a credible risk to the proposed development for a planning period beyond 2100 (design life of 81 years). The development would be at an acceptably low risk of damage from coastal inundation and wave runup over a reasonable 60 year design life if the measures outlined in Section 8 are adopted.</p> <p>Final Comment</p> <p>The proposed development does comply with the requirements of State Environmental Planning Policy (Coastal Management) 2018 (Clauses 12, 14 and 15), Section 9(2) of the Coastal Management Act 2016, Clause 7.5 of Pittwater Local Environmental Plan 2014, Section B3.3 of the Pittwater 21 DCP and the Coastline Risk</p> |

| Internal Referral Body | Comments |
|---|---|
| | Management Policy for Development in Pittwater for the matters considered herein. |
| NECC (Development Engineering) | The subject site adjoins an existing Council pipeline and easement in the adjoining property to the north. This location of the pipeline was determined on site and appropriate conditions for the protection of this system have been included. The proposed driveway crossing and internal driveway has been assessed and is satisfactory. The submitted Geotechnical report addresses the relevant DCP controls. No objection to approval, subject to conditions as recommended. |
| NECC (Riparian Lands and Creeks) | This application has been assessed under Pittwater 21 DCP B5.8 - Water Quality and B8.2 - Erosion and Sediment control The applicant is required to install a sediment arrestor pit to capture organic matter and coarse sediments before stormwater is discharged from the land. The pit with trash screen indicated on the plans is adequate, as long as the screen has a handle and is easily accessed for removal to allow for cleaning. Sediment and erosion controls must be installed prior to any work on site and maintained until all work on site is complete and groundcover reestablished. |
| NECC (Stormwater and Floodplain Engineering – Flood risk) | The proposed development is outside of the flood affected part of the property. |
| Strategic and Place Planning (Heritage Officer) | HERITAGE COMMENTS |
| | Discussion of reason for referral |
| | The proposal has been referred to Heritage as the subject property is within the vicinity of a heritage item Norfolk Island Pines (<i>Araucaria heterophylla</i>) - on the eastern side of The Strand |
| | Details of heritage items affected |
| | Details of the item as contained within the Pittwater heritage inventory is as follows: <u>Statement of significance:</u> The Norfolk Island Pines are a defining landscape element for Whale Beach, but also for many ocean beaches in Pittwater and along the coast of NSW and southern QLD. These pines are significant for their historic association with early settlement and as local cultural plantings, in some instances dating from the 1930s. The Norfolk Island Pine plantings also have a high level of visual, environmental and aesthetic value. <u>Physical description:</u> There are approximately 33 Norfolk Island Pines located along the eastern and to a lesser extent the western edges of the beach car park. The trees have a mix of sizes and age and many trees have achieved dramatic proportions and scale. The Pines are a visible feature of the Beach when approaching from the north via Whale Beach Road. |

| Internal Referral Body | Comments | | |
|---|--|-----|--|
| | | | |
| | Other relevant heritage listings | | |
| | Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 | No | |
| | Australian Heritage Register | No | |
| | NSW State Heritage Register | No | |
| | National Trust of Aust (NSW) Register | No | |
| | RAIA Register of 20th Century Buildings of Significance | No | |
| | Other | N/A | |
| | Consideration of Application | | |
| | <p>The proposal seeks consent for the construction of a new dwelling on the subject property. The heritage item is located to the east of the property across The Strand. There is adequate separation between the heritage item and the dwelling by way of the proposed dwelling being set back into the site, closer to the boundary with Whale Beach Road. As such, Heritage raises no objections to the proposal and requires no conditions.</p> | | |
| | <p>Consider against the provisions of CL5.10 of PLEP.</p> | | |
| | <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p> | | |
| | Further Comments | | |
| <p>COMPLETED BY: Brendan Gavin, Principal Planner</p> <p>DATE: 25 November 2019</p> | | | |

| External Referral Body | Comments | | |
|------------------------|---|--|--|
| Ausgrid: (SEPP Infra.) | <p>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.</p> | | |

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1020266S, dated 22 August 2019). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0004145322, dated 22 August 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 | 54 |

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:

14 Development on land within the coastal use area

(1)

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

Comment:

The proposed development is not likely to cause an impact on the existing access along the foreshore for members of the public, including persons with a disability and will not cause any overshadowing, wind tunneling or unreasonable impact on the loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands will be preserved. The proposed development will also not have an adverse impact on the cultural and built environment heritage. It is considered that the proposed development has satisfied the requirement to be designed, sited and will be managed to avoid an adverse impact to the above mentioned cultural and environmental aspects. Furthermore, the proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the surrounding coastal and built environment, which consist of low-density residential dwellings.

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:

It is considered that the proposed development is not likely to cause increased risk of coastal hazards on the subject site or other land.

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? | Zone RE1: Yes Zone E4 : Yes |
| After consideration of the merits of the proposal, is the development consistent with: | |
| aims of the LEP? | Yes |
| zone objectives of the LEP? | Zone RE1: Yes Zone E4 : Yes |

Principal Development Standards

| Standard | Requirement | Proposed | % Variation | Complies |
|----------------------|-------------|----------|-------------|----------|
| Height of Buildings: | 8.5m | 9.85m | 1.35m | No |

Compliance Assessment

| Clause | Compliance with Requirements |
|---|------------------------------|
| 1.9A Suspension of covenants, agreements and instruments | Yes |
| 2.7 Demolition requires development consent | Yes |
| 4.3 Height of buildings | No |
| 4.6 Exceptions to development standards | Yes |
| 5.1 Relevant acquisition authority | Yes |
| 5.1A Development on land intended to be acquired for public purpose | Yes |
| 5.10 Heritage conservation | Yes |
| 7.2 Earthworks | Yes |
| 7.3 Flood planning | Yes |
| 7.5 Coastal risk planning | Yes |
| 7.6 Biodiversity protection | Yes |
| 7.7 Geotechnical hazards | Yes |
| 7.8 Limited development on foreshore area | Yes |
| 7.10 Essential services | Yes |

Detailed Assessment

4.3 Height of buildings

Clause 4.3 (2) stipulates that a building on any land is not to exceed the maximum height of building for

land as shown within the Height of Buildings Map. The subject site is located within Area 'I' of the Height of Buildings Map which has a maximum height of 8.5m.

The maximum height of the proposed development has been measured at 9.85m from the ridge of the roof to the existing ground level below.

4.6 Exceptions to development standards

Description of non-compliance:

| | |
|--------------------------------------|---------------------|
| Development standard: | Height of buildings |
| Requirement: | 8.5m |
| Proposed: | 9.85m |
| Percentage variation to requirement: | 15.94% (1.35m) |

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by*

subclause (3), and

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of

native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- Despite a section of the proposed building displaying heights of 8.5m to 9.850m the proposed building height exceedance does not compromise the proposal's ability to be consistent with the desired character of the locality.
- The land is characterised by steeply sloping topography, most notably within the western portion of the site where there are level changes of up to 8.5m over a 16.5m distance displaying gradients up to 55%.
- The proposed building minimises, and provides an appropriate, bulk and scale by stepping responsive to the topography, providing generous boundary setbacks, providing a landscape setting and achieves a landscaping and deep soil outcome that meets and exceeds the planning controls under the and DCP, high quality architecture and materials.
- The proposed building is comparable in its height and massing when compared to the existing height and massing of nearby contemporary development within the hillside and the local context.
- The proposed building incorporates an appropriate range of natural colours and materials, compatible with the location and context and will harmonise with the natural environment.
- The proposed building is sympathetic to the site's landform, landscape and other features of the natural environment given that it provides a landscape setting, provides a significant setback of 23m to 29.4m to the eastern boundary of the site, does not propose any change or development within the rear part of the site that is zoned for future public acquisition.
- The proposal will present as a contemporary single storey dwelling to Whale Beach Road. This presentation is compatible with nearby dwellings to the north, located on the eastern side of Whale Beach Road that generally present to the street as 1 to 2 storey dwellings.
- The proposed building height exceedance will allow for the reasonable sharing of views because it is located at the south eastern, lowest section of the roof (at approximately RL 19.415), whereas the maximum height of the roof is at the western end on the dwelling at RL 23.040 AHD. This is due to the slope of the site and terraced nature of the building design.
- The proposal displays a skillion roof that is angled similar to the gradient of the topography and incorporates floor plates that step responsive to the slope of the land.

It is accepted that despite the variation to the building height development standard, the breach relates to the eastern end of the dwelling, being the lowest section of the skillion roof. Following a view impact assessment being undertaken, it is agreed that the western end of the roof, being 7.2m from existing ground level is the portion of the proposal that is creating the greatest level of impact. Consideration is also given that the proposed development responds to the steep topography of the site, as well as being compatible to the bulk and scale of neighbouring dwellings. It is further accepted that the second floor will not give rise to an unacceptable impact on the amenity of adjoining or adjacent properties in terms of solar access, visual bulk and privacy.

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 clauses 1.3 (c) and (g) of the EPA Act.

As such, 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 can be satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

Clause 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:

The proposed three storey dwelling is technically inconsistent with the desired character for dwelling houses to be a maximum of two storeys in any one place. It should be noted that the proposed dwelling is located on the western portion of the site that is steeply sloping. While the proposal presents as three storeys when viewed from The Strand, a high degree of facade modulation, including setbacks, assist with integrating the dwelling with the sloping topography. Further, the use of materials and finishes including timber batten screens to the ground floor, stone cladding, as well as dark roofing, help to blend the development into the surrounding natural environment. Consideration has been given that the resultant dwelling house will appear as one storey from the Whale Beach Road frontage and generally two storeys from adjoining dwellings. A condition has also been recommended for an amended landscaped plan to comprise of native vegetation including a minimum of 5 locally native canopy trees to be integrated as part of the development. It is therefore considered that the development is consistent with the desired future character of the Palm Beach Locality.

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

development,

Comment:

The proposed development demonstrates compliant above ground side setbacks that provide adequate separation between adjoining dwellings, as well as areas for landscaping. The design also utilises a high degree of modulation on all elevations and utilises natural materials and dark finishes in order to minimise the visual prominence of the development. The proposal being predominately below the height limit will ensure that the development remains compatible with the scale of surrounding and nearby development.

c) to minimise any overshadowing of neighbouring properties,

Comment:

Despite the proposal being technically non-compliant with the building envelope control along the northern elevation, the development does not breach the building envelope along the southern elevation. Through the provision of ample and compliant side setbacks to the dwelling above existing ground level, the proposal adequately minimises overshadowing of neighbouring dwellings. This is demonstrated by the compliance with the numerical controls under the P21 DCP as they relate to solar access.

d) to allow for the reasonable sharing of views,

Comment:

The proposal allows for the reasonable sharing of views by ensuring that the western end of the roof does not exceed the height of building development standard and by utilising a skillion roof form. As discussed with regard to clause C1.3 (View Sharing) of the P21 DCP, while existing views towards Whale Beach from neighbouring properties will be impacted, the proposal has demonstrated that view sharing is achieved.

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

Comment:

The proposed development does require excavation of the steeply sloping hillside for a portion of the ground floor and first floor. While the level of excavation is acknowledged to be significant, the extent of excavation is not considered to be inconsistent with neighbouring development of a similar scale along the eastern side of Whale Beach Road. Further, the application has been submitted with a Geotechnical Report, which has been subsequently reviewed by Council's Development Engineer, who is supportive of the proposal in this regard. The architectural design, incorporating a dark coloured, downward sloping skillion roof is also considered to respond to the natural topography.

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

Comment:

The subject site is within the vicinity of Whale Beach Ocean Reserve which encompasses Norfolk Island Pines that have a local heritage listing. The proposed development is situated outside the heritage buffer area. Further, the utilisation of natural materials, dark finishes and resultant

landscaping comprising of native vegetation ensures that adverse visual impacts arising from the proposal are minimised.

Zone objectives

The underlying objectives of the E4 Environmental Living zone

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

Comment:

The subject site has been identified as being on land mapped as Littoral Rainforest, Scenic Protection - Cat 1 and Area 1 of the Landscaped Area Map. The proposed development has been designed to respond sensitively to the relevant ecological, scientific or aesthetic values as they relate to the land. It is therefore considered that the proposal results in an acceptable low-impact residential development.

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

Comment:

In order to protect and maintain the surrounding natural environment and the above-mentioned values, conditions have been placed to ensure that landscaping includes sufficient canopy trees and native vegetation. Further, where the proposal is identified as being technically non-compliant with control requirements, the assessment has shown that the application has satisfied the relevant outcomes to these controls. The proposal is therefore considered to not adversely effect any relevant ecological, scientific or aesthetic values.

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

Comment:

While it is noted that the proposal requires significant excavation into the western portion of the site, the extent of excavation and overall scale of the development is not inconsistent with other neighbouring developments along Whale Beach Road and throughout the wider locality. Furthermore, the proposed landscape treatment including the planting of canopy trees and native vegetation will assist with integrating the proposed development with the surrounding landforms.

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

Comment:

The proposed development seeks to enhance the eastern portion of the site, inclusive of the foreshore area, through the incorporation of regenerative plantings and by limiting building works within this area. Despite the proposal seeking the removal of trees, conditions have been placed to ensure no net loss of canopy trees within the site. Furthermore, conditions have also been placed to ensure that appropriate erosion and sediment control are installed prior to any works commencing on site.

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:

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

In accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff may assume the concurrence of the Secretary for variations to the height of building development associated with a single dwelling house.

5.1 Relevant acquisition authority

In accordance with Clause 5.1, the consent authority has identified that the relevant authority of the State to acquire land identified as Zone RE1 Public Recreation and marked "Regional open space" on the Land Reservation Acquisition Map as 'The corporation constituted under section 8 of the Act', being the *Land Acquisition (Just Terms Compensation) Act 1991*.

5.1A Development on land intended to be acquired for public purpose

In accordance with Clause 5.1A, the land identified as Zone RE1 Public Recreation and marked "Regional open space" is to be maintained as a recreational area.

As discussed previously within this report, no building works are proposed within the RE1 Public Recreation zone, and as such, the consent authority can be satisfied in this regard.

7.2 Earthworks

To ensure that the earthworks proposed will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, a recommended condition has been placed for a Dilapidation Report, inclusive of a photographic survey, to be undertaken prior to the issue of a Construction Certificate. The placement of this condition is considered an appropriate measure to address any detrimental effects arising from excavation works, on existing adjoining properties. Council's Development Engineer has also reviewed the submitted Geotechnical documentation and the stormwater arrangement, deeming the proposal acceptable subject to compliance with recommended conditions. Further, the submitted Demolition, Waste and Sediment Control Plan demonstrates the appropriate management and protection measures that will be incorporated during construction. As such, the proposal is considered to satisfactorily address the matters identified in this clause.

7.3 Flood planning

In accordance with Clause 7.3 (3), the consent authority is to be satisfied that the development:

- a) *is compatible with the flood hazard of the land, and*

Comment:

The consent authority can be satisfied that, following a review of the submitted Flood Management Report and certified forms prepared in accordance with the P21 DCP and Council's *Flood Risk Management Policy 2017*, the development is compatible with the flood hazard of the land.

b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and

Comment:

The consent authority can be satisfied that, following a review of the submitted Flood Management Report and certified forms prepared in accordance with the P21 DCP and Council's *Flood Risk Management Policy 2017*, the development will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties.

c) incorporates appropriate measures to manage risk to life from flood, and

Comment:

The consent authority can be satisfied that, following a review of the submitted Flood Management Report and certified forms prepared in accordance with the P21 DCP and Council's *Flood Risk Management Policy 2017*, the development incorporates appropriate measures to manage risk to life from flood.

d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and

Comment:

The consent authority can be satisfied that, following a review of the submitted Flood Management Report and certified forms prepared in accordance with the P21 DCP and Council's *Flood Risk Management Policy 2017*, the development will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding,

Comment:

The consent authority can be satisfied that, following a review of the submitted Flood Management Report and certified forms prepared in accordance with the P21 DCP and Council's Flood Risk Management Policy 2017, the development is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

7.5 Coastal risk planning

In accordance with Clause 7.5 (3), the consent authority is to be satisfied that the development:

a) *is not likely to cause detrimental increases in coastal risks to other development or properties,*

Comment:

The consent authority can be satisfied that, following a review of the submitted *Coastal Risk Management Report* and certified forms prepared in accordance with P21 DCP and Council's *Coastline Policy*, the development is not likely to cause detrimental increases in coastal risks to other development or properties.

b) *is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and*

Comment:

The consent authority can be satisfied that, following a review of the submitted *Coastal Risk Management Report* and certified forms prepared in accordance with P21 DCP and Council's *Coastline Policy*, the development is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment.

c) *incorporates appropriate measures to manage risk to life from coastal risks, and*

Comment:

The consent authority can be satisfied that, following a review of the submitted *Coastal Risk Management Report* and certified forms prepared in accordance with P21 DCP and Council's *Coastline Policy*, the development incorporates appropriate measures to manage risk to life from coastal risks.

d) *is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and*

Comment:

The consent authority can be satisfied that, following a review of the submitted *Coastal Risk Management Report* and certified forms prepared in accordance with P21 DCP and Council's *Coastline Policy*, the development is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line.

e) *provides for the relocation, modification or removal of the development to adapt to the impact*

of coastal processes and coastal hazards, and

Comment:

The consent authority can be satisfied that, following a review of the submitted *Coastal Risk Management Report* and certified forms prepared in accordance with P21 DCP and Council's *Coastline Policy*, the development provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards.

f) has regard to the impacts of sea level rise, and

Comment:

The consent authority can be satisfied that, following a review of the submitted *Coastal Risk Management Report* and certified forms prepared in accordance with P21 DCP and Council's *Coastline Policy*, the development has regard to the impacts of sea level rise.

g) will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

Comment:

The consent authority can be satisfied that, following a review of the submitted *Coastal Risk Management Report* and certified forms prepared in accordance with P21 DCP and Council's *Coastline Policy*, the development will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

7.6 Biodiversity protection

In accordance with Clause 7.6 (3), the consent authority has considered the following matters:

a) whether the development is likely to have:

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

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

Comment:

Following a review of the submitted Arboricultural Impact Assessment, dated June 2019 by Urban Forestry Australia Pty Ltd that has been prepared in accordance with relevant legislation and the P21 DCP, the application as it relates to the above matters, has been considered by the consent authority to not be likely to have any adverse impacts as identified in this clause, nor any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land. Consideration has also been given of appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

In accordance with Clause 7.6 (4), the consent authority is to be satisfied that:

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

Comment:

The consent authority can be satisfied that, following a review of the submitted Arboricultural Impact Assessment, dated June 2019 by Urban Forestry Australia Pty Ltd that has been prepared in accordance with relevant legislation and the P21 DCP, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.

7.7 Geotechnical hazards

In accordance with Clause 7.7(3), the consent authority has considered the following matters to decide whether or not the development takes into account all geotechnical risks –

- (a) *site layout, including access,*

Comment:

Following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd that have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the application as it relates to site layout, including access, has been considered by the consent authority.

- (b) *the development's design and construction methods,*

Comment:

Following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd that have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the application as it relates to the development's design and construction methods, has been considered by the consent authority.

(c) the amount of cut and fill that will be required for the development,

Comment:

Following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd that have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the application as it relates to the amount of cut and fill that will be required for the development, has been considered by the consent authority.

(d) waste water management, stormwater and drainage across the land,

Comment:

Following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd that have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the application as it relates to waste water management, stormwater and drainage across the land, has been considered by the consent authority.

(e) the geotechnical constraints of the site,

Comment:

Following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd that have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the application as it relates to the geotechnical constraints of the site, has been considered by the consent authority.

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

Comment:

Following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd that have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the application as it relates to any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development, has been considered by the consent authority.

In accordance with Clause 7.7(4), the consent authority is required to be satisfied that the following matters have been addressed:

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

Comment:

The consent authority is satisfied that, following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd which have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land.

(b) the consent authority is satisfied that—

(i) the development is designed, sited and will be managed to avoid any geotechnical risk or significant adverse impact on the development and the land surrounding the development, or

Comment:

The consent authority is satisfied that, following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd which have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the development is designed, sited and will be managed to avoid any geotechnical risk or significant adverse impact on the development and the land surrounding the development.

(ii) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or

Comment:

The consent authority is satisfied that, following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd which have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the development is designed, sited and will be managed to minimise that risk or impact.

(iii) if that risk or impact cannot be minimised—the development will be managed to

Comment:

The consent authority is satisfied that, following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd which have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the development will be managed to mitigate that risk or impact.

7.8 Limited development on foreshore area

In accordance with Clause 7.8 (3), the consent authority is to be satisfied that:

a) the development will contribute to achieving the objectives for the zone in which the land is located, and

Comment:

The consent authority can be satisfied, following a review of the submitted plans, supporting

documentation, relevant legislation and P21 DCP, that, the development will contribute to achieving the objectives for the zone in which the land is located.

b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and

Comment:

The consent authority can be satisfied, following a review of the submitted plans, supporting documentation, relevant legislation and P21 DCP, that the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area

c) the development will not cause environmental harm such as:

- 1. pollution or siltation of the waterway, or*
- 2. an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
- 3. an adverse effect on drainage patterns, or*
- 4. the removal or disturbance of remnant riparian vegetation, and*

Comment:

The consent authority can be satisfied, following a review of the submitted plans, supporting documentation, relevant legislation and P21 DCP, that the development will not cause environmental harm.

d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and

Comment:

The consent authority can be satisfied, following a review of the submitted plans, supporting documentation, relevant legislation and P21 DCP, that the development will not cause congestion or generate conflict between people using open space areas or the waterway.

e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and

Comment:

The consent authority can be satisfied, following a review of the submitted plans, supporting

documentation, relevant legislation and P21 DCP, that opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised.

f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and

Comment:

The consent authority can be satisfied, following a review of the submitted plans, supporting documentation, relevant legislation and P21 DCP, that any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained.

g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and

Comment:

The application is not for the alteration or rebuilding of an existing building wholly or partly in the foreshore area.

h) sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.

Comment:

The consent authority is satisfied, following a review of the submitted plans, supporting documentation, relevant legislation and the P21 DCP, that, sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.

In accordance with Clause 7.8 (4), the consent authority must consider whether and to what extent the development would encourage the following:

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

Comment:

The proposal reasonably encourages the above matters through siting the development of the land to the western portion of the site.

7.10 Essential services

In accordance with Clause 7.10(1), the consent authority is to be satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

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

Comment:

The consent authority can be satisfied that the above services that are essential for the development are available or that adequate arrangements have been made to make them available when required.

Pittwater 21 Development Control Plan

Built Form Controls

| Built Form Control | Requirement | Proposed | % Variation* | Complies |
|---------------------|---|--|----------------------|----------------|
| Front building line | 6.5m | 0m (gate house) 1.5m (outdoor courtyard - excavated) 5.1m (garage) | 100% 77% 21.5% | No No No |
| Rear building line | N/A - FBL applies | Works outside FBL | - | Yes |
| Side building line | 2.5m (south) | 0m-6m | 100% | No |
| | 1m (north) | 0m-2.7m | 100% | No |
| Building envelope | 3.5m @ 45 degrees (south) | Within envelope | N/A | Yes |
| | 3.5m @ 45 degrees (north) | Outside envelope | 1.1m | No |
| Landscaped area | Based on 60% of 881.6m ² (528.96m ²) | 51.2% (451.8m ²) | 14.7% | No |

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

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| A1.7 Considerations before consent is granted | Yes | Yes |
| A4.12 Palm Beach Locality | No | Yes |
| | | |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---|-------------------------------------|------------------------------------|
| A5.1 Exhibition, Advertisement and Notification of Applications | Yes | Yes |
| B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites | Yes | Yes |
| B1.4 Aboriginal Heritage Significance | Yes | Yes |
| B3.1 Landslip Hazard | Yes | Yes |
| B3.3 Coastline (Beach) Hazard | Yes | Yes |
| B3.6 Contaminated Land and Potentially Contaminated Land | Yes | Yes |
| B3.11 Flood Prone Land | Yes | Yes |
| B4.17 Littoral Rainforest - Endangered Ecological Community | Yes | Yes |
| B4.22 Preservation of Trees and Bushland Vegetation | Yes | Yes |
| B5.4 Stormwater Harvesting | Yes | Yes |
| B5.8 Stormwater Management - Water Quality - Low Density Residential | Yes | Yes |
| B5.10 Stormwater Discharge into Public Drainage System | Yes | Yes |
| B5.13 Development on Waterfront Land | Yes | Yes |
| B6.2 Internal Driveways | Yes | Yes |
| B6.3 Off-Street Vehicle Parking Requirements | Yes | Yes |
| B8.1 Construction and Demolition - Excavation and Landfill | Yes | Yes |
| B8.2 Construction and Demolition - Erosion and Sediment Management | Yes | Yes |
| B8.3 Construction and Demolition - Waste Minimisation | Yes | Yes |
| B8.4 Construction and Demolition - Site Fencing and Security | Yes | Yes |
| B8.6 Construction and Demolition - Traffic Management Plan | Yes | Yes |
| C1.1 Landscaping | No | Yes |
| C1.2 Safety and Security | Yes | Yes |
| C1.3 View Sharing | Yes | Yes |
| C1.4 Solar Access | Yes | Yes |
| C1.5 Visual Privacy | No | Yes |
| C1.6 Acoustic Privacy | Yes | Yes |
| C1.7 Private Open Space | Yes | Yes |
| C1.12 Waste and Recycling Facilities | Yes | Yes |
| C1.13 Pollution Control | Yes | Yes |
| C1.17 Swimming Pool Safety | Yes | Yes |
| C1.23 Eaves | No | Yes |
| C1.25 Plant, Equipment Boxes and Lift Over-Run | Yes | Yes |
| D12.1 Character as viewed from a public place | No | Yes |
| D12.3 Building colours and materials | No | Yes |
| D12.5 Front building line | No | Yes |
| D12.6 Side and rear building line | No | Yes |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| D12.8 Building envelope | No | Yes |
| D12.10 Landscaped Area - Environmentally Sensitive Land | No | Yes |
| D12.11 Fences - General | No | Yes |
| D12.13 Construction, Retaining walls, terracing and undercroft areas | Yes | Yes |
| D12.14 Scenic Protection Category One Areas | No | Yes |

Detailed Assessment

A4.12 Palm Beach Locality

The proposed three storey development is inconsistent with the desire for dwelling houses to be a maximum of two storeys in any one place. Consideration has been given that there are number of neighbouring dwellings including No(s). 213, 223, 237 and 237A that are located along the eastern side of Whale Beach Road are greater than two storeys. It should be noted that the proposed dwelling is generally constrained to the portion of the site that is steeply sloping. While the proposal presents as three storeys when viewed from The Strand, a high degree of facade modulation, including setbacks, assist with integrating the dwelling with the sloping topography. Further, the use of materials and finishes including timber batten screens to the ground floor, stone cladding and black roofing help to blend the development into the surrounding natural environment. Consideration has been given that dwelling house will appear as one storey from the Whale Beach Road frontage and generally two storeys from adjoining dwellings. A condition has also been recommended for an amended landscaped plan to comprise additional native vegetation, including a minimum of 5 locally native canopy tree plantings across the site. Based on the above, it is considered that proposal is acceptable within the Palm Beach* Locality.

***Note:** Whale Beach forms part of the Palm Beach Locality Map.

A5.1 Exhibition, Advertisement and Notification of Applications

In accordance with this control, Council exercised its discretion to notify properties beyond those that are directly adjoining or adjacent. On the 5 November 2019, notification letters were sent to three (3) additional properties along Morella Road.

B8.6 Construction and Demolition - Traffic Management Plan

A condition requiring a Traffic Management Plan is applied due to site parking, location and access route issues. Furthermore, it is anticipated that the excavated material from the site will be greater than 100m³.

Subject to compliance with this condition, the proposed development is considered to satisfy the outcomes of this control.

C1.1 Landscaping

Under the provisions of this development control, at least 2 canopy trees in the front yard and 1 canopy tree in the rear yard are to be provided on site.

The submitted landscape plan indicates one (1) native canopy tree within the front yard and zero (0) native canopy trees within the rear yard. The proposal is therefore technically non-compliant with the control. Despite the proposal only proposing the planting of one (1) Coastal Banksia (*Banksia integrifolia*) within the front yard, the proposal is considered acceptable, noting the scale of the proposal presenting to Whale Beach Road. Further, the rear yard and associated foreshore area provides greater opportunities to soften the built form as viewed from The Strand, with sufficient deep soil areas for the planting of canopy trees.

Subject to compliance with relevant conditions for replacement tree plantings and for the landscape plan to be amended to comprise of a minimum of 80% locally native vegetation species, it is considered that the resultant development will comply with outcomes of this control.

C1.3 View Sharing

Despite no submissions being received raising concern with regard to views being impacted by the proposed development, Council requested height poles to be erected in order to assess whether view sharing would be achieved in accordance with the requirements of this clause. Following height pole certification being provided to Council, a reverse view loss assessment was carried out by the assessing officer on the 22 November 2019. The profiles plan (Figure 1- below) assist to diagrammatically demonstrate the location of the erected height poles.

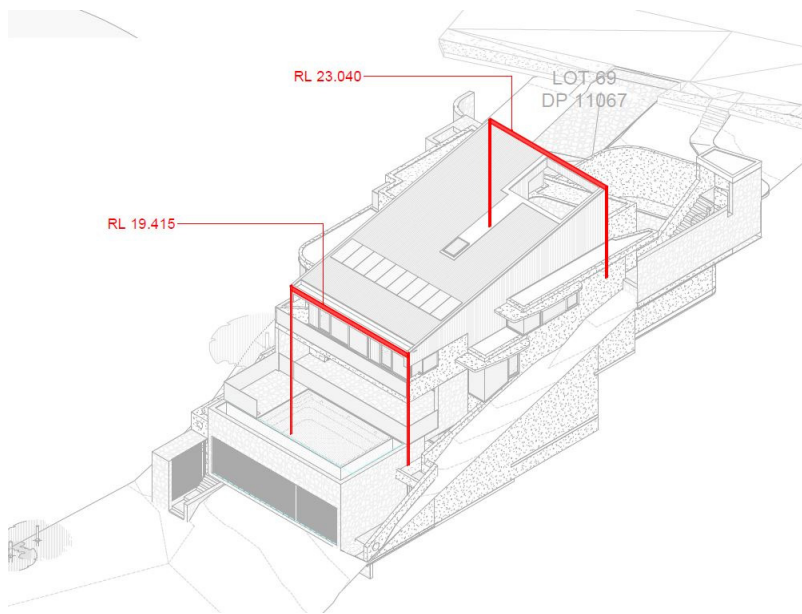


Figure 1. Profiles Plan (3D view of profiles from The Strand). Source: Shaun Locker Architects Pty Ltd.

The following view loss assessment was undertaken to assess the impact of the proposal by utilising the four step planning principal established in *Tenacity Consulting v Warringah Council [2004] NSW LEC 140*.

Step 1 - Assessment of view to be affected

The inspection revealed that the following properties were likely to have affected views of Whale Beach resulting from the proposal:

- 21 Morella Road, Whale Beach
- 23 Morella Road, Whale Beach
- 208 Whale Beach Road, Whale Beach
- 210 Whale Beach Road, Whale Beach

- 212 Whale Beach Road, Whale Beach



Figure 2. Height profiles as viewed from the road reserve in front of No. 208 Whale Beach Road (standing position)



Figure 3. Height profiles as viewed towards the south at Whale Beach (standing position at shoreline - low tide)



Figure 4. Height profiles as viewed towards the east at Whale Beach (standing position at shoreline - low tide)



Figure 5. Height profiles as viewed towards the north at Whale Beach (standing position at shoreline - low tide)



Figure 6. Height profiles as viewed directly east from The Strand (standing position at carpark)

Step 2 - Consideration from what part of the property the views are obtained.

- 21 Morella Road, Whale Beach

Views towards Whale Beach appear to be obtained from the upper floor living areas and balcony areas facing east.

- 23 Morella Road, Whale Beach

Views towards Whale Beach appear to be obtained from the upper floor living areas and balcony areas facing east.

- 208 Whale Beach Road, Whale Beach

Views towards Whale Beach appear to be obtained from the first floor living areas and balcony areas facing east.

- 210 Whale Beach Road, Whale Beach

Views towards Whale Beach appear to be obtained from the ground floor windows as well as the first floor living areas and balcony areas facing east.

- 212 Whale Beach Road, Whale Beach

Views towards Whale Beach appear to be obtained from the first floor living areas and balcony areas facing east.

Step 3 - Assess the extent of the impact for the entire property.

- 21 Morella Road, Whale Beach

While it is anticipated that partial views of the sand at Whale Beach will be affected from the upper floor living areas and balcony areas facing east, it is expected that the property would have panoramic and extensive water views. As these remaining water views would be retained, the overall potential view impact arising from the proposed development at 32 The Strand is considered to be minor.

- 23 Morella Road, Whale Beach

While it is anticipated that partial views of the sand at Whale Beach will be affected from the upper floor living areas and balcony areas facing east, it is expected that the property would have panoramic and extensive water views. As these remaining water views would be retained, the overall potential view impact arising from the proposed development at 32 The Strand is considered to be minor.

- 208 Whale Beach Road, Whale Beach

It is anticipated that north-eastern beach views (land/water interface) that are currently filtered through existing trees will be partially affected from the first floor living and balcony areas. However, it is expected that existing views towards the east and south of Whale Beach will be retained. As such, the overall potential view impact arising from the proposed development at 32 The Strand is considered to be minor.

- 210 Whale Beach Road, Whale Beach

It is anticipated that eastern beach views (land/water interface) obtained from the ground floor windows will be affected. Furthermore, it is anticipated that beach views towards the south-east from the first floor living and balcony areas will also be partially affected. However, it is expected that existing views from the first floor facing east and toward the north of Whale Beach will be retained. As such, the overall potential view impact arising from the proposed development at 32 The Strand is considered to be minor.

- 212 Whale Beach Road, Whale Beach

It is anticipated that south-east beach views (land/water interface) obtained from the first floor living areas and balcony areas will be affected. It should be noted that these views towards the south-east are filtered through vegetation and established Norfolk Island Pines along The Strand. It is expected that existing views towards the east and north of Whale Beach will be retained. As such, the overall potential view impact arising from the proposed development at 32 The Strand is considered to be minor.

Step 4 - Assess the reasonableness of the proposal causing the impact.

A proposal that complies with all controls is considered more reasonable than one that breaches them. Whilst the proposal breaches the 8.5m height limit at the eastern end of the dwelling, being the lowest section of the sloping skillion roof, it is accepted that the western end of the roof, being 7.2m from existing ground level is the portion of the proposal that is creating the impact to views. Reducing this

portion of the roof, which currently falls below the height limit, would not lead to a significant improvement on views for surrounding properties. It should also be noted that the proposed dwelling presents as one storey to the Whale Beach Road street frontage, and is of a scale that is consistent with neighbouring dwellings along the eastern side Whale Beach Road. Furthermore, as all proposed built form non-compliances have been considered and supported on merit, the proposal is not considered to be unreasonable in the circumstances of the site.

Overall, the development is considered acceptable and with view sharing achieved between properties.

C1.5 Visual Privacy

The application proposes balconies at the first floor/swimming pool terrace level and the second floor. The elevated balconies are located on the eastern side of the building and have the potential to result in overlooking toward the north facing windows of No. 30 The Strand and the private open space area of No. 237 Whale Beach Road. While the elevated swimming pool terrace is located within 9m to No. 30 The Strand, consideration has been given that proposed landscaping (as amended) within the southern side setback will help mitigate overlooking. Further, the occupants of No. 30 The Strand are protected from proposed first floor outdoor dining area, with a full height solid wall along the southern extent of this primary entertainment area. Likewise, the proposed windows along the southern elevation are not considered to result in direct overlooking for the occupants of the southern adjoining property, as the dwelling and private open space of No. 30 The Strand are primarily located towards the eastern portion of the site.

With regard to preventing overlooking of private open space areas and windows of No. 237 Whale Beach Road, consideration has been given that the proposed windows along the northern elevation have been appropriately off-set and are predominately to provide light to stairwells. Furthermore, the second floor balcony area of No. 237 Whale Beach Road is higher than that proposed on the subject site. Landscaping along the northern side setback area also ensures 50% of the rear yard will retain appropriate levels of privacy.

It should also be noted, that in this particular area, there is a level of overlooking that exists across properties in order to obtain views towards Whale Beach.

Based on the above, the proposed development is not considered to result in unreasonable impacts upon the privacy of the adjoining properties, and therefore the application is supported on merit.

C1.23 Eaves

No eaves are included along the northern, southern or the western elevations to the dwelling. The proposed development is of a contemporary character that is consistent with other developments in the locality. The submitted BASIX information also indicates that the appropriate level of solar access and shading would be achieved.

Based on the above, the proposed development is considered to satisfy the outcomes of the control and the non-compliance is supported on merit.

D12.1 Character as viewed from a public place

When viewed from The Strand, the eastern elevation of the proposed ground floor (with pool above) presents as a wall that is greater than 8m in length without articulation. Consideration has been given that a range of natural finishes including timber and stone cladding have been incorporated to help blend the development into the surrounding natural environment. Furthermore, the spatial separation,

as well as the landscaping proposed between the proposed dwelling and The Strand, help to screen the visual impact of the built form and give the appearance of the building being secondary to native vegetation.

Based on the above, the proposed development is considered to satisfy the outcomes of the control and the non-compliance is supported on merit.

D12.3 Building colours and materials

The proposed development incorporates the use of natural materials and dark finishes in order to minimise the visual prominence of the development. However, a significant portion of the external walls along the northern, western and southern elevations are to be finished in a white render, which is inconsistent with the requirement for external surfaces to be finished in dark and earth tones. In order to ensure the development blends into the surrounding natural environment, a condition is recommended for the render finish to be a tone equivalent to or darker than Colorbond 'Windspray'.

Subject to compliance with this condition, the submitted schedule of finishes is considered to be consistent with the outcomes of this control and supported on merit.

D12.5 Front building line

The application proposes a 0m setback to the gate house/entry, a 1.5m setback to the outdoor courtyard (which is excavated and hidden from view), and a 5.1m setback to the garage, inconsistent with the 6.5m minimum front building setback prescribed in relation to Whale Beach Road. The variation to the control for the purposes of facilitating carparking within the front setback is considered to be applicable due to the steeply sloping topography of the site, and Council's Development Engineer is supportive of the proposal, despite the inability to enter and exit in a forward direction.

It should be noted that with the exception of the garage, the second floor, being the only level of the dwelling visible from Whale Beach Road, is fully compliant with the front setback requirement. The development being predominantly below the road level reduces the overall dominance, built form and visual streetscape impacts. The submitted landscape plan has further demonstrated a reasonable amount of vegetation, including the planting of a Coastal Banksia tree within the front setback area. As previously discussed in order to preserve the bushland character and surrounding natural environment, relevant conditions for replacement tree plantings have been recommended as well as for the landscape plan to be amended and comprise of a minimum of 80% locally native vegetation species.

Based on the above, the proposal in this particular instance, is considered to satisfy the outcomes of this clause and is supported on its merits.

D12.6 Side and rear building line

Minimum side setback prescribed: 2.5m to at least one side; 1.0m for other side

Minimum side setback proposed: 0m-6m (South); 0m-2.7m (North)

The proposed gate house is technically non-compliant with the northern side setback, being 0m (nil) to the nearest point to the boundary. The dry cavity walls for the ground floor and first floor are also non-compliant, being 0.5m from the northern boundary. While internal stairs and some service areas are also within this setback area, consideration has been given that habitable rooms including living rooms and bedrooms have been located at least 2.5m from the northern boundary. The proposal is also technically non-compliant with the southern side setback, being 0m (nil) from the southern side boundary. The variations within this setback is sought for the dry court area that includes air-

conditioning units. It should be noted this area is measured at 1.7m in width and located a reasonable distance away from the dwelling at No. 30 The Strand. The remaining works along the southern elevation are located a minimum of 1m from this side boundary.

Despite the non-compliant side setbacks, the proposal is considered to maintain sufficient privacy and amenity between the occupants of the subject site and those of adjoining properties. Furthermore, the proposal has adequately demonstrated that an acceptable level of solar access will continue to be provided. The proposal has also been considered acceptable in achieving reasonable view sharing and providing a landscaping arrangement that is suitable for the subject site. The resultant tree plantings and external colours and finishes to dwelling will further assist to visually reduce the bulk and scale of the proposal.

Based on the above, the proposed development is considered to satisfy the outcomes of the control and the non-compliance is supported on merit.

D12.8 Building envelope

The proposed development is not within the prescribed building envelope and is therefore technically non-compliant with the control. At its maximum extent, the proposed development will breach the building envelope by 1.1m (19.8%) at the northern elevation for the second floor. While the breach is applicable for the majority of the northern elevation, the extent is significantly reduced to the front portion of the dwelling facing Whale Beach Road. Consideration should be given that the external walls connects directly to the contemporary skillion roof form, rather than connecting to eaves which are typically permitted to extend outside the building envelope. The variation sought for the proposed development does not result in an unreasonable impact to neighbouring properties with regard to views, privacy and solar access. Furthermore, the proposal is consistent with the desired future character of the locality, and the visual impacts on the streetscape, through limiting the built form of the proposed development and incorporating vegetation within setback areas.

Based on the above, the variations to the control are supported on merit in this instance, as the proposed development is considered to satisfy the outcomes of the this clause.

D12.10 Landscaped Area - Environmentally Sensitive Land

Landscaped Area requirement: 60% of the site area

Landscaped Area proposed: 51.2% (451.8m²)

Landscaped Area including variations: 54.2% (477.6m²)

As the site is subject to a split zoning, the part of the lot zoned RE1 Public Recreation has not been included within the calculation for total landscaped area. The area of the lot zoned E4 Environmental Living has been measured at 881.6m². Therefore, 60% of the land zoned E4 Environmental Living is 528.96m².

The proposed development is technically non-compliant with the control that requires 60% of the site to be landscaped. The proposal seeks to vary this control, reducing the overall total landscaped area to 51.2% (451.8m²). The variations of this clause allow for a revised landscaped area calculation to include impervious areas less than 1m in width and up to 6% of the total site area if used for outdoor recreational purposes. On this basis, the revised landscaped area is measured at 54.2% (477.6m²). The bushland character of the area will be preserved and enhanced through the planting of at least (5) locally native canopy trees or appropriate native vegetation on site as recommended by Council's Natural Environment - Biodiversity section. The planting of native canopy trees conserves the biodiversity of the area while also visually reducing the built form of the development. The proposal is also considered acceptable with regard to stormwater run-off and the infiltration of water with Council's

Development Engineer raising no objection to the application subject to conditions. While technically not included within the total landscaped area calculation, it should be acknowledged that the remaining site area measured at 223.4m² zoned RE1 Public Recreation consists entirely of landscaping. The proposed green roofs have also been excluded from the calculation, however the benefits towards reducing stormwater run-off, as well as softening the proposed built form are noted. Furthermore, the proposal will not result in an unreasonable impact on the amenity and solar access provided to neighbouring properties.

Based on the consideration above, the proposed development is consistent with the outcomes of the clause and is supported on merit.

D12.11 Fences - General

The proposed fencing arrangement within the Whale Beach Road front setback is technically non-compliant with the control to not exceed a maximum height of 1 metre above existing ground level. The variation is sought for the gate house that is measured at a height 2.5m, as well as the rendered front boundary wall that varies in height between 1.1m-1.8m. Consideration is given that due to the sloping topography of the site, these structures are predominately below the road level of Whale Beach Road, and therefore will not obscure views of the street for motorists and pedestrians. The front boundary wall also acts as landscape planter to facilitate vegetation that is expected to compliment the visual character as viewed from Whale Beach Road. The Coastal Banksia canopy tree is also proposed to be planted forward of the bin area and southern boundary wall to screen and soften the built form.

As discussed previously within the report, a condition has been recommended for the render finish to be of a mod grey tone or darker in order to minimise the stark contrast between the white rendered boundary wall and the surrounding natural environment. Furthermore, no original stones fences or posts are being removed and no fencing is proposed along the rear boundary. Screen plantings have also been indicated within the side setback areas to delineate the boundaries.

Based on the above, the variations to the control are supported on merit in this instance, as the proposed development is considered to satisfy the outcomes of the clause.

D12.14 Scenic Protection Category One Areas

The proposed development is technically non-complaint with the control that requires screen plantings and native canopy trees between dwellings and the boundary facing the waterfront. As discussed previously in this report, the amended landscaped plan must demonstrate that at least 80% of plantings are native species as well as accommodating for a minimum of 5 locally native canopy tree to be planted. Given the generous setback between the proposed dwelling and rear boundary, it is considered that there is opportunities for these plantings to sufficiently enhance the natural environment and be a predominant feature when viewed from Whale Beach. The proposed development incorporates the use of natural materials and dark finishes, particularly when viewed from Whale Beach. However, as discussed previously within this report, a condition has been recommended for the white rendered areas of the building to be a tone equivalent to or darker than Colorbond 'Windspray' in order to minimise the visual prominence of the development.

Based on the above, the non-compliance is supported on merit and, subject to compliance with recommended conditions, considered to satisfy the outcomes of the control in this particular instance.

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.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$25,641 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,564,125.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

Council is satisfied that:

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

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

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

Accordingly Council as the consent authority grant Development Consent to DA2019/0913 for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 70 DP 11067, 32 The Strand, WHALE 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 |
| 100.01, Rev C (Site & Locality Plans) | 26.06.19 | Shaun Lockyer Architects Pty Ltd |
| 200.01, Rev B (Second Floor Plan) | 18.04.19 | Shaun Lockyer Architects Pty Ltd |
| 200.02, Rev B (First Floor Plan) | 18.04.19 | Shaun Lockyer Architects Pty Ltd |
| 200.03, Rev B (Ground Floor Plan) | 18.04.19 | Shaun Lockyer Architects Pty Ltd |
| 210.01, Rev C (Roof Plan) | 26.06.19 | Shaun Lockyer Architects Pty Ltd |
| 300.01, Rev D (North & East Elevation) | 04.09.19 | Shaun Lockyer Architects Pty Ltd |
| 300.02, Rev D (South & West Elevation) | 04.09.19 | Shaun Lockyer Architects Pty Ltd |
| 400.01, Rev C (Sections - Sheet 1) | 04.09.19 | Shaun Lockyer Architects Pty Ltd |
| 400.02, Rev C (Sections - Sheet 2) | 04.09.19 | Shaun Lockyer Architects Pty Ltd |
| 400.03, Rev C (Sections - Sheet 3) | 04.09.19 | Shaun Lockyer Architects Pty Ltd |
| 400.04, Rev C (Sections - Sheet 4) | 04.09.19 | Shaun Lockyer Architects Pty Ltd |
| 100.10, Rev A (Landscape Plan) | 26.06.19 | Shaun Lockyer Architects Pty Ltd |
| | | |

| | | |
|---|----------|----------------------------------|
| 020.03, Rev A (Material Palette - Exterior) | 18.04.19 | Shaun Lockyer Architects Pty Ltd |
|---|----------|----------------------------------|

| Engineering Plans | | |
|--|--------------|--------------------|
| Drawing No. | Dated | Prepared By |
| DR-000, Rev 1 (Legend) | 05.07.19 | Stellen Consulting |
| DR-001, Rev 1 (Pipe Layout - Second Floor) | 05.07.19 | Stellen Consulting |
| DR-002, Rev 1 (Pipe Layout - First Floor) | 05.07.19 | Stellen Consulting |
| DR-003, Rev 1 (Pipe Layout - Ground Floor) | 05.07.19 | Stellen Consulting |
| DR-110, Rev 1 (Details) | 05.07.19 | Stellen Consulting |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|---|--------------|-------------------------------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| Arboricultural Impact Assessment Report | June 2019 | Urban Forestry Australia Pty Ltd |
| Geotechnical Report, Ref. J2226 | 17.06.19 | White Geotechnical Group Pty Ltd |
| Flood Management Report | 9.08.19 | Horton Coastal Engineering Pty Ltd |
| Coastline Risk Management Report | 9.08.19 | Horton Coastal Engineering Pty Ltd |
| BASIX Certificate, Ref. 1020266S | 22.08.19 | Building Sustainability Assessments |
| ABSA Assessor Certificate, Ref. 0004145322 | 22.08.19 | Building Sustainability Assessments |

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 |
| Demolition, Waste and Sediment Control Plan | 15.05.19 | No Author |

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

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

2. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) 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.
- (j) 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.

(k) 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 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$25,641.25 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$2,564,125.46.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

5. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security 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, 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.

6. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of \$10,000 as security against any damage to Council's stormwater drainage infrastructure adjoining the site as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure.

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

7. **Stormwater Disposal**

The applicant is to submit stormwater plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to a suitably designed absorption system generally in accordance with the design by Stellen Consulting Engineers, drawing number DR-000, 001, 002, 003 and 110 Issue 1 dated 05/07/2019.

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 17 June 2019 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

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

10. **Structures Located Adjacent to Council Pipeline or Easement**

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Pittwater 21 DCP 2014 Clause B5.12. A statement of compliance is to be prepared by a suitably qualified Structural Engineer and submitted to Council for approval. The approval from Council is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure.

11. **Structural Adequacy and Excavation Work**

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

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

12. Vehicle Crossings Application

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

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

Reason: To facilitate suitable vehicular access to private property.

13. Pre-Construction Stormwater Assets Dilapidation Report

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at:

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.pdf>

The pre-construction / demolition dilapidation report must be submitted to Council for approval and the approval issued to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure.

14. Water Quality Management

The applicant must install a filtration device that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

15. Amendment of Landscape Plans

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

- i) Deletion of exotic and environmental weed species.
- ii) Replacement with a planting schedule comprising a minimum of 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Gardening Booklet available on Council's website. The

planting schedule is to specify details including stratum, species/common names, quantities, pot sizes and staking details.

iii) Provision of a minimum of 5 canopy tree replacement plantings. Species are to have a minimum mature height of 6m and be consistent with Council's Native Gardening Guide.

iv) Provision of locally native shrub species within the setback to southern boundary for the extent of swimming pool (between the pool terrace and southern side boundary), consisting of screen plantings that attain a minimum mature height of 3m and planted at a minimum 200mm pot size, and planted no more than 1 metre apart.

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

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls.

16. **Compliance with Coastal Risk Management Report**

The development is to comply with all recommendations of the approved Coastal Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd, dated 9 August 2019, and these recommendations are to be incorporated into construction plans and maintained over the life of the development.

Reason: To ensure coastal risk is addressed appropriately

17. **Low Level Coastal Inundation Risk Design**

All development must be designed and constructed to achieve a low risk of damage and instability due to coastal inundation, wave impact and foreshore erosion hazards.

Reason: To ensure coastal risk is addressed appropriately

18. **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.

19. **Sydney Water "Tap In"**

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

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

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

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

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

20. **Dilapidation Report**

A dilapidation report including a photographic survey of the following adjoining properties must be provided to Principal Certifying Authority prior to any demolition or works commencing on the site or the issue of a Construction Certificate (whichever comes first). The dilapidation report must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

| Property Area | Structures / |
|-----------------------------------|---------------------|
| 30 The Strand, Whale Beach | Whole Building |
| 237 Whale Beach Road, Whale Beach | Whole Building |

If excavation works are proposed the dilapidation report must report on the visible and structural

The dilapidation report is to be prepared by a practising Structural Engineer. All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on the consent. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written correspondence from the owners of the affected properties or other evidence must be obtained and submitted to the Principal Certifying Authority in such circumstances that demonstrates such documentation has been received. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

Reason: To maintain proper records in relation to the proposed development.

21. **Boundary Survey**

A boundary survey, prepared by a Registered Surveyor, shall be provided as evidence that all buildings/works are within the appropriate property boundaries of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the boundaries as shown on the survey.

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

Reason: To ensure all approved works are constructed within the subject site.

22. **External Finishes**

The external finishes of the development are to be consistent with the materials nominated on the approved elevations referenced in this consent, with the exception of the proposed use of

'rnd01' tyrolean splatter render finish on the external walls, which is to be replaced with a finish/tone equivalent to or darker than Colorbond 'Windspray'.

In order to minimise solar reflections to neighbouring properties and Whale Beach, any roof with a metallic steel finish is not permitted.

Details demonstrating compliance are to be submitted to the certifying authority prior to the issue of the construction certificate.

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

23. Tree protection

(a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 30mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 30mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

24. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

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

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

25. Compliance with Arborist's Recommendations – Pre-construction

All pre-construction tree protection measures specified in Section 5 of the submitted Arboricultural Impact Assessment report (Urban Forestry Australia, June 2019) and these conditions of consent are to be implemented at the appropriate stage of development.

Compliance with pre-construction measures is to be certified in writing by the project arborist and provided to the Principal Certifying Authority prior to issue of the Construction Certificate.

Reason: To confirm compliance with tree protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

26. Removing, Handling and Disposing of Asbestos

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

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

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

27. Demolition Works - Asbestos

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

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

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

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

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

28. Traffic Control During Road Works

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

Reason: Public Safety.

29. **Protection of Adjoining Property - Excavation**

Where excavations extend below the level of the base of the footings of a building or Council asset on the lot or an adjoining allotment of land, the person causing the excavation must preserve and protect the building and asset from damage and, if necessary, underpin and support the adjoining building or asset in an approved manner.

Reason: To ensure protection of private and Council's Infrastructure.

30. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/5 EL and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

31. **Protection of rock and sites of significance**

a) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

32. **Compliance with Arborist's Recommendations – During Construction**

All tree protection measures to be implemented during construction, as specified in Section 5 of the submitted Arboricultural Impact Assessment report (Urban Forestry Australia, June 2019) and these conditions of consent are to be implemented at the appropriate stage of development. Compliance with these measures is to be certified in writing by the project arborist, including photographic evidence, and submitted to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To confirm compliance with tree protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

33. **Survey Certificate**

A Survey Certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls, columns and/or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

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

34. **Stormwater Disposal**

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

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

35. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Pittwater 21 DCP 2014 Clause B5.12.

A statement of compliance is to be prepared by a suitably qualified Structural Engineer and submitted to Council and Council's acceptance of the certification is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's Infrastructure

36. **Post-Construction Dilapidation Survey**

A post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's

Guidelines are available at:

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/generalinformation/engineer>

The post-construction dilapidation report must be submitted to Council for review and Council's acceptance of the report issued to the Principal Certifying Authority prior to the issue of the Occupation Certificate. Any damage to Council's stormwater asset is to be rectified in accordance with Council's technical specifications prior to the release of the security bond.

Reason: To ensure security against possible damage to Council.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

38. **Certification of Landscape Plan**

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

conditions of consent. The new landscaping is to be certified by a qualified landscape architect as being complete and in accordance with approved Landscape Plans and these conditions of consent prior to issue of the Occupation Certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls.

39. **Works as Executed Drawings - Stormwater Treatment Measures**

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

40. **Replacement of Canopy Trees**

At least 5 locally native canopy trees are to be planted on site to replace prescribed trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with Council's Native Gardening Guide. Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree. Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate landscaping in accordance with relevant Natural Environment LEP/DCP controls

41. **Post Construction Coastal certificate**

Prior to the issue of the Occupation Certificate, a Post Construction Coastal Certificate shall be submitted to the Principal Certifying Authority (Form No. 3 of the Coastline Risk Management Policy for Development in Pittwater - Appendix 6 of P21 DCP) that has been prepared and signed by a specialist coastal engineer who is a registered professional engineer with chartered professional status (CP Eng) and coastal engineering as a core competency and who has an appropriate level of professional indemnity insurance.

Reason: To ensure the development has been constructed to the engineers requirements

42. **House / Building Number**

House/building number is to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

43. **Dilapidation Report - 2**

A second Dilapidation Report including photos of any damage evident at the time of inspection must be submitted after the completion of works. A copy of this Dilapidation Report must be given to the property owners referred to in this Development Consent. The report must:

- Compare the post construction report with the pre-construction report required by these conditions,
- Clearly identify any recent damage and whether or not it is likely to be associated with the development works including suggested remediation methods.

A copy must be lodged with Council and the Principal Certifying Authority prior to the issue of an Occupation Certificate. Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

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

44. **Control of Weeds**

Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). All environmental weeds are to be removed and controlled. Refer to Council website (<https://www.northernbeaches.nsw.gov.au/environment/weeds>).

Reason: Weed management.

45. **Replacement of Canopy Trees**

Tree replacement plantings required under this consent are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: To replace locally native trees in accordance with relevant Natural Environment LEP/DCP controls.

46. **Maintenance of Stormwater Treatment Measures**

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

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

Reason: Protection of the receiving environment..

47. **No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

48. **Dead or Injured Wildlife**

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

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

49. **Domestic Animals Exclusion**

For the life of the development, cats are to be kept in a cat run and/or inside the dwelling such that they are prevented from entering wildlife habitat areas at all times. Dogs are to be kept in an enclosed area such that they cannot enter areas of bushland, unrestrained, on surrounding properties.

Reason: Wildlife protection

50. **Fencing for Wildlife Passage**

Any new fencing (with the exception of swimming pool fencing) is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide x 100mm high at ground level spaced at 6 metre intervals.

Reason: Management of wildlife corridors

51. **Pool Filter Noise**

The maximum noise level associated with the pool filter does not exceed 5dB(A) above ambient background level when measured from any adjoining premises.

Reason: To protect the amenity for adjoining properties.