

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2239
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 170 DP 15376, 255 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	Alterations and additions to dwelling house including a swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Sally Ann Constable Peter Charles Constable
Applicant:	Nanna Margrethe Lesiuk

Application Lodged:	19/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/12/2021 to 15/12/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,410,000.00
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PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing dwelling house. Specifically, the works consist of:

Level 4

- New double garage, vehicle crossing and internal driveway.
- Demolish existing bedroom and provide new bedroom and ensuite partially within existing footprint.
- New entryway and open courtyard.

Level 3

- Internal alterations to create an open plan kitchen, living and dining area.
- New pantry and study.
- New additions to provide a study, bathroom and terrace area.

Level 2

- Internal alterations to create a bedroom, ensuite, laundry and sitting room.
- New additions to provide bedrooms, a second living space and rear balcony.

Level 1

- New subfloor area to provide a powder room, pool equipment room, home gym and pool terrace.
- New suspended swimming pool with landscaping below to screen the undercroft area.

AMENDED PLANS

Amended architectural and landscape plans were submitted throughout the assessment process to address concerns raised by Council's Development Engineers, Roads Assets, Landscaping and Biodiversity Officers. The amended plans constituted a reduced impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 5.21 Flood planning
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - C1.1 Landscaping
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
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 - D12.13 Construction, Retaining walls, terracing and undercroft areas

SITE DESCRIPTION

Property Description:	Lot 170 DP 15376 , 255 Whale Beach Road WHALE BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one allotment located on the eastern side of Whale Beach Road, Whale Beach.</p> <p>The site is irregular in shape with a frontage of 15.44m and respective depths of 63.685m and 57.26m along the northern and southern side boundaries. The site has a surveyed area of 918.8sqm.</p> <p>The site is located within the C4 Environmental Living zone pursuant to Pittwater LEP 2014 and accommodates a part 1-3 storey dwelling house including a double garage within the front setback area.</p> <p>The site backs onto Whale Beach. The rear portion of the site below the footprint of the existing dwelling house is densely vegetated. Pedestrian access stairs are located between the dwelling house and Whale Beach.</p> <p>The site experiences a slope (fall) of approximately 24.5m that slopes away from the front boundary towards the rear. This represents an approximate gradient of 39.1%.</p> <p>The site is environmentally constrained with geotechnical, bushfire and biodiversity constraints.</p> <p>Description of Surrounding Development</p> <p>The surrounding built environment is characterised by multi storey dwelling houses on sloping sites.</p>

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development

Section 4.15 Matters for Consideration	Comments
Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Amended architectural and landscape plans were submitted throughout the assessment process to address concerns raised by Council's Development Engineers, Roads Assets, Landscaping and Biodiversity Officers.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Building Code & Bushfire Hazard Solutions, dated 11 November 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 01/12/2021 to 15/12/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Ms Janet Elizabeth France	234 Whale Beach Road WHALE BEACH NSW 2107
Colco Consulting Pty Ltd	29 A Amiens Road CLONTARF NSW 2093

Two (2) submissions were received following the public exhibition period. The following issues were raised within the submissions:

- **View Loss arising from Proposed Development**

The submissions raised concerns that the proposed development would create unreasonable view loss from the adjacent property to the south (253 Whale Beach Road).

Comment:

This matter is discussed within detail in the section of this report relating to Clause C1.3 of Pittwater 21 DCP. In summary, the qualitative extent of view loss from the adjacent property is considered to be minor when considered in accordance with the view sharing planning principles established within the NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*. In this case, reasonable view sharing has been achieved.

- **View Loss from existing dwelling house on the site**

The submissions raised concerns that the existing dwelling house created view loss from

surrounding properties. Written correspondence was provided by this particular neighbour in question to confirmed that they did not object to the proposed development on view loss grounds.

Comment:

The existing dwelling house has been lawfully approved and this particular concern outlined above is not a matter for consideration under the subject development application.

- **Privacy Impacts**

The submissions raised concerns that the proposed development will create unreasonable privacy impacts, both visually and acoustically.

Comment:

It is considered that adequate separation between buildings has been provided to negate unacceptable acoustical privacy impacts. In regards to visual privacy, conditions have been imposed requiring amendments to the design (i.e. higher window sill for south-facing kitchen window, obscure glazing to ensuite window and privacy screen for a portion of the outdoor terrace on the southern elevation) to alleviate unreasonable visual privacy impacts. This matter is discussed in further detail within the section of this report relating to Clause C1.5 of the Pittwater 21 DCP.

- **Overshadowing**

The submissions raised concerns that the proposed development will create unreasonable overshadowing of the southern adjacent property (253 Whale Beach Road).

Comment:

This matter is discussed in detail within the section of the report relating to Clause C1.4 of the Pittwater 21 DCP. Whilst it is acknowledged that living room windows and private open space on the adjacent site will not receive compliant solar access on June 21, the impact arising from the proposal is considered to be equitable given the adjacent property currently does not receive the required amount of sunlight and due to the adverse site constraints (i.e. east-west orientation and significant slope that falls towards the east), which makes compliant with the solar access provision not feasible.

- **Elevated Swimming Pool in Foreshore area**

The submissions raised concerns of the visual impacts arising from the elevated swimming pool within the foreshore area.

Comment:

This matter has been discussed in further detail within the section of this report relating to Clause 7.8 of Pittwater LEP 2014. In summary, it is considered that the proposal satisfies the relevant considerations within Clause 7.8. It is further noted that swimming pools are permitted below the foreshore building line.

- **Calculation of Maximum Building Height/Height non-compliance**

The submissions raised concerns that the existing ground levels on the plans are not correct and that the proposal exceeds the 8.5m maximum height limit.

Comment:

The documentation submitted with the application is sufficient to enable Council to calculate the maximum building height. Council has calculated the maximum building height to be 9.16m, which exceeds the 8.5m height plane. Notwithstanding, the proposal relies upon the exemption provision within Clause 4.3(2D) of Pittwater LEP 2014, which allows for a 10m maximum building height on sites with slopes in excess of 30% under the building footprint. The proposal meets this requirement and thus, complies with the maximum building height for the site. This matter is discussed in further detail within the section of this report relating to Clause 4.3 of Pittwater LEP 2014.

- **Side Building Envelope non-compliance**

The submissions raised concerns that the proposal does not comply with the Pittwater 21 DCP side building envelope provision.

Comment:

This matter has been discussed in detail within the section of this report relating to Clause D12.8 of the Pittwater 21 DCP. In summary, as the slope of the site under the building footprint is greater than 30%, the side building envelope is subject to a merit assessment. An assessment against the outcomes of the control has found the development to be acceptable and consistent with those outcomes.

- **Lack of Landscaping Plan**

The submissions raised concerns that the application was not accompanied by a detailed landscaping plan.

Comment:

A detailed landscaping plan (prepared by Dangar Barin Smith, dated 7 April 2022) was submitted with this application and indicates numerous native landscape treatment on the site. Council's Landscape and Biodiversity Officers have found the landscape plan to be acceptable.

- **Impacts on Immanent Development Application for 253 Whale Beach Road**

The submissions raised concerns that the proposal would impact future works proposed under a current development application at 253 Whale Beach Road (southern adjacent site).

Comment:

There is no certainty that the works proposed under the development application next door will be approved and/or constructed. Thus, this is not a matter to be considered in the assessment of the subject development application.

- **Documentation Deficiencies**

The submissions raised concerns that the documentation submitted with the development application is inadequate.

Comment:

It is considered that sufficient documentation has been submitted to enable an accurate assessment of the development application.

Conclusion

The concerns raised within the submissions have been addressed above and alleviated through the imposition of conditions where appropriate. The concerns raised do not warrant refusal of the development application, subject to conditions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>This application is for the alterations and additions to an existing residential dwelling. Alterations include the minor demolition of existing site structures in order to facilitate internal layout re-configurations, with additions inclusive of a minor dwelling extension on the east. This dwelling extension supports a new outdoor terrace on the first floor, new deck, bedroom and living area on the ground floor, with a new gym, study and swimming pool on the lower ground floor.</p> <p>Councils Landscape Referral section has considered the application against the Pittwater Local Environmental Plan, and the following Pittwater 21 DCP controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D12.10 Landscaped Area - Environmentally Sensitive Land • D12.14 Scenic Protection Category One Areas <p><i>Updated comments:</i> As requested updated Landscape Plans are submitted and these provide an landscape outcome suitable to achieve the objectives of the C4 Environmental Living zone for which the land is located upon, and satisfy the DCP relevant controls.</p> <p>Landscape Referral raise no objections to the development proposal, subject to the completion of landscape works and the protection of existing trees and vegetation, and conditions shall be imposed.</p> <p><i>Previous comments:</i> The Statement of Environmental Effects provided with the application notes that existing trees and vegetation are to be retained as part of proposed works. This Statement is largely supported by the Architectural Plan provided as it is evident no trees are shown to be removed. It is noted no Arboricultural Impact Assessment has been provided with the application.</p> <p>Upon further review of the site, it is noted there are a number of existing trees located within the road reserve, the adjoining property, as well as towards the eastern portion of the site. Due to the presence of existing site structures including retaining walls on the western and southern boundaries, these trees located within the road reserve and the adjoining property are not anticipated to be impacted by proposed</p>

Internal Referral Body	Comments
	<p>works. As a result, no major concern is raised as these trees are expected to be retained with little to no impacts. Slight concern is raised regarding the impacts of proposed works, specifically the new swimming pool, on an existing tree located centrally within the rear yard. It is understood the swimming pool is to be cantilevered, hence any footings are likely to be clear of this tree's Tree Protection Zone (TPZ) and Structural Root Zone (SRZ), however care must still be taken during excavation and construction as any negative impacts towards this tree, or any other existing vegetation, is not likely to be supported. It is further noted the indicative suspended stair layout at the rear of the site appears to cut through the trunk of this existing tree. Although this stairway is to future detail, the alignment of this stairway should be reconsidered to avoid any conflicts with this tree. The retention of existing trees and vegetation is vital to satisfy control B4.22, as key objectives of this control include "to protect and enhance the urban forest of the Northern Beaches", "to protect, enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities", as well as "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide".</p> <p>Slight concern is raised regarding the lack of landscape works proposed which is particularly important considering the increase to overall built form size and scale, as well as the proximity of the site to land identified as containing the Littoral Rainforest Endangered Ecological Community. It is noted that a landscape concept is provided, however this lacks detail of proposed works with no species, quantities and locations of proposed trees identified. Landscape works are necessary to ensure the proposed built form is softened and mitigated, whilst ensuring privacy between adjoining properties is maintained and the sensitive ecological communities found within the eastern portion of the site are enhanced. For this reason it is recommended that a Landscape Plan be provided with the application in accordance with Council's Development Application Lodgement Requirements. This Landscape Plan should include screen planting along the northern and southern boundaries for privacy, tree planting, as well as details of any on-slab planting that is proposed. A plant schedule shall also be required, with at least 80% of new planting incorporating native species as listed within the Littoral Rainforest Endangered Ecological Community. This Landscape Plan is necessary to satisfy controls C1.1 and D12.10, as key objectives of these controls seek to ensure "vegetation is retained and enhanced to visually reduce the built form", "landscaping retains and enhances Pittwater's biodiversity by using locally native plant species", as well as "landscaping enhances habitat and amenity value".</p> <p>Considering the information above, the landscape component of the proposal is therefore not currently supported due to insufficient information about proposed landscape works. For this reason, it is recommended that a Landscape Plan be provided with the application in accordance with Council's Development Application Lodgement</p>

Internal Referral Body	Comments
	<p>Requirements.</p> <p>Upon the receipt of the required information, further assessment can be made.</p>
NECC (Bushland and Biodiversity)	<p>Updated Biodiversity Referral Comments (2 May 2022): The following information has been considered in this updated biodiversity referral:</p> <ul style="list-style-type: none"> • Landscape Plans, Dangar Barin Smith (7 April 2022) • Flora and Fauna Assessment, GIS Environmental Consultants (8 October 2021) • Bushfire Assessment Report, Building Code & Bushfire Hazard Solutions (11 November 2021) <p>Vegetation within the eastern (rear) portion of the site contributes to connectivity of the coastal biodiversity corridor; as such, no removal of native vegetation or wildlife habitat (including the brush-turkey mound) is permitted in this area.</p> <p>The submitted landscape plans satisfactorily address the relevant landscaping requirements of PDCP Clause B4.17.</p> <p>The proposal is supported, subject to recommended conditions.</p> <p>Original Biodiversity Referral Comments (5 January 2022): The following biodiversity controls apply to the subject site:</p> <ul style="list-style-type: none"> • Pittwater LEP Clause 7.6 (Biodiversity Protection) • Pittwater DCP Clause B4.17 (Littoral Rainforest Endangered Ecological Community) <p>PDCP Clause B4.17 includes a requirement that "development shall ensure that at least 80% of any new planting incorporates native vegetation". It is unclear from the submitted documentation whether the new proposed landscaping will comply with this requirement, however it is noted that the Landscape Referrals Body has requested submission of detailed Landscape Plans as additional information. This would also assist in assessing the proposal's compliance with applicable biodiversity-related controls. As such, the Biodiversity Referrals Body will recommence assessment of the proposal following provision of Landscape Plans which comply with relevant requirements of the applicable biodiversity and landscaping 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>

Internal Referral Body	Comments
	<p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 The subject land has been included on the 'Coastal Use Area' map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under clauses 14 and 15 of the CM SEPP. 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>Development on Foreshore Area</p> <p>A large section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The DA proposes construction of a new suspended swimming pool. This is partly located within the Foreshore Area. The proposed work is consistent with Clause 7.8(2)(b). On internal assessment, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p>
NECC (Development Engineering)	The existing driveway is steep and it appears there are changes proposed to the existing driveway.

Internal Referral Body	Comments
	<p>The proposed new driveway is steep and requires compliance with AS/NZS 2890.1; 2004. In this regard no driveway longitudinal grades in compliance with AS/NZS 2890.1:2004 is provided in support of the application. The Applicant is to ensure, driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. <u>Access levels across the road reserve</u> are to comply with Council's vehicular crossing profile, available in Council's web page.</p> <p>https://www.northernbeaches.nsw.gov.au/planning-development/permits-and-certification/driveway-and-vehicle-crossings</p> <p>The proposal shows a private area located in Council's road reserve is proposed to be retained. In this regards, please refer to manager for Transport & Civil Infrastructure to approve for continued use of Council road reserve for private purposes.</p> <p>DATED 06/05/2022</p> <p>Road Assets have supported the application subject to conditions. No Development Engineering objections subject to recommended conditions.</p>
Parks, reserves, beaches, foreshore	<p>The development application is for alteration and additions to and existing dwelling, new swimming pool and associated works.</p> <p>The development site adjoins Whale Beach Reserve downslope. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Reserve.</p> <p>No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries.</p> <p>The location of the suspended pool forward of existing building lines and within the foreshore building line raises concerns in terms of visual impact from the public reserve and foreshore. The predominance of the natural landscape zone containing sand dunes and vegetation is interpreted by the suspended pool, and in particular by the height above the natural landscape.</p> <p>Council's Parks, Reserves and Foreshores Referral are of the opinion that visual impact upon the foreshore reserve is established by the development proposal of the suspended pool beyond the foreshore building line, and this matter shall be determined by Planning.</p>

Internal Referral Body	Comments
	Should the application be approved, conditions of consent shall be imposed to ensure environmental impacts are controlled and no encroachment into public foreshore reserve occurs.
Road Reserve	<p>The hardstand area and retaining walls located on Council's public road reserve are noted. No approval of these structures could be located however they appear to have existed prior to 2000 as shown on DA N0758/00.</p> <p>Former Pittwater Council sought to have the owners in 2000 lease the privatised area however it appears this matter was not progressed. The former Pittwater Policy prevents the leasing of road reserves for car parking and permanent structures. Council's policy may be reviewed in the future.</p> <p>The proposed redevelopment of the property is not affecting the concrete area adjacent to the garage and retaining structures however they are not to be used for private purposes such as vehicle or trailer parking or storage of materials. Should such use be observed by Council, enforcement action may be taken to prevent such use, seek removal of the area or formalise such use through leasing subject to Council policy..</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p><i>Supported, with conditions</i></p> <p>The development must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets.</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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A434715 dated 20 October 2021).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is located within the Coastal Environment Area pursuant to this SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
 - 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*
 - ii) *platform for members of the public, including persons with a disability,*
 - iii) *overshadowing, wind funnelling and the loss of views from public places to*
 - iv) *foreshores,*
 - v) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
Aboriginal cultural heritage, practices and places,
cultural and built environment heritage, and
 - b) *is satisfied that:*
 - i) *the development is designed, sited and will be managed to avoid an adverse*
 - ii) *impact referred to in paragraph (a), or*
 - iii) *if that impact cannot be reasonably avoided—the development is designed,*

*sited and will be managed to minimise that impact, or
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 retains the existing pedestrian access stairs that provide access from the subject site to Whale Beach. Thus, the proposal will not preclude access to or along the foreshore area. Moreover, whilst the proposal results in overshadowing of the foreshore area at 3pm on June 21 it is noted that this impact is exacerbated by the significant slope that falls towards Whale Beach. It is further noted that this portion of the beach is already overshadowed by the existing dense vegetation below the foreshore building line. The proposal also does not result in an unreasonable loss of views from Whale Beach Road towards the beach or wind funnelling towards the foreshore.

The proposal has also been designed to step down the slope of the land to integrate with the landform and landscape. The proposed native landscape treatment and existing vegetation within the foreshore area will assist in softening the built form. For these reasons, the proposal is not considered to detract from the scenic qualities of the coastal area. The proposal is also not likely to have an adverse impact upon Aboriginal cultural heritage, practices or places or detract from built items identified with local environmental heritage significance.

For these reasons, it is considered that the proposal is appropriately designed, sited and will be managed to avoid an adverse impact upon the matters referred to in Clause 2.11.

The Development Assessment Planner has also taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development and concluded that the scale of the development will be commensurate with the surrounds and that the proposal will be suitable for this coastal setting.

Division 5 General

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

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

Comment:

The proposed development has been adequately designed and sited to respond to the environmental constraints of the site. Therefore, it is considered that the proposal is not likely to cause increased risk of coastal hazards within the locality.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings - Clause 4.3 (2D)	10m	9.16m	-	Yes - see discussion

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	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The proposed development involves alterations and additions to an existing dwelling house. Dwelling houses are permissible with consent in the C4 Environmental Living zone. The proposal is considered against the objectives of the zone as follows:

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

Comment:

The area of the site that is subject to the development has been subject to previous disturbance by previous development. The dense vegetation below the foreshore building line is being retained, which will soften the visual impacts of the development when viewed from Whale

Beach. Furthermore, the proposed additions are appropriately sited and scaled, such that the works will not unreasonably detract from the visual qualities of the locality. Overall, the development is considered to have an acceptable impact upon the ecological, scientific or aesthetic values of the area.

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

Comment:

As demonstrated above, the proposed development does not have an adverse effect on the ecological, scientific or aesthetic values listed above.

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

Comment:

The proposed development does not necessitate the removal of significant landscaping and does not significantly alter the site topography. Furthermore, the building height steps down with the slope of the land, which visually reduces the built form and sensitively responds to the natural topography. The proposal also does not change the existing low density residential land use and the scale of the development is commensurate with nearby residential development within the locality. Overall, the proposal meets this objective.

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

Comment:

The proposal does not result in the removal of the foreshore vegetation in the rear portion of the site. Conditions have been included with this consent to mitigate impacts to this vegetation.

Conclusion

As demonstrated above, the proposed development satisfies the objectives of the C4 Environmental Living zone.

4.3 Height of buildings

The site is located within Area I on the Pittwater LEP 2014 Height of Buildings Map. Within this area, the maximum building height permitted is 8.5m above the existing ground level. The maximum height of the proposed development is 9.16m above the existing ground level, which exceeds the 8.5m prescribed requirement.

Notwithstanding, Clause 4.3(2D) of the Pittwater LEP 2014 contains an exemption provision that stipulates that the maximum building height within Area I can be increased to 10m, providing the following is demonstrated:

(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and

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

Comment:

The built form does not exceed 2 storeys at any one point, which is consistent with the desired scale of development within low density residential areas. Sufficient landscaping has also been incorporated into the proposal to ensure the development is a secondary component to the landscape setting.

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

Comment:

The height, bulk and scale of the proposed development is commensurate with established low density residential development within the Whale Beach foreshore area.

(c) to minimise any overshadowing of neighbouring properties,

Comment:

The southern adjacent property (253 Whale Beach Road) is already significantly overshadowed on June 21 (winter solstice) by the existing development on the subject site. The overshadowing is largely attributed to the east-west orientation of the allotments and the steep topography that falls away from the street. The small areas of the proposed roofline that exceed the 8.5m height plane do contribute to a materially worse impact to the adjacent property with regards to solar access. Thus, the development is considered acceptable in this regard. It is further noted that the subject site itself receives limited sunlight due to the slope of the land and orientation of the allotments.

(d) to allow for the reasonable sharing of views,

Comment:

This matter is discussed in detail within the section of this report relating to Clause C1.3 of the Pittwater 21 DCP. In summary, it is concluded that the proposal allows for reasonable view sharing.

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

Comment:

The proposal does not exceed 2 storeys at any one point and steps down in height with the slope of the land to integrate with the landform and landscape. Thus, it is considered that the proposal responds sensitively 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 site does not contain a heritage item, is not located within a heritage conservation area and is not located in close proximity to heritage items. Therefore, the proposal will not have an adverse impact upon environmental and built heritage. Additionally, the dense vegetation located within the foreshore

area will soften the built form when viewed from Whale Beach and the wider foreshore area. The chosen colours and materials also harmonise with the coastal setting.

Conclusion

Having regard to the above assessment, it is concluded that the proposal satisfies the requirements of Clause 4.3(2D) of Pittwater LEP 2014. Therefore, the 10m maximum building height is applied to the site. The maximum height of the proposed development is 9.16m above the existing ground level, which complies with the 10m provision.

5.21 Flood planning

The development is not within the flood affected area of the site, which runs contiguous to the rear boundary within the foreshore area. Thus, the proposal satisfies the requirements of Clause 5.21 of Pittwater LEP 2014.

7.2 Earthworks

The objective of Clause 7.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

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

Comment:

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

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

Comment:

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

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

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

Comment:

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

excavation/construction.

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment:

The excavation works are generally limited to previously disturbed areas of the site and thus, the earthworks are not likely to disturb relics.

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

Comment:

Council's Biodiversity and Landscape Officers have reviewed the application and are satisfied that the proposal is not likely to have an adverse impact upon the foreshore vegetation, subject to adherence to the conditions of consent.

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

Comment:

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

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

Comment:

The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Conclusion

Having regard to the above assessment, it is concluded that the proposed development is consistent with Clause 7.2 of Pittwater LEP 2014, subject to conditions.

7.6 Biodiversity protection

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

(a) whether the development is likely to have:

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

Comment:

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

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

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

Conclusion

Having regard to the above assessment, it is concluded that the proposal satisfies the requirements of Clause 7.6 of Pittwater LEP 2014, subject to conditions.

7.7 Geotechnical hazards

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

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

Comment

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

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

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

Comment

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

(b) the consent authority is satisfied that:

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

Comment

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

Conclusion

Having regard to the above assessment, it is concluded that the proposal satisfies the requirements of Clause 7.7 of Pittwater LEP 2014, subject to conditions.

7.8 Limited development on foreshore area

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

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further*

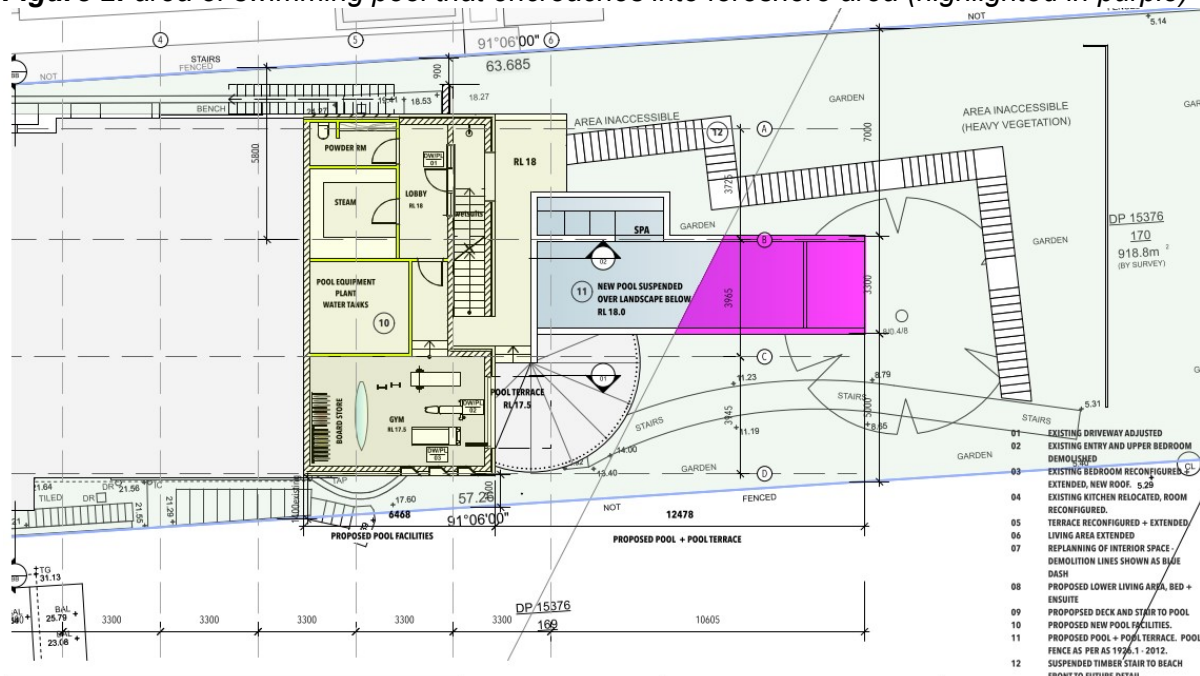
into the foreshore area,

- boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).

Comment:

The proposed development includes a new suspended swimming pool that encroaches into the foreshore area. It is noted that swimming pools are permitted within the foreshore area. Figure 2 below depicts the extent of the swimming pool that encroaches into the foreshore area.

Figure 2: area of swimming pool that encroaches into foreshore area (highlighted in purple)



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

- the development will contribute to achieving the objectives for the zone in which the land is located, and
- the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and
- the development will not cause environmental harm such as:
 - pollution or siltation of the waterway, or
 - an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or
 - an adverse effect on drainage patterns, or
 - the removal or disturbance of remnant riparian vegetation, and
- the development will not cause congestion or generate conflict between people using open space areas or the waterway, and
- opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and
- 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

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

Comment:

The proposed development is consistent with the objectives of the C4 Environmental Living zone. Due to the existing dense vegetation within the foreshore area, coupled with the fact that the swimming pool is situated approximately 1m below the existing rear lower ground floor terrace comprising permeable surfaces, the swimming pool will not be viewed from Whale Beach. The Development Assessment Planner has undertaken a site visit at Whale Beach and Figure 3 below depicts sight lines back towards the subject site from the beach.

Figure 3: *sight lines back towards the subject site from Whale Beach*



Dense landscape treatment is also proposed under the swimming pool to screen the undercroft area.

The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. Council's Biodiversity and Landscape Officers have reviewed the application in this regard and raise no objections, subject to conditions.

The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. Moreover, the proposal does not preclude public access to the foreshore area. The existing private access way from the site to the foreshore will also be retained.

The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The swimming pool will also not have an adverse impact upon the amenity or aesthetic appearance of the foreshore, given the existing and proposed landscape treatment obscures the pool.

Furthermore, the proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

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

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

Comment:

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

Conclusion

Having regard to the above assessment, it is concluded that the proposal satisfies the requirements of Clause 7.8 of Pittwater LEP 2014, subject to conditions.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	(east to Whale Beach Road) 6.5m	Garage - No change to existing (nil) Dwelling - increased setback from 7.9m to 11.4m	100% -	No (existing) Yes
Rear building line	Foreshore Building Line (FBL)	Dwelling - no encroachment Pool - encroaches by up to 6.4m	-	Yes - pool permitted to encroach into FBL
Side building line	(north) 2.5m	Garage - 0.65m (existing) Additions - 1.4m Terraces - 0.9m	75% 44% 64%	No (existing) No No

	(south) 1.0m	Building - 1.1m	-	Yes
Building envelope	(north) Merit Assessment as >30% slope	Acceptable on Merit	-	Yes - see discussion
	(south) Merit Assessment as >30% slope	Acceptable on Merit	-	Yes - see discussion
Landscaped area	60% (551.28sqm)	62.92% (578.13sqm)	-	Yes

Note: Landscaped area calculations include allowable variations to the control (i.e. 6% of terrace private open space and impervious areas less than 1m in width).

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	No	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D12.1 Character as viewed from a public place	Yes	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
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	No	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

Clause A4.12 of the Pittwater 21 DCP provides guidance on the form and scale of development anticipated for the Palm Beach Locality. The locality statement notes as follows:

"The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on the lowlands and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

The design, scale and treatment of future development within the commercial centres will reflect a 'seaside-village' character through building design, signage and landscaping, and will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

A balance will be achieved between maintaining the landforms, landscapes and other features of the

natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

Palm Beach will remain an important link to the offshore communities".

Comment:

The proposal achieves the Palm Beach desired future character statement for the following reasons:

- The proposed development does not exceed 2 storeys at any one point and steps down in height with the natural fall of the land to integrate with the landform and landscape.
- The proposed development does not necessitate the removal of prescribed vegetation on the site.
- The excavation works are generally limited to previously disturbed areas of the site and are not considered to be excessive.
- The development is serviced by the required infrastructure.
- The development is commensurate with the height, bulk and scale of nearby residential development within the Whale Beach precinct.
- The proposal is well-articulated and utilises external finishes that will harmonise with the foreshore area.
- The site remains predominantly landscaped to ensure that the built form reads as a secondary component to natural environment.
- The proposal has been designed to respond to the environmental constraints of the site, which includes geotechnical, biodiversity and bushfire matters.

C1.1 Landscaping

The proposal is technically non-compliant with the landscaping requirements of this control, which require at least 60% of the front setback area to be landscaped. The proposal does not provide 60% if

the front setback area as landscaping. It is noted that 60% of the front setback area is not currently landscaped.

Despite this, the proposed development complies with the 60% landscaped area requirement for the entire site and incorporates additional native planting to soften the built form.

Given the location of the existing dwelling and the topography of the site, there is limited opportunity for additional soft landscaping within the front setback. Due to the slope of the land, falling away from the street, the development will continue appear as a single storey building when viewed from Whale Beach Road and thus, will not dominate the streetscape.

The application has been reviewed by Council's Landscape Officer and Bushland & Biodiversity Officer who raised no objection to the development, subject to conditions.

Under these circumstances, the non-compliance is supported in this instance.

C1.3 View Sharing

Following the public exhibition period one (1) submission was received raising concern of potential view loss arising from the proposed development. The submission was prepared on behalf of the owners of the southern adjacent site (253 Whale Beach Road).

The Development Assessment Planner examined the views from the lower ground floor rear deck on the adjacent site on 16 May 2022. It is noted that the rear deck adjoins a living area on the lower ground floor.

Merit consideration

The development is considered against the underlying outcomes of the control as follows:

- *A reasonable sharing of views amongst dwellings.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

The affected views obtained from the adjacent site comprise the northern Whale Beach headland, water and foreshore area. These views are located to the north-east of the subject site and are partially obstructed by the existing dwelling house on the subject site. The view is considered to be highly valued in accordance with this principle.

Notwithstanding, it is noted that the view of concern is not the primary view from the adjacent site. The adjacent property benefits from largely un-interrupted views to the east and south-east, which comprise Whale Beach, the foreshore area and southern Whale Beach Headland. Given these views are whole views and are more substantial, these views are considered to be more valued than the view towards the north-east. It is noted that the views towards the east and south-east from this property are not impacted by the proposed works.

2. What part of the affected property are the views obtained

“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic”.

Comment to Principle 2:

The affected view from 253 Whale Beach Road is obtained across the northern side boundary and can be enjoyed from standing and sitting positions from the lower ground floor. Whilst the Development Assessment Planner was not able to access the upper floors for this assessment, it is assumed that the views could be obtained from the upper floors to a similar extent to the lower ground floor. It is noted that the lower and middle floors contain living rooms, whereas the uppermost floor accommodates bedrooms. Figure 4 below depicts the affected corridor towards the north-east.

Figure 4: lower ground floor deck standing view to the north-east



The unaffected views from 253 Whale Beach Road are obtained across the eastern (rear) boundary and southern side boundary. These views can be enjoyed from standing and sitting positions from the lower ground floor. Whilst the Development Assessment Planner was not able to access the upper floors for this assessment, it is assumed that the views could be obtained from the upper floors to a similar extent to the lower ground floor. Figures 5 and 6 below depict the unaffected corridors towards the east and south-east.

Figure 5: *lower ground floor deck standing view to the east*



Figure 6: *lower ground floor deck standing view to the south-east*



3. Extent of impact

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3:

As the proposal protrudes further towards the east from the existing building footprint the development will obstruct a portion of the Whale Beach northern headland, foreshore and a small portion of ocean when viewed from the decking and living room areas on the lower and middle floors. However, this corridor is difficult to retain as it is located over a side boundary.

Despite this, the primary view towards the east and south-east of the adjacent dwelling will remain unaffected by the proposal. These views are considered to be more valuable than the impacted corridor as they are whole views.

For these reasons, the qualitative extent of the view loss from 253 Whale Beach Road is considered to be minor.

4. Reasonableness of the proposal that is causing the impact

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A

development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

The area of the building that creates the view obstruction towards the north-east sits partially outside of the prescribed southern side building envelope that is typically applied to sites with a slope less than a 30% gradient. However, the envelope provision is typically subject to a merit assessment for sites with a slope that exceeds 30%, which is the case for the subject application. Nevertheless, a development that sits wholly within the southern side building envelope would not result in a materially improved view sharing outcome for 253 Whale Beach Road. Having regard to this and the minor nature of the view impact, it is considered that the development allows reasonable view sharing to be achieved.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

Comment:

The proposal does unreasonably impact existing view corridors from Whale Beach Road or other public places.

- *Canopy trees take priority over views.*

Comment:

The subject site is not proposing the removal of canopy trees, ensuring that any existing canopy trees have priority over views.

Conclusion

Having regard to the above assessment, it is concluded that the proposal will achieve the requirements and outcomes of this control and satisfy the planning principles outlined within the NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.

C1.4 Solar Access

Description of non-compliance

The control requires as follows:

- *"The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st".*
- *"Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows)".*

The applicant has submitted certified shadow diagrams to depict the shadowing impacts to adjoining properties. The assessment has concluded that living room windows and private open space on the southern adjacent site (253 Whale Beach Road) will not receive the required amount of solar access on June 21 (winter solstice), which does not comply with the prerequisite.

It is important to note that these areas in question currently do not receive the required amount of solar access on June 21 as a consequence of the east-west orientation of the allotments, the steep topography that falls towards the east and existing development on the subject site.

Merit consideration

It is noted that the proposal entails the following variation provision:

"Where the following constraints apply to a site, reasonable solar access to the main private open space and to windows to the principal living area will be assessed on a merit basis:

- *where the orientation or shape of a lot precludes northerly orientation (20o west to 30o east of north),*
- *where there is adverse slope or topography,*
- *where there is existing vegetation, obstruction, development or fences that overshadow, or*
- *where other controls have priority, e.g. heritage and landscaping considerations.*

Subject to a merit assessment, consent may be granted where a proposal does not comply with the standard, provided the resulting development is consistent with the general principles of the development control, the desired future character of the locality and any relevant State Environmental Planning Policy".

As detailed above, the adjacent property does not receive the required amount of solar access to living rooms and private open space. This is due to the east-west aspect of the site and significantly sloping topography that falls towards the east. In fact, due to the natural escarpment that slopes up to Bynya Road (i.e. slopes up to the west) development within the foreshore area receives limited direct sunlight during winter months within the afternoon hours.

Overall, the overshadowing of the adjacent property during mid-winter is similar to the current scenario. Thus, the variation provision permitted by this control is applied in this instance as the proposed development demonstrates consistencies with the general outcomes of the Pittwater 21 DCP, the desired future character statement of the Palm Beach locality and applicable State Environmental Planning Policies.

Thus, the non-compliance is supported on merit.

C1.5 Visual Privacy

Description of non-compliance

The control requires as follows:

"Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout,

landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level)".

"Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building".

The proposal contains a large terrace sited at RL23.6 adjacent to the living room. The terrace is setback between 1.1m - 1.4m from the southern side boundary and has a trafficable area of approximately 31.8sqm (excluding the seating). The terrace is located within 9m of private open space on the southern adjacent property (253 Whale Beach Road) and does not comply with the separation requirement for overlooking. The private open space on the adjacent property is a lawn area and a number of elevated balconies.

Additionally, the adjacent private open space will be overlooked by a number of south facing windows from the kitchen/living area, bedrooms and bathrooms.

Merit consideration

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

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*

Comment:

Elevated Terrace

In considering the reasonableness of the overlooking impacts from the elevated terrace sited at RL23.6 it is important to establish the location of the terrace and the frequency in which the occupants would use the area.

The terrace sited at RL23.6 has a trafficable area of approximately 31.8sqm and is located directly adjacent to the living, kitchen and dining areas. The terrace is also sited to enable the enjoyment of the expansive ocean views towards the east. For these reasons, the terrace in question is considered to be the principal private open space for the dwelling house and thus, it is expected that the terrace will receive high volumes of pedestrian movement of a frequent basis. Thus, any overlooking from this area would be unreasonable.

Whilst the terrace is noted for containing planter boxes on the southern elevation to mitigate overlooking, vegetation cannot be relied upon as the sole privacy mitigating measure. This matter is discussed within the NSW Land and Environment Court Case of *Super Studio v Waverley [2004] NSWLEC 91*, where Senior Commissioner Roseth notes as follows: *"The second principle is that where proposed landscaping is the main safeguard against overlooking, it should be given minor weight. The effectiveness of landscaping as a privacy screen depends on continued maintenance, good climatic conditions and good luck. While it is theoretically possible for a council to compel an applicant to maintain landscaping to achieve the height and density proposed in an application, in practice this rarely happens"*.

To ensure that a reasonable level of visual privacy is maintained for 253 Whale Beach Road, a suitable condition has been recommended with this consent requiring a non-transparent privacy screen to be affixed to the southernmost edge of the terrace, spanning a horizontal length of 3m when measured from the external wall of the kitchen towards the east. The screen is to be of a fixed panel or louvre style construction of a maximum openings of 30mm. The privacy screen must be to a height of at least 1.7m above the finished floor level, but no greater than 1.8m above the finished floor level.

The screen has not been conditioned for the entire southern elevation of the terrace as direct sightlines towards the adjacent private open space would not be provided when standing on the eastern (rear) portion of the terrace. When standing towards the end of the terrace on a southern aspect direct sight lines would only be provided towards vegetation within the foreshore area. Hence, the aforementioned condition outlined above will mitigate overlooking from the terrace sited at RL23.6.

South-Facing Windows

The following windows are located within 9m of private open space on the southern adjacent property (253 Whale Beach Road) and would have sight lines towards the adjacent private open space:

- DW/LGF08: bedroom on level 2.
- DW/LGF09: bedroom WIR on level 2.
- DW/LGF10: ensuite on level 2.
- DW/LGF11: bedroom on level 2.
- DW/LL06: kitchen on level 3.
- DW/LL07: laundry on level 3.

When assessing privacy impacts that occur as a result of overlooking from windows judgements within the NSW Land and Environment Court have deemed overlooking impacts from bedrooms as minor, given occupants of a dwelling typically spend little waking time within bedrooms. Thus, the overlooking that may occur from the aforementioned bedroom windows is deemed acceptable in this instance. This approach is also deemed appropriate for the laundry and WIR, which are both areas that typically receive limited volumes of pedestrian movement.

However, with regards to the kitchen area, as occupants of a dwelling tend to spend greater periods of waking time within kitchen, dining and living areas, overlooking that occurs from these areas is considered to be more unreasonable when compared to overlooking from a bedroom. This is outlined within the NSW Land and Environment Court Case of *Meriton v Sydney City Council [2004] NSWLEC 313*, where Senior Commissioner Roseth notes as follows: *"Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time"*.

As the kitchen window DW/LL06 contains a low window sill and is located in close proximity to private open space at 253 Whale Beach Road it is considered appropriate in this case to impose a condition requiring the window sill to be increase to a height of 1.5m above the finished floor level, which will prevent downward overlooking into the rear yard of 253 Whale Beach Road.

In relation to the ensuite window DW/LGF10, it is considered appropriate to impose a condition requiring the window to comprise frosted glazing, which will also ensure that an adequate level of internal amenity is maintained for the occupants of the dwelling.

Subject to the conditions recommended above, it is considered that the proposal will optimise visual privacy through good design, which is consistent with the intent of this outcome.

- *A sense of territory and safety is provided for residents.*

Comment:

Subject to compliance with the aforementioned condition, a sense of territory and safety will be provided for the occupants of the subject site and adjacent properties.

Conclusion

Having regard to the above assessment, it is concluded that the outcomes of the control will be achieved, subject to conditions.

D12.3 Building colours and materials

The proposed alterations and additions have been colour matched to the existing building facade to create consistency throughout the site. Given the existing colour scheme for the site this is considered reasonable in this circumstance. Additionally, the proposal does introduce new external finishes that complement the coastal setting, which includes sandstone cladding, natural timber finishes and mid grey.

D12.5 Front building line

The proposed garage maintains the existing nil front boundary setback, which does not meet the numeric requirement of 6.5m. Nevertheless, the proposal does not exacerbate the existing non-compliance. It is noted that the new components of the dwelling house are setback in excess of 6.5m from the front boundary. It is further noted that the proposal meets the following exemption provision for sloping sites:

"Where carparking is to be provided on steeply sloping sites, reduced or nil setbacks for carparking structures and spaces may be considered, however all other structures on the site must satisfy or exceed the minimum building line applicable".

In this case there are no other feasible locations to provide the garage due to the sloping topography that falls away significantly from the street. Thus, the non-compliance is supported.

D12.6 Side and rear building line

Description of non-compliance

The control requires development to be setback 2.5m from one side boundary and 1m from the opposing side boundary. The new works are setback over 1m from the southern boundary, however encroach into the 2.5m northern side setback area for the following components:

- Garage: 0.65m northern side setback (existing and unchanged).
- Terrace: 0.9m northern side setback for new components.
- Façade: 1.4m northern side setback for new components.

Merit consideration

The proposed development is considered against the underlying outcomes of the control as follows:

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

Comment:

As discussed in detail within the section of this report relating to Clause A4.12 of the Pittwater 21 DCP,

the proposal is consistent with the Palm Beach desired future character statement.

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

Comment:

The height, bulk and scale of the proposed development is commensurate with established low density residential development within the Whale Beach foreshore area. Additionally, the building is well articulated and employs a 'terraced style' built form that steps down with the slope of the land to integrate with the landform and landscape. The existing foreshore dense vegetation and proposed landscape treatment will further alleviate the perceived bulk and scale of the built form.

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

Comment:

As discussed in detail within the section of this report relating to Clause C1.3 of the Pittwater 21 DCP, the proposal allows for the equitable preservation of views and vistas from nearby private and public property.

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

Comment:

As noted above, reasonable view sharing is achieved.

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

Comment:

As discussed earlier within this report, the overshadowing impacts to the south are deemed to be acceptable given the current level of overshadowing that already occurs as a consequence of the site constraints. Moreover, the privacy impacts have been addressed through the imposition of appropriate conditions.

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

Comment:

The proposed development complies with the Pittwater 21 DCP landscaped area numeric requirement and accommodates sufficient landscape treatment to maintain an attractive streetscape.

- *Flexibility in the siting of buildings and access.*

Comment:

Flexibility is afforded with regards to the side setback non-compliance as the proposal does not result in unacceptable streetscape or amenity impacts. Furthermore, vehicular and pedestrian access arrangements to the site will be maintained via Whale Beach Road.

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

Comment:

Sufficient vegetation is accommodated on the site to visually reduce the built form.

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

Comment:

The site does not adjoin commercial development.

Conclusion

Having regard to the above assessment, it is concluded that the outcomes of the control have been achieved. Therefore, the application is supported on merit in this particular circumstance.

D12.8 Building envelope

The control requires development to be located within a building envelope determined by projecting planes at 45 degrees measured from 3.5m above natural ground level at side boundaries.

Components of the new additions protrude outside of the prescribed side building envelope on the northern and southern elevations, as depicted in Figures 7 and 8 below.

Figure 7: areas of building outside of side building envelope on northern elevation

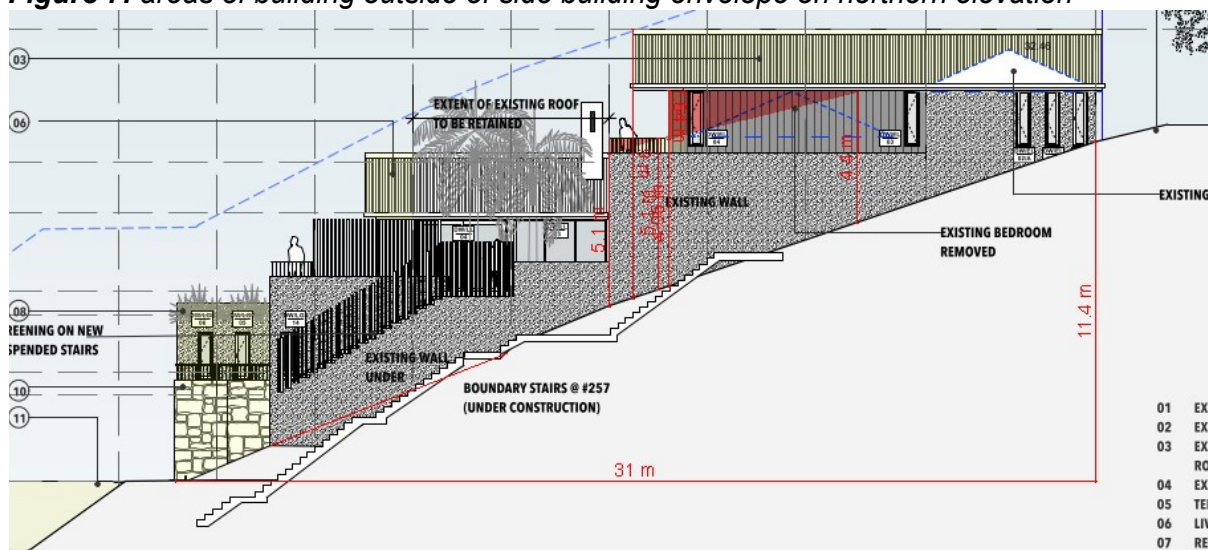


Figure 8: areas of building outside of side building envelope on southern elevation



Notwithstanding, control permits a variation provision which states that the building envelope assessment will be subject to a merit assessment where the building footprint is situated on a slope over 30%. The site topography directly under the building footprint has a 39.94% slope and therefore, the proposal is subject to a merit assessment.

The outcomes of the control are addressed below as follows:

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

Comment:

As discussed in detail within the section of this report relating to Clause A4.12 of the Pittwater 21 DCP, the proposal is consistent with the Palm Beach desired future character statement.

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

Comment:

The height, bulk and scale of the dwelling house is commensurate to the surrounding built environment. The dwelling house steps down with the slope of the land, which sensitively responds to the local topography. Furthermore, the height of the dwelling is situated below the established tree canopy within the locality.

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

Comment:

The proposed development retains stepping down with the slope of the land, thereby responding to, reinforcing and sensitively relating to the environment

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

Comment:

The height, bulk and scale of the proposed development is commensurate with established low density residential development within the Whale Beach foreshore area. Additionally, the building is well articulated and employs a 'terraced style' built form that steps down with the slope of the land to integrate with the landform and landscape. The existing foreshore dense vegetation and proposed landscape treatment will further alleviate the perceived bulk and scale of the built form.

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

Comment:

As discussed in detail within the section of this report relating to Clause C1.3 of the Pittwater 21 DCP, the proposal allows for the equitable preservation of views and vistas from nearby private and public property.

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

Comment:

As discussed earlier within this report, the overshadowing impacts to the south are deemed to be acceptable given the current level of overshadowing that already occurs as a consequence of the site constraints. Moreover, the privacy impacts have been addressed through the imposition of appropriate conditions.

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

Comment:

Sufficient vegetation is accommodated on the site to visually reduce the built form.

Conclusion

As demonstrated above, the proposal is consistent with the outcomes of this control and therefore, is acceptable on merit.

D12.13 Construction, Retaining walls, terracing and undercroft areas

Description of non-compliance

The control stipulates that undercroft areas should be not greater than 3.5m above the existing ground level. The elevated swimming pool creates an undercroft area of 6.2m, which does not satisfy the

prerequisite.

Merit consideration

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

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

Comment:

As discussed in detail within the section of this report relating to Clause A4.12 of the Pittwater 21 DCP, the proposal is consistent with the Palm Beach desired future character statement.

- *To protect and minimise disturbance to natural landforms.*

Comment:

The swimming pool is elevated above the natural ground level and does not necessitate significant alterations to the natural landform.

- *To encourage building design to respond sensitively to natural topography.*

Comment:

As discussed earlier within this report, the swimming pool will be obscured by the existing dense vegetation located within the foreshore area when viewed from Whale Beach. Additionally, native landscape treatment is proposed under the swimming pool to screen the undercroft area, thereby ensuring the swimming pool does not present as a significantly elevated structure above the natural topography when viewed from adjacent properties to the north and south of the site.

Conclusion

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$24,100 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,410,000.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/2239 for Alterations and additions to dwelling house including a swimming pool on land at Lot 170 DP 15376, 255 Whale Beach Road, 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
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Drawing No.	Dated	Prepared By
DA05 - Demolition + Site Management Plan	15 November 2021	Housed Architects
DA06 - Proposed Site Plan	15 November 2021	Housed Architects
DA07 - Proposed Roof Plan	15 November 2021	Housed Architects
DA08 - Proposed Entry Level	15 November 2021	Housed Architects
DA09 - Proposed Living Level	15 November 2021	Housed Architects
DA10 - Proposed Lower Level	15 November 2021	Housed Architects
DA11 - Proposed Pool Level	15 November 2021	Housed Architects
DA12 - Proposed Elevations - South	15 November 2021	Housed Architects
DA13 - Proposed Elevations - North	15 November 2021	Housed Architects
DA14 - Proposed Elevations - East	15 November 2021	Housed Architects
DA15 - Proposed Elevations - West	15 November 2021	Housed Architects
DA16 - Proposed Section 01	15 November 2021	Housed Architects
DA17 - Proposed Section 02	15 November 2021	Housed Architects
DA18 - Proposed Section AA + BB	15 November 2021	Housed Architects
DA19 - Proposed Section CC	15 November 2021	Housed Architects
DA22 - Site + Sediment Control	15 November 2021	Housed Architects
DA24 - Materials	15 November 2021	Housed Architects
DA32 - Driveway Detail	15 November 2021	Housed Architects
DA35 - Visual Impact	15 November 2021	Housed Architects

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Assessment Report Ref. 220575	11 November 2021	Building Code & Bushfire Hazard Solutions Pty Limited
Geotechnical Investigation Ref. J3578	3 November 2021	White Geotechnical Group
Flora and Fauna Assessment	8 October 2021	GIS Environmental Consultants
BASIX Certificate No. A434715	20 October 2021	GRS Building Reports

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:

Landscape Plans		
Drawing No.	Dated	Prepared By
LP01-D2422 - Site Plan	7 April 2022	Dangar Barin Smith

LP02-D2422 - Front Landscape	7 April 2022	Dangar Barin Smith
LP03-D2422 - Middle Landscape	7 April 2022	Dangar Barin Smith
LP04-D2422 - Rear Landscape	7 April 2022	Dangar Barin Smith

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	28 October 2021	Housed Architects

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. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	not dated

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$24,100.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$2,410,000.00.

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

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

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

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

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

6. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. Stormwater Disposal

The applicant is to submit Stormwater Engineering 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 the existing integral drainage system.

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

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

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 3 November 2021 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **Traffic Management and Control Plan**

The Applicant is to submit an application for Traffic Management and control Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management and control 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. **Amendments to the approved plans**

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

- The southernmost edge of the external terrace sited at RL23.6 must be affixed with a non-transparent screen that spans for a length of 3.0 metres when measured from the external wall of the dwelling towards the rear of the terrace. The privacy screen must be of a fixed panel or louvre style construction with maximum openings of 30 millimetres. The screen must be to a height of at least 1.7 metres above the finished floor level of the terrace, but no greater than 1.8 metres above the finished floor level.
- The kitchen window DW/LL06 must be amended to have a window sill that is at least 1.5 metres above the finished floor level or obscure glazing to a height of 1.5 metres above the finished floor level.
- The ensuite window DW/LGF10 must be amended to consist entirely of obscure glazing.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

11. **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.

12. **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.

13. External Finishes to Roof

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. 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

14. Works on Land Owned or Managed By Council

No encroachments are to be carried out on Land owned or managed by Council.

Note: Separate approval from Council is required for access driveways, paths, stairs, connections to underground utilities (stormwater, gas, sewer, electricity, telecommunications etc.), and landscaping works on Land owned or managed by Council.

Reason: To protect the land owned or managed by Council.

15. Installation and Maintenance of Sediment and Erosion Control

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period. Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. Tree and Vegetation Protection

a) Existing trees and vegetation as shown on the approved plans shall be retained and protected, including:

- i) all trees and vegetation within the site,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

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

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

17. **Road Reserve**

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

Reason: Public safety.

18. **No Access Through Land Owned or Managed by Council**

Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and natural environment protection.

19. **Storage of Materials on Land Owned or Managed by Council Prohibited**

The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

20. **Protection of Council's Public Assets**

Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to, the following: foreshore natural environment, open space, recreational facilities and the like, road, kerb and gutters, crossovers, crossings, paths, grass verge, within the meaning of the Local Government Act 1993.

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

Reason: To protect and/or restore any damaged public asset.

21. **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)];
- 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; and
- 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.

22. **Geotechnical Requirements**

All recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent, that are required to occur during works must be done.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

23. **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.

24. Vehicle Crossings

The Applicant is to construct one vehicle crossing 5.0 metres wide at the kerb and 6.0 metres at the boundary in accordance with Northern Beaches Council Drawing No A4-3330/7 ML and the driveway levels application approval. The existing lay back shall be reconstructed. 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.

25. Wildlife Protection

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

Reason: To protect native wildlife.

26. Compliance with ecologist recommendations - during construction

All during-construction biodiversity measures specified in Section 5 of the submitted Flora and Fauna Report (GIS Environmental Consultants, 8 October 2021) and these conditions of consent are to be implemented at the appropriate stage of development.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

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

27. Landscape Completion

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

Prior to the issue of any Occupation Certificate details (from a landscape architect or landscape designer) shall be submitted to the Principal Certifying Authority certifying that the landscape

works have been completed in accordance with the approved Landscape Plans and with any conditions of consent.

Reason: Environmental amenity.

28. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

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

Reason: Tree and vegetation protection.

29. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Council's Water Management for Development Policy by a suitably qualified Civil Engineer. 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.

30. **Protection of Habitat Features – Certified by Ecologist**

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

Written details demonstrating compliance are to be certified by the Project Ecologist and provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

31. **Fencing for Wildlife Passage**

Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

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

Reason: To preserve wildlife corridors.

32. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans and these conditions of consent.

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

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

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

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

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

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

34. **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.

35. **Wildlife Protection - Brush-turkey Habitat**

The brush-turkey (*Alectura lathami*) mound in the rear yard is to be protected during construction and demolition works. No impacts to the mound or brush-turkeys are permitted without an approved License to Harm Native Animals from the NSW Department of Planning and Environment.

Written confirmation of compliance is to be prepared by the Project Ecologist and provided to the Certifying Authority prior to issue of any Occupation Certificate.

Reason: Protection of native wildlife on site.

36. **Swimming Pool Requirements**

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

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

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

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

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and

is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

37. **Landscape Maintenance**

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

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent. All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

38. **Compliance with Ecologist's Recommendations – Ongoing**

All ongoing biodiversity-related measures are to be implemented in accordance with Section 5 of the submitted Flora and Fauna Report (GIS Environmental Consultants, 8 October 2021) and these conditions of consent.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

39. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

40. **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dB(A) above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

41. **Private Structures on Public Road Reserve**

The retaining walls and concrete paved area on the public road reserve adjacent to the garage shall not be used for private parking of vehicles or storage unless expressly authorised by Council and subject to an appropriate agreement. The property owner shall maintain these structures in accordance with provisions of s142 of the Roads Act 1993.

Reason: To ensure public infrastructure is not used inappropriately for a private benefit and the structures are maintained by the property owner.

42. **General Foreshore Matters**

Unless in accordance with the approved works the Consent holder must ensure that:

- a) No materials or cleared vegetation that may obstruct flow or cause damage to the foreshore are left within the coastal foreshore area.
- b) All drainage works must not obstruct flow of water within the coastal waters. Drain discharge points are stabilised to prevent erosion. Any excavation must not result in diversion of any foreshore bank instability or damage to native vegetation.
- c) The foreshore is graded to enable the unimpeded flow of water and retaining structures result in a stable foreshore banks.
- d) Any vegetation or other material removed from the area of operations shall be disposed of lawfully. Burning of the material is not permitted.
- e) The foreshore is to function as an ecological system and as such, all works, access, roads, recreational areas, service easements and any other non-ecologically functioning work or activity are to be located beyond the foreshore other than provided by the consent.

Reason: Environmental protection, monitoring and enhancement of the foreshore.

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

Signed



Thomas Burns, Planner

The application is determined on 17/06/2022, under the delegated authority of:



Phil Lane, Acting Development Assessment Manager