

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/1028
<b>Responsible Officer:</b>	Thomas Burns
<b>Land to be developed (Address):</b>	Lot 2 DP 212320, 43 Hilltop Road AVALON BEACH NSW 2107
<b>Proposed Development:</b>	Use of existing log cabin as a secondary dwelling
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Kerry Catherine Ritson
<b>Applicant:</b>	Kerry Catherine Ritson

<b>Application Lodged:</b>	27/07/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	04/08/2022 to 18/08/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Deferred Commencement Approval

<b>Estimated Cost of Works:</b>	\$ 400.00
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**PROPOSED DEVELOPMENT IN DETAIL**

The applicant seeks development consent for the use of an existing detached studio (i.e. log cabin) as a secondary dwelling. No physical works are proposed under this application.

The subject log cabin is identified as Heritage Item No. 2270455 'Log cabin' within Schedule 5 of Pittwater LEP 2014.

**Note:** It is noted that the existing structure is currently being used for separate occupancy and the internal works have already been carried out. Accordingly, a deferred commencement condition has been recommended with this consent requiring the applicant to obtain a Building Information Certificate for these unauthorised internal works as a Development Application cannot retrospectively grant consent to unauthorised works. The applicant will have 6 months to activate this consent.

**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 - 5.4 Controls relating to miscellaneous permissible uses

Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation

Pittwater 21 Development Control Plan - B3.1 Landslip Hazard

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

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 212320 , 43 Hilltop Road AVALON BEACH NSW 2107
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the south-eastern side of Hilltop Road, Avalon Beach.</p> <p>The site is regular in shape with a frontage of 15.85m and a depth of 48.77m. The site has a surveyed area of 773sqm.</p> <p>The site is located within the C4 Environmental Living zone pursuant to Pittwater LEP 2014 and accommodates a two storey dwelling house located centrally within the site upslope that is accessed via an inclinator. The site also contains a single car carport adjacent to the front boundary and a detached log cabin (i.e. detached studio) adjacent to the front boundary. The subject log cabin is identified as Heritage Item No. 2270455 'Log cabin' within Schedule 5 of Pittwater LEP 2014.</p> <p>The site is significantly vegetated and includes a number of shrubs and canopy trees. The site slopes significantly from rear to the frontage, representing a fall of approximately 20m.</p> <p><b>Description of Surrounding Development</b></p> <p>The surrounding built environment is characterised by detached low density residential development within landscaped settings on sloping sites.</p>

Map:



**SITE HISTORY**

The land has been used for residential purposes for an extended period of time. There are no recent or relevant development applications on the site.

**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	There are no current draft environmental planning instruments.
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 Matters for Consideration	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clause 69 of the EP&amp;A Regulation 2021 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>Clause 69 of the EP&amp;A Regulation 2021 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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 04/08/2022 to 18/08/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
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<b>Name:</b>	<b>Address:</b>
Mr Kimbal Robert McKinlay Dunsmore	37 Cannes Drive AVALON BEACH NSW 2107

One (1) submission was received following the public exhibition period. The following issues were raised in the submission:

- **Safety Impacts from Spotted Gum Tree Health**

The submission raised concerns that an existing spotted gum tree on the site poses safety hazards from falling branches.

Comment:

No physical works are proposed under this application and the proposal will not impact the spotted gum tree in question. This concern regarding the existing tree health should be directed to Council's Environmental Compliance department to undertake an investigation separate to this application.

- **Sydney Water Meter**

The submission raised concern that access to the existing Sydney Water infrastructure should be maintained.

Comment:

No physical works are proposed under this application and access to the existing Sydney Water infrastructure will be maintained.

Conclusion

The concerns raised within the submission have been addressed above. The concerns do not warrant refusal of the application.

**REFERRALS**

<b>Internal Referral Body</b>	<b>Comments</b>

Internal Referral Body	Comments		
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	<p>The proposal has been referred to Heritage as the subject property contains a heritage item</p> <p><b>Log Cabin - 43 Hilltop Road Avalon Beach</b></p>		
	Details of heritage items affected		
	<p>Details of this heritage item, as contained within the Pittwater Heritage Inventory, is:</p> <p><u>Statement of Significance</u>            The Log Cabin at 43 Hilltop Road, Avalon Beach, which was built on a lot of the 1914 Newport and Clareville Beach Estate subdivision, is representative of one of Pittwater's early log cabins built of local natural materials to simple designs with traditional construction techniques. The cabin has historic and aesthetic significance as one of the most intact remaining log cabins of the early Pittwater subdivisions. An increasingly rare, little modified example of its type, it is associated with the development of the Northern Beaches as a holiday destination.</p> <p><u>Physical Description</u>            This small cabin is a simple timber-framed structure made of raw timber logs with a highly pitched roof originally clad in timber with simple detailing. Recent works have replaced the original roof clad with corrugated iron. Not inspected internally.</p>		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
NSW State Heritage Register	No		
National Trust of Aust (NSW) Register			
RAIA Register of 20th Century Buildings of Significance	No		

Internal Referral Body	Comments	N/A	
	<p>Consideration of Application</p> <p>This is a response to a proposal and submission of as-existing plans received from the owner-occupier of the subject property, seeking formal consent to a change of use for the subject dwelling. The dwelling concerned is listed as a heritage item within Northern Beaches, having been listed as SHI Item No.2270455.</p> <p>For reasons unknown to her, the freestanding “log cottage” which stands at the above address, in front of a later dwelling set further to the rear of the site, is formerly considered storage. It would appear that it has been used as a modest separate dwelling for some time. No work is proposed in the application, only a formal change of use.</p> <p>The application proposes no works, simply a change of use to formalise the separate occupancy function for which it has evidently been used for some time. As with all buildings, continued use is far preferable to disuse, and the best way of ensuring protective maintenance. The formal designation of storage use may date from construction of the later rear dwelling, when controls may well have prevented “two dwellings” upon the land.</p> <p>As only the change of use is proposed, no adverse heritage impacts would seem to be implied or entailed.</p> <p>Subject to the absence of any adverse factors of an amenity nature, to Council’s satisfaction, the proposal would appear to be acceptable in heritage terms.</p> <p>Therefore Heritage raises no objections and recommends one condition to make clear that no physical works to the cabin are approved.</p> <p>Consider against the provisions of CL5.10 of PLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No          Has a CMP been provided? No          Is a Heritage Impact Statement required? Yes          Has a Heritage Impact Statement been provided? Yes</p>		

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid, who responded confirming that a formal assessment was not required.

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs 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 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. 1318982S, dated 13 July 2022).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	94

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 responded confirming that a formal assessment was not required.

### SEPP (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
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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

There are no applicable principal development standards for this development

### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

### Detailed Assessment

#### **5.4 Controls relating to miscellaneous permissible uses**

Clause 5.4(9) of Pittwater LEP 2014 limits the total floor area of secondary dwellings to 60sqm. The total floor area of the existing log cabin that is proposed to be used as a secondary dwelling is 27.1sqm, which complies with this clause.

#### **5.10 Heritage conservation**

Council's Heritage Officers have reviewed the application and provided the following comments:

*"The application proposes no works, simply a change of use to formalise the separate occupancy function for which it has evidently been used for some time. As with all buildings, continued use is far preferable to disuse, and the best way of ensuring protective maintenance. The formal designation of storage use may date from construction of the later rear dwelling, when controls may well have prevented "two dwellings" upon the land.*

*As only the change of use is proposed, no adverse heritage impacts would seem to be implied or entailed.*

*Subject to the absence of any adverse factors of an amenity nature, to Council's satisfaction, the proposal would appear to be acceptable in heritage terms.*

*Therefore Heritage raises no objections and recommends one condition to make clear that no physical works to the cabin are approved".*

Based on the above comments, the proposal is found to be consistent with the requirements of this clause, subject to conditions.

## **Pittwater 21 Development Control Plan**

### Built Form Controls

There are no applicable built form controls

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes
C1.2 Safety and Security	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes

### Detailed Assessment

#### **B3.1 Landslip Hazard**

The application merely seeks consent for the use of an existing building as a secondary dwelling, with no physical works proposed. Hence, a geotechnical report is not required for this application.

#### **B6.3 Off-Street Vehicle Parking Requirements**

##### Description of non-compliance

A total of 3 off-street parking spaces are required on the site for the principal and secondary dwelling. Currently the site only has one (1) off-street parking space. No additional off-street parking is proposed on the site and thus, the proposal does not satisfy the prescribed requirement.

##### Merit consideration

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

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

##### Comment:

There are limited opportunities to provide additional off-street parking on the site due to the steep topography and location of the existing log cabin (which is proposed to be used as a secondary dwelling) and existing single car carport that occupy a significant portion of the front setback area. There are also available on-street parking spaces on Hilltop Road to accommodate for the additional vehicles. In this regard, it is considered that there is sufficient available parking to meet the demands generated by the development.

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

Comment:

No physical works are proposed under this application.

***Safe and convenient parking.***

Comment:

There is safe and convenient parking available on the subject site and along Hilltop Road.

Conclusion

As demonstrated above, the outcomes of the control have been achieved.

## **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 2022**

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

## **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 2021;
- 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

### DEFERRED COMMENCEMENT APPROVAL

A. THAT Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Clause 76 of the Environmental Planning and Assessment Regulation 2021 to DA2022/1028 for Use of existing log cabin as a secondary dwelling on land at Lot 2 DP 212320,43 Hilltop Road, AVALON BEACH, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

### DEFERRED COMMENCEMENT CONDITIONS

#### 1. **Deferred Commencement**

The applicant must obtain a Building Information Certificate for the existing internal works that have been carried out without development consent.

Evidence required to satisfy these conditions must be submitted to Council within 6 months of the date of this consent, or the consent will lapse in accordance with the Environmental Planning and Assessment Regulation. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Clause 76 of the Environmental Planning and Assessment Regulation 2021. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 2. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

## a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
2022-EX01 (Issue B)	May 2022	Freshwater Blue Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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.

### 3. **Approved Land Use**

Nothing in this consent shall authorise the use of the log cabin as detailed on the approved plans for any land use of the site beyond the definition of a secondary dwelling. This land use is defined as follows:

***secondary dwelling means a self-contained dwelling that—***

- (a) is established in conjunction with another dwelling (the principal dwelling), and*
- (b) is on the same lot of land as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling.*

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

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

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

### 4. **National Construction Code (BCA) Report**

A BCA Report was not provided with the application. A 'Building Code of Australia (NCC/BCA) Assessment Report' from an appropriately qualified Registered Certifier\* will need to be submitted with the Construction Certificate application addressing the following:

The report is to detail the extent to which the existing building (relevant affected parts) does or does not comply with the deemed-to-satisfy provisions of Volume Two of the Building Code of Australia. The report is to also provide recommendations with respect to the existing building / works required to ensure that the specified measures and facilities contained in the existing building, including any modifications to be made by the proposed development are appropriate for its intended use to:

- i) restrict the spread of fire from the building to other buildings nearby;
- ii) protect persons using the building, and to facilitate their egress from the building in the event of fire;
- iii) ensure occupant safety and amenity; and
- iii) provide facilities and services appropriate for the development.

*\*To be regarded as an "appropriately qualified registered certifier" the certifier must hold the relevant level of accreditation that would enable the certifier to issue a construction certificate for the subject building.*

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

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety

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

5. **No Physical Works to Cabin**

For the avoidance of doubt, no physical works to the cabin are approved by this consent.

Reason: Protection of the heritage item and significant fabric

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

**Signed**



**Thomas Burns, Planner**

The application is determined on 02/09/2022, under the delegated authority of:



**Steven Findlay, Manager Development Assessments**