

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|                            |             |
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| <b>Application Number:</b> | DA2020/1169 |
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|                                           |                                                       |
|-------------------------------------------|-------------------------------------------------------|
| <b>Responsible Officer:</b>               | Kye Miles                                             |
| <b>Land to be developed (Address):</b>    | Lot 1 DP 528345, 10 Capua Place AVALON BEACH NSW 2107 |
| <b>Proposed Development:</b>              | Alterations and additions to a dwelling house         |
| <b>Zoning:</b>                            | E4 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>                             | Felicity Anne Benbrook                                |
| <b>Applicant:</b>                         | Jo Willmore Designs                                   |

|                                  |                                         |
|----------------------------------|-----------------------------------------|
| <b>Application Lodged:</b>       | 23/09/2020                              |
| <b>Integrated Development:</b>   | No                                      |
| <b>Designated Development:</b>   | No                                      |
| <b>State Reporting Category:</b> | Residential - Alterations and additions |
| <b>Notified:</b>                 | 30/09/2020 to 14/10/2020                |
| <b>Advertised:</b>               | Not Advertised                          |
| <b>Submissions Received:</b>     | 0                                       |
| <b>Clause 4.6 Variation:</b>     | 4.3 Height of buildings: 35.3%          |
| <b>Recommendation:</b>           | Approval                                |

|                                 |               |
|---------------------------------|---------------|
| <b>Estimated Cost of Works:</b> | \$ 160,000.00 |
|---------------------------------|---------------|

### PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to an existing dwelling house at No. 10 Capua Place. The works comprise of:

- Construction of a pitched roof over existing level three (3) deck,
- Replace existing single garage with a new double garage with storage,
- Affiliated landscaping works.

### ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning

and Assessment Act 1979 and the associated Regulations. In this regard:

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

## SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater 21 Development Control Plan - D1.9 Side and rear building line

Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

## SITE DESCRIPTION

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | Lot 1 DP 528345 , 10 Capua Place AVALON BEACH NSW 2107                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Detailed Site Description:</b> | <p>The subject site consists of a single allotment located on the northern side side of Capua Place.</p> <p>The site is irregular in shape with a frontage of 39.9m along Capua Place and a depth of 29.0m. The site has a surveyed area of 822m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living zone and accommodates a three-storey 'pole home' and detached garage.</p> <p>The site is relatively steep and has an average slope of some 27 degrees.</p> <p>The site has a front and rear garden with landscaping and natural rock outcrops. The existing species are both native and exotic species, neither of which constitute threatened or endangered species.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by</p> |

2 and 3 storey residential dwellings.

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                                                | <u>Division 8A</u> of the EP&A Regulation 2000 requires the consent                                                                                                                                                                                                                                                                                                                                            |

| Section 4.15 Matters for Consideration'                                                                                                                                            | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)                                                                                                | <p>authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;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>Clause 98</u> of the EP&amp;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&amp;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) <b>Environmental Impact</b><br/>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><br/>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><br/>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 30/09/2020 to 14/10/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| Landscape Officer      | <p>The proposal is for alterations and additions to an existing dwelling including a new garage.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 Environmental Living zone, and the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• D1 Avalon Beach Locality, including D1.14 Landscaped Area - Environmentally Sensitive Land</li> </ul> <p>The site is located in the E4 Environmental Living Zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features such as rock outcrops and watercourses, and the retention of existing trees.</p> <p>The existing landscape character is a landscape setting where the existing dwelling is secondary to the existing trees and planting. The proposed works minimise the impact to the existing natural landscape and satisfy the intent of the E4 Environmental Living Zone, and the proposed works remain secondary to the existing trees and planting, satisfying the DCP controls.</p> <p>No existing trees nor vegetation protected under Pittwater DCP are proposed for removal. The proposed replacement garage works do not impact upon existing landscape areas nor existing trees given the works occupy the existing footprint and existing hardstand paving area. The proposed roof over the existing deck is in close proximity to existing tree trunks, and the arboricultural assessment recommends trunk protection for existing trees identified as T1 (<i>Angophora costata</i>), T2 (<i>Elaeocarpus reticulatus</i>), and T3 (<i>Angophora costata</i>).</p> <p>The existing T3 (<i>Angophora costata</i>) sits within the existing deck that is suspended above the ground level. Ground level protection for T3 therefore is not recommended in the arborist report as the existing deck provides tree protection and proposed post excavation works are within existing hardstand footprint. Additional existing trees in close proximity to the works are exempt species (ie. <i>Cocus Palms</i>).</p> |



| Internal Referral Body           | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                  | Landscape Referral supports the application as the proposed works do not impact upon the existing landscape character of the site.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| NECC (Bushland and Biodiversity) | <p>The proposed development has been assessed against the objectives and controls of PLEP cl.7.6 Biodiversity and P21 DCP B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor. The submitted arborist report has assessed the trees potentially affected, and includes various recommendations regarding tree removals and tree protection measures, and these should be included as part of any consent conditions.</p> <p>All significant planting and trees will be retained there will be no loss of canopy cover. The development is proposed in the area of least impact on native vegetation and there will be no net loss of native vegetation.</p> <p>In summary, the development complies with the relevant biodiversity controls and is designed, sited and will be managed to avoid any significant adverse environmental impact.</p> |
| NECC (Development Engineering)   | <p>The submitted Geotechnical report certifies that an acceptable risk is achievable for the development.</p> <p>No objection to approval, subject to conditions.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

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

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

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

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

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

### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of

contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

## SEPP (Infrastructure) 2007

### Ausgrid

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

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

### Comment:

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

## 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: | 8.5m        | 11.5m    | 35.3%       | No       |

### Compliance Assessment

| Clause                                                   | Compliance with Requirements |
|----------------------------------------------------------|------------------------------|
| 1.9A Suspension of covenants, agreements and instruments | Yes                          |
| 2.7 Demolition requires development consent              | Yes                          |
| 4.3 Height of buildings                                  | No                           |
| 4.6 Exceptions to development standards                  | Yes                          |
|                                                          |                              |

| Clause                      | Compliance with Requirements |
|-----------------------------|------------------------------|
| 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

#### **4.6 Exceptions to development standards**

##### **Description of Non-compliance**

|                                      |                     |
|--------------------------------------|---------------------|
| Development standard:                | Height of Buildings |
| Requirement:                         | 8.5m                |
| Proposed:                            | 11.50m              |
| Percentage variation to requirement: | 35.3%               |

##### **Assessment of request to vary a Development Standard**

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*.

##### **Clause 4.6 Exceptions to Development Standards**

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

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

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

##### **Comment:**

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

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

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



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

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

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

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

#### **Clause 4.6 (4)(a)(i) (Justification) Assessment**

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

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

##### **Comment:**

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

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

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

##### **Comment:**

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

### **Applicants Written Request**

The applicants written request argues, in part:

- *"Due to the steepness of the site, which is in excess of 30 degrees, and position of the existing deck the new deck roof will at its western end will breach the 8.5m height plane.*
- *The new roof is over existing floor area and will not increase the building footprint nor reduce landscaped areas.*
- *The roof is significantly lower than the house roof and with it being an open structure it will not increase any perceived bulk and scale and remain compatible with the scale of neighbouring homes.*
- *Overshadowing of neighbouring homes will not be increased due to the non compliant section of roof and as it is set close to the existing house and with the maximum ridge height being 1.8m lower than the neighbouring deck of the 12 Capua Place there will be no impact on existing views experienced from neighbouring properties.*

### Comment:

It is agreed that compliance with Council's Building height standard is constrained by the placement of the existing dwelling and the sites topographical features. As such, the proposed alterations represent a minor change to the current non-compliance. Additionally, it is acknowledged that the proposed development does not create unreasonable bulk, as the works are not readily visible from the street, due to the elevated position of the dwelling and existing vegetation.

Whilst the proposal doesn't comply with Council's maximum building height development standard, it is agreed that this non-compliance will not create unreasonable impacts with regard to view loss, overshadowing, or bulk and scale. Overall, it is considered that demanding compliance with Council's maximum height standard is both unreasonable and unnecessary for this proposal, due to the constraints caused by the 'pole home' design of the existing dwelling and the sloping nature of the site.

It is considered that the applicants written request has adequately demonstrated that the proposed development will protect the surrounding natural environment, through retaining the site's existing topographical features and landscape elements. In addition, the written request has justified that the development is of good design and will protect the amenity of the surrounding built environment, therefore satisfying cl 1.3 (e) (g) of the EPA Act.

In this regard, the applicants written request has adequately identified that there are sufficient

environmental planning grounds to justify breaching the development standard as required by cl 4.6(3) (b).

Therefore, it is concluded that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

#### **Clause 4.6 (4)(a)(ii) (Public Interest) Assessment**

Clause 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

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

#### Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E4 Environmental Living zone. An assessment against these objectives is provided below.

#### **Objectives of the Development Standard**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

#### Comment:

The proposal involves a minor addition to the existing level three deck, creating a maximum building height of 11.50m. The current roof line already sits above the 8.5m height limit (approximately 13.6m) and this can be attributed to the existing 'pole home' design of the dwelling, which sensitively responds to the topographical features of the site.

The proposed roof form will not be readily visible from the street, due to the elevated position of the subject dwelling and existing vegetation. The desired future character of the Avalon locality seeks to remain primarily a low-density residential area with dwelling houses set a maximum of two storeys, which have a well integrated landscaped setting, between the landform and landscape.

Despite the proposed roof, the existing building will remain relatively consistent within the locality, by virtue of its height and scale.

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

#### Comment:

The existing dwelling currently exceeds the 8.5m height control. This is primarily the result of the slope of the subject site and the existing dwelling's 'pole home' design. The proposed roof is effectively integrated with the existing dwelling and is relatively minor in nature, as it will not be

readily visible from the street or adjoining properties, due to the elevated position of the subject dwelling and existing landscaping.

Overall, it is considered that the proposed will not unreasonably affect the subject sites compatibility with the height and scale of surrounding and nearby development.

*c) to minimise any overshadowing of neighbouring properties*

Comment:

The solar impacts of this aspect of the development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces. The proposal satisfies requirements of Clause C1.4 Solar Access of the Pittwater 21 DCP, as the main private open space areas of adjoining properties receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

The development satisfies this objective.

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

Comment:

District views of Avalon are obtained from the subject site in the southern direction. Therefore, the proposal will not unreasonably reduce the views experienced by the properties adjoining the sides of the subject site, in particular, Nos. 8 and 12 Capua Place. In relation, to properties to the rear of the development they are situated much higher than the subject dwelling, additionally, the ridge height of the existing dwelling is remaining the same.

In summary, the proposal will allow for the reasonable sharing of views.

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

Comment:

The subject site is relatively steep and has an average slope of some 27 degrees. The 'pole home' design of the existing dwelling has responded appropriately to the slope of the site, by adequately retaining the natural topographical features of the land. The construction of the proposed roof will not require any excavation.

Overall, the proposal seeks to upgrade the existing design by the means of enhancing the amenity experienced by the occupants. Notwithstanding, the proposed works will maintain the existing core values of the structure, therefore, it is considered that this design 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 proposed alterations and additions will be sufficiently set back from the building line of adjoining properties, thus preserving visual privacy for neighbours. In addition, the proposal is retaining the existing 'pole home' design of the subject dwelling and only involves minimal excavation for the garage. The proposed works does not involve the removal of any surrounding

native trees, nor will it unreasonably affect existing topographical features.

The site is not located in a heritage conservation area nor is there a heritage item on or near the site.

## **Objectives of the Zone**

The underlying objectives of the E4 Environmental Living zone are:

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

### Comment:

The existing 'pole home' design of the dwelling, is being retained and is considered a sensitive response to the natural topography of the site. Additionally, the proposed roof over the existing deck provides greater occupant amenity, without causing unreasonable environmental impacts to neighbours or to the site itself. Amenity to adjoining properties is maintained and the proposal will allow for the reasonable sharing of views.

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

### Comment:

The development will not have an adverse effect on any special ecological, scientific or aesthetic values.

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

### Comment:

The proposed development does not dominate the natural environment and will not significantly alter the existing built form, therefore, will remain compatible within the established streetscape along Capua Place. The proposal does not involve the removal of any native species, nor will it unreasonably disrupt existing topographical features. Overall, it is considered that the proposal successfully achieves a residential development of a low density and scale integrated with the landform and landscape.

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

### Comment:

The development will not effect wildlife corridors nor will it have an effect on riparian and foreshore vegetation.

## **Conclusion on Zone Objectives**

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 Environmental Living zone.



## Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings and Floor space ratio Development Standards is assumed by the Local Planning Panel, for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel.

## Pittwater 21 Development Control Plan

### Built Form Controls

| Built Form Control  | Requirement | Proposed        | % Variation* | Complies  |
|---------------------|-------------|-----------------|--------------|-----------|
| Front building line | 6.5m        | 7.5m            | N/A          | Yes       |
| Rear building line  | 6.5m        | 0.6m            | 90.8%        | <b>No</b> |
| Side building line  | 2.5m - West | 4.7m            | N/A          | Yes       |
|                     | 1.0m - East | 1.3m            | N/A          | Yes       |
| Building envelope   | 3.5m        | Within envelope | N/A          | Yes       |
|                     | 3.5m        | Within envelope | N/A          | Yes       |
| Landscaped area     | 60%         | 56.8% (467sqm)  | 5.3%         | <b>No</b> |

### 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                         |
| B1.3 Heritage Conservation - General                                      | Yes                          | Yes                         |
| B1.4 Aboriginal Heritage Significance                                     | Yes                          | Yes                         |
| B3.1 Landslip Hazard                                                      | Yes                          | Yes                         |
| B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor | Yes                          | Yes                         |
| B5.1 Water Management Plan                                                | Yes                          | Yes                         |
| B5.4 Stormwater Harvesting                                                | Yes                          | Yes                         |
| B5.7 Stormwater Management - On-Site Stormwater Detention                 | Yes                          | Yes                         |
| B5.8 Stormwater Management - Water Quality - Low Density Residential      | 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                         |

| Clause                                                              | Compliance with Requirements | Consistency Aims/Objectives |
|---------------------------------------------------------------------|------------------------------|-----------------------------|
| B8.2 Construction and Demolition - Erosion and Sediment Management  | Yes                          | Yes                         |
| B8.3 Construction and Demolition - Waste Minimisation               | Yes                          | Yes                         |
| C1.1 Landscaping                                                    | Yes                          | Yes                         |
| C1.2 Safety and Security                                            | Yes                          | Yes                         |
| C1.3 View Sharing                                                   | Yes                          | Yes                         |
| C1.4 Solar Access                                                   | Yes                          | Yes                         |
| C1.5 Visual Privacy                                                 | Yes                          | Yes                         |
| C1.6 Acoustic Privacy                                               | Yes                          | Yes                         |
| C1.7 Private Open Space                                             | Yes                          | Yes                         |
| C1.23 Eaves                                                         | Yes                          | Yes                         |
| D1.1 Character as viewed from a public place                        | Yes                          | Yes                         |
| D1.4 Scenic protection - General                                    | Yes                          | Yes                         |
| D1.5 Building colours and materials                                 | Yes                          | Yes                         |
| D1.8 Front building line                                            | Yes                          | Yes                         |
| D1.9 Side and rear building line                                    | No                           | Yes                         |
| D1.11 Building envelope                                             | Yes                          | Yes                         |
| D1.14 Landscaped Area - Environmentally Sensitive Land              | No                           | Yes                         |
| D1.16 Fences - Flora and Fauna Conservation Areas                   | Yes                          | Yes                         |
| D1.17 Construction, Retaining walls, terracing and undercroft areas | Yes                          | Yes                         |

### Detailed Assessment

#### **D1.9 Side and rear building line**

##### Description of non-compliance

The proposed garage is set back 0.6 from the northern boundary (rear). The control requires a minimum setback of 6.5m.

##### Merit consideration

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

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

##### Comment:

The proposed development is consistent with the desired future character of the Avalon Locality.

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

##### Comment:

The proposed garage has been appropriately sited with compliant side setbacks and adequately set back from the front boundary. In addition, the works are encapsulated within P21DCP's building envelope control, while sitting below the maximum building development standard. Furthermore, the proposal provides sufficient opportunities for landscaping to soften the built form. Overall, the bulk and scale of the proposed built form has been minimised with good design and sufficient landscaping.

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

Comment:

The proposal will not result in the loss of views.

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

Comment:

The proposed works are appropriately sited in relation to the existing dwelling and will not result in the loss of any views. In addition, the proposal will retain sufficient landscaped areas to effectively screen the development.

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

Comment:

The proposal is replacing an existing garage and will maintain the existing rear setback of 0.6m. The proposed garage has been designed so that it will not create any unreasonable privacy impacts to adjoining properties. Additionally, due to the location of the garage it will not overshadow the private open space of adjacent properties. Overall, adequate building separation has been maintained as a result of the application, which will further ensure reasonable privacy, amenity and solar access is maintained for surrounding properties

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

Comment:

The proposal provides a relatively compliant landscape setting (as discussed in clause D1.14) that will enhance the natural features. In addition, the proposed works will not be readily visible from the street, due to the topography of the land and the existing vegetation within the front setback.

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

Comment:

No unreasonable amenity impacts are likely to arise as a result of the proposed works and there are no proposed changes to the current access arrangement for the site.

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

Comment:

No significant vegetation is required to be removed to facilitate the proposed works. As such, the built form will be sufficiently screened and softened as a result.

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

Comment:

The subject site is located within, and is surrounded by, residential zones, therefore, this outcome is not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **D1.14 Landscaped Area - Environmentally Sensitive Land**

Detailed description of non-compliance:

The control requires a minimum of 60% (493.2sqm) of the site area to be landscaped.

The application proposes a total landscaped area of 56.8% (467sqm), representing a variation of 5.3%

Provided the outcomes of this control are achieved, impervious areas less than 1 metre in width and impervious landscape treatments providing these areas are for outdoor recreational purposes only up to 6% of site area can be included in the landscaped area calculation. The inclusion of this variation to the landscaped area increases the calculation to 516.32sqm, 62.8% of site area.

Merit assessment

The outcomes of the control have each been addressed as follows:

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

Comment

The desired future character of the Avalon Beach locality is maintained.

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

Comment

The proposal involves the construction of a roof over an existing level three deck and replacing an existing single garage with a double garage. Both developments will not be readily visible from the street due to the topography of the site and the retention of significant vegetation on and around the site. Notwithstanding, the proposed roof has been effectively integrated with the existing dwelling through the selective choice of materials and incorporating a similar roof design. In addition, the visual impact is further softened through the proposal's lightweight design. The proposed garage will not be visually overbearing as it is located at ground level and will be adequately sited from the boundaries.

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

#### Comment

The proposed roof and garage have been designed to ensure a reasonable level of privacy, amenity and solar access is maintained by the residents of the subject site and the adjoining dwellings.

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

#### Comment

The proposed roof will be constructed over existing hard surfaces and will not involve the removal of any landscaped area. In addition, the proposed double garage will slightly extend beyond the existing's footprint, however, this will not result in the removal of any significant vegetation. Overall, the retention of significant vegetation on and around the site will visually reduce the built form.

- *Conservation of natural vegetation and biodiversity.*

#### Comment

No native vegetation or wildlife species will adversely be affected by the proposed works.

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

#### Comment

The proposed works are to be connected to existing the stormwater drainage on site.

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

#### Comment

Consistency with the relevant built form controls and the retention of significant vegetation on the site will ensure the character of the area is maintained. In addition, the proposal is consistent with development in the area.

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

#### Comment

Soft surfaces and porous materials have been utilised where possible to minimise run-off and assist with stormwater management.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported 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 2019**

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

A monetary contribution of \$ 800 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 160,000.

## **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

Council is satisfied that:

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

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

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

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

## RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2020/1169 for Alterations and additions to a dwelling house on land at Lot 1 DP 528345, 10 Capua Place, AVALON BEACH, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

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

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

##### a) Approved Plans

| <b>Architectural Plans - Endorsed with Council's stamp</b> |                |                    |
|------------------------------------------------------------|----------------|--------------------|
| <b>Drawing No.</b>                                         | <b>Dated</b>   | <b>Prepared By</b> |
| DA01 - Site plan                                           | July 2020      | Jo Wilmore Designs |
| DA02 - Garage plan                                         | July 2020      | Jo Wilmore Designs |
| DA03 - Garage elevations                                   | July 2020      | Jo Wilmore Designs |
| DA04 - Level 3 plan                                        | July 2020      | Jo Wilmore Designs |
| DA05 - Elevations                                          | July 2020      | Jo Wilmore Designs |
| DA06 - Elevations sections                                 | July 2020      | Jo Wilmore Designs |
| Colour schedule                                            | 27 August 2020 | Jo Wilmore Designs |

| <b>Reports / Documentation – All recommendations and requirements contained within:</b> |                |                          |
|-----------------------------------------------------------------------------------------|----------------|--------------------------|
| <b>Report No. / Page No. / Section No.</b>                                              | <b>Dated</b>   | <b>Prepared By</b>       |
| Aborist Impact Assessment                                                               | 11 August 2020 | Nigel Dean               |
| Geotechnical Report                                                                     | 18 August 2020 | White Geotechnical Group |

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

c) The development is to be undertaken generally in accordance with the following:

| <b>Waste Management Plan</b> |              |                    |
|------------------------------|--------------|--------------------|
| <b>Drawing No/Title.</b>     | <b>Dated</b> | <b>Prepared By</b> |
|                              |              |                    |

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

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

## 2. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such

damage.

- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

### 3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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 2008
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa



area.

- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## **FEES / CHARGES / CONTRIBUTIONS**

### **4. Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$800.00 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 2019. The monetary contribution is based on a development cost of \$160,000.00.

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 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

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

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

### **5. Security Bond**

A bond (determined from cost of works) of \$1,500 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](http://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**

### **6. 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. Stormwater shall be conveyed from the site to the existing internal 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.

### **7. 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 18th August, 2020 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.

### **8. 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.

**9. Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

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

Reason: To ensure the development is constructed in accordance with appropriate standards.

**10. Sydney Water "Tap In"**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

**11. 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.

**12. 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.

**13. Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall

remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

**14. Vehicle Crossings**

The Applicant is to reconstruct the existing damaged in accordance with Northern Beaches Council Drawing No A4-3330/1 and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

**15. Tree and vegetation protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- 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 tree protection measures 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), vi) and vii) 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.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment prepared by Standfast Tree Services, as listed in the following sections: 3. Tree Protection Measures; 4. Conclusions/Recommendations, and Appendix 2, Tree Protection Measures.

The Certifying Authority must ensure that:

d) 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.

**16. Condition of trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

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

**17. 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:

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

Reason: tree protection.

**18. Stormwater Disposal**

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

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

**19. 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.

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

**20. Control of Weeds**

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

**Reason:** Weed management.

**21. No Planting Environmental Weeds**

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

**Reason:** Weed management.

**22. Dead or Injured Wildlife**

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

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