

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0534
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Responsible Officer:	Penny Wood
Land to be developed (Address):	Lot 179 DP 15376, 271 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	Construction of a swimming pool and inclinator
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Simon Charles Howard Tripp
Applicant:	Simon Charles Howard Tripp

Application Lodged:	28/05/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	05/06/2019 to 19/06/2019
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 387,255.00
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PROPOSED DEVELOPMENT IN DETAIL

The subject development application proposes the following works:

- Swimming pool (partly in-ground);
- Inclinator along the western boundary;
- Stone retaining wall along the southern side of the proposed pool; and
- Decking platform along the western elevation to provide access to inclinator

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - C1.1 Landscaping

Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways

Pittwater 21 Development Control Plan - D12.6 Side and rear building line

Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 179 DP 15376 , 271 Whale Beach Road WHALE BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Whale Beach Road</p> <p>The site is regular in shape with a frontage of 18.59m along Whale Beach Road and a depth of 66.70m along the western elevation and 77.80m along the eastern elevation. The site has a surveyed area of 1078m².</p> <p>The site is located within the Environmental Living E4 zone from PLEP 2014 and accommodates a two storey dwelling. Access to Whale Beach is provided from the rear of the site.</p> <p>The site slopes steeply from the north eastern corner (RL 36.13) to the rear south western corner of the site (RL 9) which adjoins Whale Beach.</p> <p>The site is heavily vegetated at the rear.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by</p>

dwellings of a similar scale and design.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

Building Certificate (BC2019/0082) approved on 19 September 2019 for a timber deck structure and bulustrading to rear of existing dwelling.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the sites location being affected by Coastline Bluff/Cliff instability Hazard on Council's Coastal Risk Planning Map in Pittwater LEP 2014. A Geotechnical Report was submitted to Council which has been assessed by Council and is considered acceptable. An acoustic report was also required to ensure any noise associated with the proposed inclinor did not exceed 5D(b)A. This was assessed by Council and is considered acceptable. The subject site is also identified as being affected by the State Environmental Planning Policy (Coastal Management) 2018 and therefore an assessment against the relevant clauses was required. This was undertaken by the applicant and assessed by Council and deemed acceptable.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact</p>

Section 4.15 Matters for Consideration'	Comments
and economic impacts in the locality	<p>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mrs Sian Elen Wooldridge	7 Ruskin Rowe AVALON BEACH NSW 2107

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

- View Loss;
- Noise; and
- Privacy

The matters raised within the submissions are addressed as follows:

- View Loss
Comment:
Concern was raised by the neighbouring property to the east at 269 Whale Beach Road in relation to potential view loss from the construction of an inclinor along the eastern side of the

subject site. A visit to the site revealed that the construction of an inclinator - whilst visible from the rear of 269 Whale Beach would have a negligible impact on existing views enjoyed from 269 Whale Beach Road. 269 Whale Beach Road currently enjoys expansive ocean views directly south, south east and to the east from the rear of the site. The proposed inclinator is considered to be compatible with the existing slope of the site and given it's purpose for moving up and down the site to provide access for the residents of the subject property, it is not considered to be located in a location which will detrimentally impact on existing views.

- Noise

Comment:

The applicant has provided an acoustic report as part of additional information requested by Council. The report recommended that acoustic mitigation is required to ensure the noise emission achieve compliance and will not exceed 5D(b)A above background noise when measured from the nearest property. Council's Coastal section concurred with the report and it is considered to achieve compliance with the requirements of Section C1.19 of the Pittwater 21 DCP. An appropriate condition is imposed to ensure compliance with the acoustic report submitted by the applicant.

- Privacy

Comment:

The character of the existing site and adjoining sites along the southern side of Whale Beach Road, with direct access to Whale Beach is of an open nature without side boundary fences and privacy screens. The site currently provides access stairs to the rear of the site from the dwelling which allow for overlooking between the adjoining sites. Whilst, the inclinator will be creating a smaller setback to the eastern side boundary, the use of the inclinator is not anticipated to create excessive overlooking and will be used solely for access for the residents between the beach and the dwelling.

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018</p>

Internal Referral Body	Comments
	<p>As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Minto Planning Services dated 27/8/2019 and Council accepts the assessment, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>The subject site is also shown to be affected by Coastline Bluff/Cliff Instability Hazard on Council's Coastal Risk Planning Map in Pittwater LEP 2014. As such, the Geotechnical Risk Management Policy for Pittwater (Appendix 5, Pittwater 21 DCP) and the relevant B3.4 Coastline (Bluff) Hazard controls in P21 DCP will apply to new development of the site.</p> <p>Coastline Bluff Hazard Management</p> <p>A Geotechnical Report by Ascent Geotechnical Consulting dated 28/8/2019 assessing coastline (bluff)/ coastal cliff or slope instability has been submitted with the DA. An impact assessment of the long term coastal processes on the coastline (bluff)/ coastal cliff or slope instability, prepared by Horton Coastal Engineering Pty. Ltd. dated 27/8/2019 has been appended with the Geotechnical Report. The report assessed that 'the level of risk is 'Acceptable', based on a design life of 100 years.</p> <p>As such, it is considered that the application does comply, subject to conditions, with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>

Internal Referral Body	Comments
	<p>Incline Passenger Lifts and Stairways</p> <p>An acoustic assessment prepared by Acoustic Dynamics dated 23/8/2019 recommended that accoustic mitigation is required to ensure the noise emission achieve compliance and will not exceeds 5D(b)A above background noise when measured from the nearest property boundary</p> <p>As such, it is considered that the application does comply, subject to implementation of mitigation measures, with the requirements of Section C1.19 of the Pittwater 21 DCP.</p>
NECC (Riparian Lands and Creeks)	<p>This application was assessed under Pittwater 21 DCP B5.8. As neither the deck nor the pool will drain to the stormwater system, they are not directly connected to a waterway and there is sufficient landscaped area on site to allow infiltration of water, water quality controls are not required.</p> <p>Sediment and erosion controls must be installed prior to any work on site and maintained until all work is complete and groundcover re-established.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

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

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

Comment:

This clause has been assessed against the subject site and the proposed development. The proposed development is not considered to impact on the coastal processes no issues were raised in relation to the proposed development and the land being within proximity to a coastal wetlands area.

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

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

- (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

This clause has been assessed against the subject site and the proposed development. The proposed development is not considered to impact on the coastal processes no issues were raised in relation to the proposed development and the land being within proximity to a coastal wetlands area.

12 Development on land within the coastal vulnerability area

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

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

Comment:

This clause has been assessed against the subject site and the proposed development. The proposed development is not considered to impact on the coastal processes no issues were raised in relation to the proposed development and the land being within proximity to a coastal wetlands area.

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

This clause has been assessed against the subject site and the proposed development. No issues were raised in relation to the proposed development and the land being within a coastal environment area.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

This clause has been assessed against the subject site and the proposed development. No issues were raised in relation to the proposed development and the land being within a coastal environment area.

14 Development on land within the coastal use area

- (1)
- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*
 - (v) *cultural and built environment heritage, and*
 - (b) *is satisfied that:*
 - (i) *the development is designed, sited and will be managed to avoid an adverse*

- impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed works are not considered to impact on the visual amenity of the scenic coast as the proposal is well designed and sited.

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

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

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

Comment:

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

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	3.6m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.7 Development below mean high water mark	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.7 Geotechnical hazards	Yes

Clause	Compliance with Requirements
7.8 Limited development on foreshore area	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Not affected	N/A	Yes
Rear building line	6.5m	20m (Pool) 0.9m (lift)	N/A	No
Side building line	2.5m (east)	2.3m	8%	No
	1m (west)	0.3m	70%	No
Building envelope	3.5m	Within envelope	N/A	Yes
	3.5m	Within envelope	N/A	Yes
Landscaped area	(646.8sqm) 60%	(418.2sqm) 38.7%	35.4%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.4 Coastline (Bluff) Hazard	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	No	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.19 Incline Passenger Lifts and Stairways	No	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.1 Landscaping

See Clause D12.10 Landscaped Area - Environmentally Sensitive Land

C1.19 Incline Passenger Lifts and Stairways

Description of non-compliance

The proposed incline lift is set back at minimum of 0.3m from the western side boundary. The control requires a minimum setback of 2.0m.

Merit consideration

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

Incline passenger lifts and stairways that cause minimal visual and acoustic disturbance to the environment and neighbours.

The proposed inclinator, with a setback of 300mm to the western side boundary, is inconsistent with the provisions of this clause which require the outer face of the carriage to be setback a minimum distance of 2m from the side boundary. However, as the inclinator is to replace existing stairs and will be in keeping with the general slope of the site, the reduced setback will not result in any unreasonable impacts upon the amenity of the adjoining property. The nature of the site and the adjoining sites maintain an open character with unobstructed views towards Whale Beach. The location of the inclinator will not increase the opportunity for further overlooking as to what currently exists. Proposed conditions of consent act to restrict the noise of plant equipment at the site, and overall, the proposal is consistent with the outcome of this control, which aims to minimise visual and acoustic disturbance to the environment and neighbours as a result of the construction and ongoing use of inclinator.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives 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.

D12.6 Side and rear building line

The inclinator will provide a 0.3m setback along the western boundary creating a 70% variation to the 1.0m side setback control. The swimming pool will provide a 2.3m setback to the western boundary creating a 8% variation to the 2.5m requirement. The inclinator will be setback 0.9m from the southern boundary.

A variation to the control is supported as the outcomes of the clause are achieved as detailed below;

To achieve the desired future character of the Locality.

Comment:

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

The bulk and scale of the built form is minimised.

Comment:

The bulk and scale of the proposed works are maintained as the existing side building line is maintained and the proposal complies with the height and building envelope requirements. The built form is further softened as the pool and inclinator will be screened by existing and proposed vegetation.

Equitable preservation of views and vistas to and/or from public/private places. To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

Comment:

Views to and from public places will not adversely be impacted by the proposed alterations and additions.

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

Comment:

A reasonable level of privacy, amenity and solar access is maintained by the residents of the subject site and the adjoining dwellings.

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

Comment:

Satisfactory landscaping is maintained on-site to provide an attractive streetscape and dense vegetation located within the rear setback area.

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

Comment:

The proposed swimming pool is located in a logical position for the occupants of the dwelling and due to the existing openness of the site is not anticipated to create additional overlooking towards adjoining properties. The location of the inclinator will not create any overlooking into the private open space of adjoining dwellings and is not anticipated to create any additional overlooking that does not currently exist between neighbouring sites.

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

Comment:

The proposed inclinator and swimming pool area is raised however will be screened by existing and proposed vegetation and therefore when viewed from Whale Beach and surrounding properties will have a minimal visual impact.

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

Comment:

The subject site does not adjoin any commercial zones.

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

D12.10 Landscaped Area - Environmentally Sensitive Land

The subject site is located within Area 1 of the Landscaped Area Map, therefore the site requires a minimum of 60% landscaped area. The proposed development results in a numerically non-compliant landscaped area of 38.7%; this represents a variation of 35.4%. However, up to 6% of the total site area may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only. Areas less than 1m in width may also be included in the LOS calculation. Provided the outcomes of the control can be achieved, a variation may be permitted.

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

Achieve the desired future character of the Locality.

Comment:

Under A4.12 Palm Beach Locality of the P21 DCP, the proposal is consistent with the objectives of the desired future character of Palm Beach. The proposal will achieve a height that is well below the existing tree canopy. Furthermore, minimal native vegetation is proposed to be removed as a result of the development. The bulk and scale of the development is minor in nature, and is unlikely to impact upon the amenity of the adjoining properties.

The bulk and scale of the built form is minimised.

Comment:

The proposed development is of minimal bulk and scale. The location of the inclinator is to the rear of the dwelling structure and cannot be viewed from Whale Beach Road Road. The proposal will be visible from Whale Beach, however due to the 20m rear setback, will not be overly visible or obtrusive.

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

Comment:

While the proposed development encroaches into the eastern side setback, the nature of the development is minor and will be used to provide safe and convenient access for the occupants of the subject site to the rear yard. No privacy, amenity or solar access issues will arise as a result of the development.

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

Comment:

A minimal amount of vegetation is proposed to be removed as a result of the development.

Conservation of natural vegetation and biodiversity.

Comment:

As discussed above, a minimal amount of vegetation is proposed to be removed as a result of the development, thus conserving natural vegetation and biodiversity of the locality.

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

Comment:

The proposed development is for an inclinator and a swimming pool. The existing stormwater management of the site will be maintained, thus preventing soil erosion and siltation of natural drainage channels.

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

Comment:

As discussed, the proposed development will not result in the removal of vegetation or canopy trees, thus preserving and enhancing the bushland character of Palm Beach.

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

Comment:

The proposed development will result in a minimal the reduction of soft surface of the site, therefore maintaining the existing infiltration of water into the water table, and the existing stormwater management of the site is unlikely to be interrupted as a result of the proposed development.

While the proposal is numerically non-compliant, it is considered to be consistent with the underlying objectives of the control, and is therefore supported on merit.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$3,873 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$387,255.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/0534 for Construction of

a swimming pool and inclinator on land at Lot 179 DP 15376, 271 Whale Beach Road, WHALE BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
2480/01 Issue B	22 August 2019	Rob Crump Design
2480/02 Issue B	22 August 2019	Rob Crump Design
2480/03 Issue B	22 August 2019	Rob Crump Design
2480/04 Issue B	22 August 2019	Rob Crump Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report	28 August 2019	Ascent Geotechnical Engineering
Acoustic Report	23 August 2019	Acoustic Dynamics

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	May 2019	Minto Planning Services

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

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon

- plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$3,872.55 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 \$387,255.00.

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

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 to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

6. **Coastal Bluff Engineering Assessment Implementation**

The advice and recommendations contained in the approved Coastal Engineering Assessment report prepared by Horton Coastal Engineering Pty. Ltd., dated 27/8/2019, must be addressed as necessary through the Geotechnical Risk Management Report prepared in support of the development application and must be incorporated as required into construction plans and structural specifications for the development.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are

minimised

7. **Coastal Bluff Engineering Assessment Implementation**

All development or activities must be designed and constructed such that they will not increase the level of risk from coastal processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect coastal processes; they will not be adversely affected by coastal processes.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

8. **Engineers Certification of Plans**

The structural design shall be prepared by and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

9. **Construction of Inclined Chair Lift**

The advice, recommendations and mitigation measures contained in the approved Noise Emission Assessment report prepared by Acoustic Dynamics dated 23/8/2019, must be addressed and incorporated as required into construction plans and structural specifications for the development.

Reason: To ensure potential noise emissions associated with development of a Inclined Chair Lift and pool pump.

10. **Design Impact on Coastal Processes and Public/Private Amenity**

All development and/or activities must be designed and constructed so that they will not adversely impact on surrounding properties, coastal processes or the amenity of public foreshore lands.

Reason: To ensure the development does not impact the coastal process and public/private

11. **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.

12. **Boundary Survey**

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

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

Reason: To ensure the accurate location of buildings in relation to boundaries, easements and rights of way.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. **Geotechnical Issues**

All conditions outlined in Geotechnical report prepared by Ascent Geotechnical Consulting dated 28/8/2019 are to be complied with and adhered to throughout development.

Reason: To ensure (insert excavation, foundations, footings, etc.) is undertaken in an appropriate manner and structurally sound.

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

15. **Geotechnical Issues**

Following construction activities provide Council with a geotechnical report that has investigated the stability of the site and provided an assessment of any new landslip hazards prior to the issue of an occupation certificate.

Reason: To ensure works are undertaken in an appropriate manner.

16. **Swimming Pool Requirements**

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

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

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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life (DACPLF09)

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

17. General Foreshore Matters

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

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

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

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

Signed



Penny Wood, Planner

The application is determined on 10/10/2019, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments