

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/0619
----------------------------	-------------

<b>Responsible Officer:</b>	Jordan Davies
<b>Land to be developed (Address):</b>	Lot 1 DP 121833, 13 A Ocean Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Construction of a swimming pool and inclinor with associated landscaping
<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>	Michele Matthews
<b>Applicant:</b>	Michele Matthews

<b>Application Lodged:</b>	17/06/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	04/07/2019 to 18/07/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	5
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 544,500.00
---------------------------------	---------------

### PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for the construction of a swimming pool, stairs and associated works, specifically consisting of:

- New swimming pool and spa with surrounding sandstone paved terrace with plant room beneath;
- New external stairs for access to the swimming pool from the existing dwelling and secondary dwelling
- Inclinor for access from the proposed new swimming pool to the secondary dwelling including inclinor landing for secondary dwelling;
- New landscaping surrounding pool.

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone E4 Environmental Living

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

Pittwater 21 Development Control Plan - D12.14 Scenic Protection Category One Areas

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 121833 , 13 A Ocean Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Ocean Road.</p> <p>The site is regular in shape with a frontage of 28m along Ocean Road and a depth of 57m. The site also has a second frontage to Sunrise Road at the top of the site. The site has a surveyed area of 986m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living zone and accommodates a two storey dwelling house at the Ocean Road frontage, and a secondary dwelling currently under construction at the top of the site accessed from the Sunrise Road Frontage.</p> <p>The site has a very steep gradient falling from Sunrise Road to Ocean Road. The elevation change is approximately 40m across the site.</p>

The understorey vegetation is largely cleared upon the site, with a number of small native trees located at the top and centre of the site along the boundaries. There are a number of existing sandstone rocks center of the site and an existing retaining wall above an existing shotcrete cliff behind the main dwelling house.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by detached dwelling houses with ancillary development such as pools. The dwellings are sited within the steep sloping land and are surrounded by low to moderate shrubs and trees. Immediately to the north of the property is a two storey dwelling house. Immediately to the south of the property is a two storey and single storey dwelling house.

A site inspection was conducted on 5 August 2019.

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:

- NO567/10 Alterations and additions to the dwelling house approved by Pittwater Council on 25/08/11.
- NO328/16 Alterations and additions to the dwelling house and construction of a secondary dwelling and pool was withdrawn on 27/03/2017
- NO373/17 Construction of a secondary dwelling approved by Northern Beaches Council on 3/04/2018.
- Mod2018/0503 Modification of development consent NO373/17 for secondary dwelling

approved by Northern Beaches Council on 26/09/2018.

During the assessment of the application, Council requested the applicant reduce the size of the terrace at the southern extent of the pool. This request was made on 4 September 2019 to the applicant.

On 23 September 2019, the applicant provided an amended set of plans which reduced the terrace by 40% in area. This change removed a section of retaining wall and terracing on the western side of the terrace. The amendment provided for additional landscaping and tree planting to the east of the terrace. This was demonstrated upon the updated landscape plan submitted with the amended plans. Due to the reduction in the proposed development, no re notification was required.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;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&amp;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&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to reduced footprint of the pool terrace.</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 clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of</p>

Section 4.15 Matters for Consideration'	Comments
	<p>development). This clause is not relevant to this application.</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> <p><u>Clause 143A</u> of the EP&amp;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 and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.



## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited 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 5 submission/s from:

Name:	Address:
Mr James Eaton Slack	14 Sunrise Road PALM BEACH NSW 2108
The Palm Beach & Whale Beach Association Inc	PO Box 2 PALM BEACH NSW 2108
Mrs Deidre Heather Broad	11 Sunrise Road PALM BEACH NSW 2108
Pikes & Verekers Lawyers	DX 521 SYDNEY NSW
Mr Hugh Rodney Cooke	13 Ocean Road PALM BEACH NSW 2108

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

- The proposal will result in further destruction of the immediate environment.
- The proposal will create more noise as a result of the pool area.
- The proposal will set a precedent for excessive site development along a relatively undeveloped coastline.
- The proposal does not meet the objectives of control D12.14 Scenic Protection in Category One areas.
- Concern is raised regarding geotechnical risk associated with the proposed works.
- The proposal is inconsistent with Clause 14(1)(a)(iii) of the SEPP (Coastal Management) 2018 with regards to consideration of visual amenity and scenic qualities of the coast.
- Development of the adjoining sites are generally confined to the upper and lower sections of the escarpment, with a clear band of vegetation running between.
- The proposal is inconsistent with the E4 Environmental Living Zone objectives and is not a low impact development.
- The inclinor will sit too high above the natural ground level.
- The proposal does not comply with the 60% landscapes area control.
- The proposed inclinor will have a noise impact.
- There will be additional overshadowing to the southern property 13 Ocean Road, including overshadowing by the proposed screen planting between the pool terrace and the boundary.
- Loss of privacy as a result of the elevated pool terrace overlooking the bbq and garage deck area of 13 Ocean Road.

The matters raised within the submissions are addressed as follows:

- The proposal will result in further destruction of the immediate environment.  
Comment:  
The proposed development does not involve the removal of any canopy trees or significant vegetation which would cause an adverse impact upon wildlife habitat or native plant communities. The pool is proposed to be sited in an area of already cleared understorey vegetation and new landscape plantings are proposed around perimeter of the works. Council's Natural Environment and Climate Change division (Biodiversity Officer, Coastal Officer and Riparian Officer) have reviewed the proposal and have advised the proposal will not have an

unreasonable impact upon the natural environment.

- The proposal will create more noise as a result of the pool area.

Comment:

The proposed pool plant will be contained within storage area beneath the terrace to contain noise emissions. The noise resulting from the ordinary residential use of the pool associated with the dwelling and secondary dwelling is not expected to give rise to an unreasonable impact.

- The proposal will set a precedent for excessive site development along a relatively undeveloped coastline.

Comment:

The application has demonstrated the site is capable of accommodating the proposed development whilst achieving compliance with the numerical controls contained within the DCP (with a merit assessment determining that the variation clause for landscaped area may be used in the circumstance). The site benefits from a dual frontage and a reasonably large area between the dwelling and secondary dwelling capable of accommodating the proposed works without the need for the removal of canopy trees or significant vegetation. There is ample room to establish new native landscaping surrounding the proposed works (as demonstrated in the landscaping plan). Overall, the proposal is not considered to set a precedent for excessive development and subsequent applications in the surrounding area will be assessed on the merits of each proposal.

- The proposal does not meet the outcomes of control D12.14 Scenic Protection in Category One areas.

Comment:

A assessment of the proposal against the development controls contained within D12.14 has been carried out later within this report. The proposal has demonstrated compliance with each of the controls and it is therefore considered that the proposal meets the outcomes of D12.14 having complied with each of these controls.

- Concern is raised regarding geotechnical risk associated with the proposed works.

Comment:

A geotechnical risk assessment (including the required Form No.1 and Form No.1(a)) have been submitted in accordance with Council's requirements for sites identified as having geotechnical risk or landslip hazards. The report identifies recommendations to be implemented prior, during and post construction to ensure the risk of landslip and geotechnical hazards are maintained as 'low risk'. The recommendations of the geotechnical report will form conditions of development consent.

- The proposal is inconsistent with Clause 14(1)(a)(iii) of the SEPP (Coastal Management) 2018 within regards to consideration of visual amenity and scenic qualities of the coast.

Comment:

The Coastal Management SEPP has been considered later within this report, including the above mentioned clause. Overall, the proposed development is considered reasonable given the retention of existing canopy trees, use of natural/dark coloured materials and is low scale when compared to the existing buildings upon the escarpment. Council have formed the opinion that the proposal does not have an unacceptable impact of the scenic qualities of the coastline and for this reason, is consistent with the SEPP (Coastal Management) 2018.

- Development of the adjoining sites are generally confined to the upper and lower sections of the escarpment and a clear band of vegetation running between.

Comment:

When viewing the escarpment from Palm Beach it is correct that the existing location of the dwellings are located either at the top of the ridge or at the road level, leaving an undeveloped space in the middle of the hillside. However, this area is not identified as either Category 1 'Core Bushland' or an area of biodiversity value under Clause 7.6 of the Pittwater LEP. Further, there are no specific controls which restrict development centrally within the site. The subject site has the benefit of a dual street frontage, unlike the sites to the south which are individual lots at either the top or bottom of the hillside. This has the effect of limiting the development of the southern sites closer to the road frontage, leaving a central space vacant. The sites to the north are more heavily vegetated with significant canopy trees and topography which is steeper than the subject site, therefore remain undeveloped due to the site constraints.

The proposed development has been sited in a way that avoids removal of canopy trees and provides additional native landscape plantings to soften the built form within the landscape. In the absence of any specific control or environmental constraints limiting development centrally within the site, the proposed development is considered acceptable in this circumstance.

- The proposal is inconsistent with the E4 Environmental Living Zone objectives and is not a low impact development.

Comment:

A detailed assessment of the proposal against the E4 Environmental Living Zone objectives are outlined later within this report. Council have formed the considered opinion that the proposed development is not inconsistent with the zone objectives and for this reason, the outcome will result in a development that does not have an unreasonable impact on surrounding properties or the Palm Beach locality.

- The inclinator will sit too high above the natural ground level.

Comment:

The south elevation shows the inclinator will follow the natural ground level at the lower portion, with the track sitting a maximum of 700mm above the natural ground level as it rises towards the upper platform. This is considered a reasonable height given the steepness of the site and the inclinator having a total length of 12m. Landscape planting is proposed alongside the southern boundary to soften the built form and provide screening when viewed from the southern extent of Palm Beach.

- The proposal does not comply with the 60% landscapes area control and calculations by the applicant incorrect.

Comment:

A detailed assessment has been undertaken later within this report under clause D12.10 Landscaped Area. Council's assessment officer has verified the landscape area calculations and found the proposal to be consistent with the outcomes of the Landscaped area control.

- The proposed inclinator will have a noise impact.

Comment:

A condition of development consent will be imposed requiring an acoustic assessment prepared by a suitably qualified person demonstrating that the noise level from the incline passenger lift will not exceed 5D(b)A above background noise when measured from the nearest property



boundary

- There will be additional overshadowing to the southern property 13 Ocean Road, including overshadowing by the proposed screen planting between the pool terrace and the boundary.  
Comment:  
The submitted shadow diagrams demonstrate that the proposed development will cause only minor additional overshadowing to the southern property No.13 Ocean Road. However, this property will retain the required amount of solar access during the morning period in accordance with the Pittwater DCP (3 hours solar access to Principle Private Open space in the morning period on 21st June).

The proposed planting along the southern boundary will assist in site regeneration and softening of the built form when viewed from the southern end of Palm Beach. In accordance with the planning principles set out in the Land and Environment Court Judgement *The Benevolent Society v Waverly Council (2010) NSWLEC 1082* overshadowing caused by vegetation should be ignored when considering solar access, except for taking into account in a qualitative way, in particular when a dense hedge appears like a fence. In this circumstance, the proposed planting will consist of coastal banksias, wattles and tea trees which will not act like dense hedge and will allow for filtered sunlight to be received once established. In this regard, a reasonable outcome will be maintained with regard to solar access to 13 Ocean Road.

- Loss of privacy as a result of the elevated pool terrace overlooking the rear bbq area and terrace above the garage of 13 Ocean Road.  
Comment:  
Due to the steep topography of the land, it is inevitable that areas located above the dwelling upon 13 Ocean Road may overlook the property. However, a site inspection was undertaken of the above mentioned areas and found there to be limited direct views between the proposed pool/terrace area and the terrace above the garage due to thick existing vegetation. Further, the terrace area is within the front setback and is already a highly visible area from the road. Therefore, the proposed development will not result in an unreasonable additional impact given the exposed nature of the terrace and established thick vegetation. In regards to the rear bbq area, the established thick vegetation and proposed new landscape planting will result in highly obscured views between the properties. The proposed works have a compliant side setback of 2.5m (to the southern boundary) which is appropriate in maintaining privacy between properties.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposed development includes construction of a new swimming pool, spa, terrace, stairs, inclinator and associated landscaping at 13A Ocean Road, Palm Beach. In terms of landscape impact to the existing landscape character, the works does not require removal of any significant vegetation.</p> <p>A Arboricultural Impact Report has been prepared by Landscape</p>

Internal Referral Body	Comments
	<p>Matrix, dated 29 May 2019 and the recommendations for tree protection measures are to be put in place. No existing trees are severely impacted by the development, with the tree protection zone encroachment to trees 1, 5, 6 and 7 to be minimised by isolated pier construction techniques, under the supervision of a Project Arborist.</p> <p>A Landscape Plan prepared by Volker Klemm Landscape Design is provided in accordance with the DA Lodgement Requirements, subject to conditions.</p> <p>Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP Controls: B4.22 Preservation of Trees or Bushland Vegetation C1.1 Landscaping D12 Palm Beach Locality</p>
NECC (Bushland and Biodiversity)	<p>This application was assessed against Pittwater DCP B4.3 Flora and fauna habitat enhancement category 2 land.</p> <p>The proposal is for a new swimming pool and spa, stairs, inclinor and landscaping to the rear of the existing dwelling.</p> <p>The submitted Arboricultural Impact Report (Guy Paroissien 29/05/2019) assesses 7 trees at or adjacent to the site. No trees are proposed to be removed. T1 <i>Livistona australis</i> will incur a 27.43% encroachment of the tree's identified TPZ "<i>while this is a high level of encroachment this species (like most palms) is resilient to significant levels of disturbance</i>". The author states, "<i>The proposed steel mesh staircase is located in close proximity to tree numbers 5, 6 and 7 – disturbance from this structure will be minimised as it is a lightweight structure supported by isolated piers – it is recommended the pier locations be determined by hand excavation under the direction of an AQF Level 5 arborist to avoid removal of, or damage to, any roots of 35mm diameter or greater from these trees.</i>"</p> <p>Council's Natural Environment - Biodiversity section supports the application subject to conditions.</p>
NECC (Coast and Catchments)	<p>This parcel has been assessed in accordance with the Coastal Management SEPP against Clause 13, 14 and 15.</p> <p>The land on which constructions have been proposed is identified on the Pittwater 21 Development Control Plan - Coastal Beach Hazard.</p> <p>All development on land to which this control applies must comply with the requirements of the Geotechnical Risk Management Policy for Pittwater (see Part B Appendix 5).</p> <p>Development must be designed and constructed to ensure that every reasonable and practical means available is used to remove risk to an acceptable level as defined by the Geotechnical Risk Management Policy for Pittwater (see Part B Appendix 5) for the life of the development.</p>

Internal Referral Body	Comments
	<p>The DA accompanies a Geotechnical Report prepared by Douglas Partners Consultants dated 24 April 2019. The report does not include an assessment by Coastal Engineer, as required under the Geotechnical Risk Management Policy for Pittwater (see Part B Appendix 5). However, due to the proposed location of the works being above the wave inundation zone, an assessment by a coastal engineer is not necessary.</p> <p>The impacts on the coastal environment are deemed acceptable. Any geotechnical conditions applied by the development engineer are supported.</p>
NECC (Riparian Lands and Creeks)	<p>This application was assessed under Pittwater 21 DCP B5.8.</p> <p>The proposed development exceeds 50sqm of impervious area and would normally require water quality controls. The steepness of the site and the amount of bedrock on the site, in addition to rain falling on the swimming pool draining to sewer has all been taken into consideration and in this case B5.8 will not be applied. The applicant is encouraged however to consider the use of paving around the swimming pool that allows water to infiltrate into the ground rather than becoming runoff that is capture in the stormwater pipe network on the property.</p> <p>Sediment and erosion controls must be installed prior to any ground being disturbed on site and maintained until all work is complete and groundcover has been re-established.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

## **SEPP 55 - Remediation of Land**

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

## **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. A345820 dated 29 May 2019).

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

## **SEPP (Infrastructure) 2007**

### Ausgrid

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

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

### Comment:

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

## **SEPP (Coastal Management) 2018**

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

### **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:

Not within wetlands or littoral rainforest 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:

Not within proximity to coastal wetlands or littoral rainforest.

## **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:

Not within a coastal vulnerability 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:

The proposal does not limit access to the foreshore area or have impact on the coastal environment within regards to biology or hydrology.

- (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:

The proposal avoids adverse impact to the issues cited in clause (1).

#### 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 proposal does not limit access, overshadow or cause loss of views from a public place to the foreshore. The proposal is located upon the escarpment, however is not considered to have an unreasonable impact upon the visual quality of the scenic landscape as the proposed pool and works are low scale compared to the surrounding dwellings upon the escarpment, set within the slope of the land and will have sufficient native landscape planting surrounding the built form to blend into the landscape. The use of natural materials are used as well as dark tones to reduce the visual impact of the development. The proposal is not located within a heritage conservation area or identified as heritage item (for which there are a number within the locality).

As such, it is considered that the application complies 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:

The proposal will not create a risk of coastal hazard upon the land or adjacent lands.

#### 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	3.5m	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

#### Detailed Assessment

##### Zone E4 Environmental Living

The objectives of the E4 Environmental Living Zone are as follows:

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

Comment: The establishment of a pool and associated terrace is not considered an unreasonable or unexpected form of development within Palm Beach. The proposal does not attribute to additional residential density or result in unreasonable amenity impacts such as loss of views, unreasonable levels of overlooking or overshadowing beyond the scope of the development controls.

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

Comment: The works are not considered to have an impact upon the ecological or scientific value of the immediate vicinity due to the retention of existing trees and establishment of new native plantings around the proposed works. It is recognised that the Palm Beach locality has high aesthetic value which is characterised by two storey residential development being set within the natural landscape surrounded by trees. The immediate locality and escarpment is not a landscape that is completely free of development and untouched (clearly visible residential development upon the escarpment). Therefore, it is considered reasonable to allow low scale ancillary development comprising of sandstone materials which is softened by new landscape planting around the works.

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

and landscape.

Comment: The proposed pool and structures are low scale structures that sit below the canopy tree level. The application has demonstrated via the submitted landscaping plan that there is sufficient room for the establishment of locally native trees surrounding the proposed works to help integrate the development into the landscape. The choice of natural sandstone and dark/earthy tones will assist in the structures integrating into the landscape. A moderate amount of excavation is required for the proposed works, however this is not unreasonable given the steep slope of the site and attempt to maintain a low scale built form. The development has also been design in a way that retains the natural rock features and existing canopy trees.

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

Comment: The application does not propose the removal of any canopy trees or significant vegetation. As demonstrated upon the landscaping plan, new native plantings are proposed around the pool to enhance the links to existing vegetation upon the escarpment.

Overall, the proposed development is considered consistent with the zone objectives of the E4 Environmental Living Zone.

## Pittwater 21 Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	20.5m	N/A	Yes
Rear building line	6.5m	16.3m	N/A	Yes
Side building line	2.5m - South	2.5m	N/A	Yes
	1m - North	1m	N/A	Yes
Building envelope	3.5m	Within	N/A	Yes
	3.5m	Within	N/A	Yes
Landscaped area	60%/591sqm	50.2%/495sqm	16%	No* However, 61% with variation clause applied.
Incline Passenger Lift Setback	2.5m to track 2m to outside of carriage	2.5m track 2m outside carriage	N/A	Yes

**\*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

Clause	Compliance with Requirements	Consistency Aims/Objectives
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.3 Coastline (Beach) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	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	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
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C5.1 Landscaping	Yes	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	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

### **D12.10 Landscaped Area - Environmentally Sensitive Land**

The total soft landscaped area proposed for the site is 495sqm or 50.2% of the site area.

In accordance with the variation clause, impervious pathways less than 1m wide and up to 6% of the site area may be provided in the form of roofed or unroofed pergolas, paved private open space and patios on the landscape portion of the site providing the outcomes of the control are met.

When including pathways in the landscaped area calculation, the landscaped area figure results in 542.64sqm or 55% of the site area. It is further noted that a number of these pathways comprise of steel mesh which allow opportunity for penetration of water and the chance for grasses to establish beneath.

In accordance with the variation clause, 6% (59sqm) of the site area may be consist of open unenclosed POS area (paved pool terrace, deck and paved POS area). This results in a total landscape area of 601.6sqm or 61% in accordance with the variation clause.

The proposal is considered against the outcomes of the control when considering the inclusion of the variation clause, as follows:

*Outcome 1) Achieve the desired future character of the Locality.*

Comment: The proposal is for a pool, stairs, terrace and inclinator which is not out of character for the Palm Beach locality or works unexpected to be associated with residential development.

*Outcome 2) The bulk and scale of the built form is minimised.*

Comment: The pool and terrace have been set within the slope of the land in way that balances the amount of excavation required and the height of the structures to minimise impact as best possible given the slope of the land. Native landscape plantings are proposed around the pool and terrace to soften the proposal within the landscape, along with using natural materials such as sandstone.

*Outcome 3) A reasonable level of amenity and solar access is provided and maintained.*

Comment: The proposal does not have an unreasonable impact in regards to overlooking or overshadowing for adjoining properties.

*Outcome 4) Vegetation is retained and enhanced to visually reduce the built form.*

Comment: No tree removal is proposed as part of the application. Some understorey clearing has occurred prior to submission of the application. New native tree planting is proposed as part of the development to assist in regeneration and to soften the built form.

*Outcome 5) Conservation of natural vegetation and biodiversity.*

Comment: Existing trees are retained and new planting will assist in regeneration of low-moderate tree canopy.

*Outcome 6) Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*

Comment: The applicant has provided an acceptable stormwater solution for the site and method of sediment and erosion control to be in place during construction. On going, the proposed landscape plantings will assist soil stability.

*Outcome 7) To preserve and enhance the rural and bushland character of the area.*

Comment: The proposal does not remove and canopy trees and proposes new landscape plantings to assist in maintaining the character of the site whilst allowing ancillary works such as the pool and terrace.

*Outcome 8) Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.*

Comment: A number of the pathways proposed are steel mesh which allow water infiltration and establishment of grass below. The proposal has been accompanied by a suitable stormwater plan which demonstrates the proposed works will not have an adverse impact on the adjoining land with regard to stormwater or water run-off.

Overall, the proposal is considered to meet the outcomes of the control and the Pittwater DCP and the variation clause to landscaped area may be used in this circumstance.

#### **D12.14 Scenic Protection Category One Areas**

The subject site is located within a category one scenic protection area and is therefore subject to the controls contained within part D12.14 of the Pittwater DCP. The proposal is assessed against the following controls:

*1. Screen planting shall be located between structures and boundaries facing waterways.*

Comment: Low and medium height native screen planting is proposed around the structures where facing the waterway which has been demonstrated in the submitted landscaping plan. The planting consists of locally native species that which assist in softening the built form and integrating the development into the landscape.

*2. Canopy trees are required between dwellings and boundaries facing waterways and waterfront reserves.*

Comment: There are no additional dwellings proposed as part of the application.

*3. Development is to minimise the impact on existing significant vegetation.*

Comment: No tree removal is proposed as part of the subject application. The application is accompanied by an arborist report which includes recommendations regarding protection of existing trees on site. The recommendations will form conditions of development consent.

*4. The applicant shall demonstrate the retention and regeneration of existing native vegetation outside of the immediate area required to carry out the development.*

Comment: The proposal has been designed in a way that retains the existing trees upon the site and allows ample opportunity for new native landscape plantings, as demonstrated in the landscaping plan. Small-medium height native trees are proposed around the pool and landscaping works which assist in regenerating the recently cleared understorey vegetation.

*5. The development is to incorporate measures for planting and maintenance of native vegetation within those areas which are already cleared, and which are not required to be cleared to allow for the development.*

Comment: The landscape plan provided shows a satisfactory amount of new landscape plantings to compliment the scale of the proposed development.

*6. The siting, building form, orientation and scale of the development shall not compromise the visual integrity of the site by removal of canopy trees along ridges and upper slopes.*

Comment: The subject site is very steep with natural landform features such as rock outcrops and existing small-medium height canopy trees. The proposal has been designed around the constraints of the site which include retention of the natural rock features, retention of canopy trees and use of natural materials such as stone, timber and dark/earthy tones.

*7. The development must incorporate the use of unobtrusive and non-reflective materials and the colours of exterior surfaces shall help blend structures into the natural environment.*

Comment: The main feature of the built form will consist of natural sandstone rock that will assist the development in blending in with the landscape once the landscape planting is established. The exterior colours of the inclinators and pool store room door are dark grey tones in accordance with the DCP requirements.

As demonstrated above, the application has demonstrated compliance with the relative controls contained within the DCP for category one scenic protection areas. This includes the retention of canopy tree planting, use of recessive and natural materials and site regeneration outside the footprint of the development.

## **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 \$5,445 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$544,500.

## **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 DA2019/0619 for Construction of a swimming pool and inclinor with associated landscaping on land at Lot 1 DP 121833, 13 A Ocean Road, PALM 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
DA02.02_C	10/09/2019	Maccormick and Associates Architects
DA03.01_C	12/09/2019	Maccormick and Associates Architects
DA03.02_C	12/09/2019	Maccormick and Associates Architects
DA03.03_C	12/09/2019	Maccormick and Associates Architects
DA04.01_C	12/09/2019	Maccormick and

		Associates Architects
DA04.02_C	12/09/2019	Maccormick and Associates Architects
DA04.03_B	7/06/2019	Maccormick and Associates Architects
DA00.04_B	7/06/2019	Maccormick and Associates Architects

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
H-DA3-00, Issue B	06/06/2019	Itm Designs
H-DA3-01, Issue B	06/06/2019	Itm 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>
Arboricultural Impact Report	29 May 2019	Guy Paroissien
BASIX Certificate No.A345820	2 May 2019	MacCormick and Associates
Geotechnical Assessment, 85471.02.R.001.Rev0	24 April 2019	Douglas Partners

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>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA1, Revision C	09/2019	Volker Klemm Landscape Design

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	V. Milligan	13 June 2019

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 \$5,445.00 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 \$544,500.00.

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 \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

A Soil and Water Management Plan prepared in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and implemented on site until the works are completed.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites. (DACHPC02)

7. **Engage a Project Arborist**

A Project Arborist with a minimum of AQF Level 5 is to be appointed for the duration of the works. The Project Arborist is to implement pre-construction tree protection measures and direct supervision all works within 5m of significant trees.

Evidence demonstrating Project Arborist engagement is to be provided to the Principal Certifying Authority prior to the issue of Construction Certificate.

**Reason: Tree protection in accordance with relevant Natural Environment LEP/DCP controls.**

8. **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.

9. **Incline Passenger Lift - Acoustic Report**

Prior to the issue of a Construction Certificate, an acoustic assessment prepared by suitably qualified person shall be provided to the Principle Certifying Authority demonstrating that the noise level from the incline passenger lift will not exceed 5D(b)A above background noise when measured from the nearest property boundary.

Reason: To ensure an appropriate level of residential amenity is maintained.

10. **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 Douglas Partners dated 24 April 2019 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Structural Adequacy and Excavation Work**

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

- (a) maximum height of 900mm above or below ground level and at least 900mm from a boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1

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



Reason: To provide public and private safety.

12. **Boundary Survey**

Prior to the issue of a construction certificate, a boundary survey shall be undertaken for the subject site. The boundary survey shall be provided to the Principle Certifying Authority prior to the issue of a construction certificate.

Reason: To ensure all proposed works are wholly located within the property boundary.

## CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. **Tree protection measures**

Tree protection measures are to be installed prior to any site works in accordance with section 5 of the Arboricultural Impact Report prepared by Landscape Matrix dated 29th May 2019.

Site attendance shall be undertaken during works by a AQZ level 5 Arborist with qualifications in arboriculture/horticulture to locate pier locations for construction in the vicinity of existing trees 1, 5, 6 and 7 as identified in Table 3 of the Arboricultural Impact Report.

Additionally, the Certifying Authority or a Project Arborist AQZ Level 5 must ensure that:

- i) the activities listed in section 4.2 of AS4970- 2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and
- ii) 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.

The tree protection measures and fencing 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.

Note. A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Reason: to ensure tree protection is provided and maintained.

14. **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

15. **Tree and vegetation protection**

- a) Existing trees and vegetation shall be retained and protected as follows:

- i) all trees and vegetation within the site not approved by Council for removal, excluding exempt 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 generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF Level 5 Arborist,
- iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
- v) to minimise the impact on trees and vegetation to be retained and protected, 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,
- vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF Level 5 Project Arborist on site,
- vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, including advice on root protection measures,
- ix) should either or all of vi), vii) and viii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- x) 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 AS 4970-2009,
- xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

c) All protected trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are approved for removal must be replaced with a locally native canopy tree.

Reason: to retain and protect significant planting on development and adjoining sites.

#### 16. **Protection of rock and sites of significance**

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

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

Reason: preservation of significant environmental features.

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

**17. Landscape works**

Landscaping is to be implemented in accordance with the landscape plan DA1 revision B prepared by Volker Klemm Landscape Design, inclusive of the following requirements:

- i) all tree planting is to be installed at 75 litre container size, with a minimum soil area of 3m x 3m, and planted 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used,
- ii) all tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree locations may otherwise be positioned to minimise any significant loss of views,

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity.

**18. Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by a AQF level 5 Arborist with qualification in arboriculture/horticulture, shall be submitted to the Certifying Authority, assessing the health and impact of trees and vegetation required to be retained as a result of the proposed subdivision works, including the following information:

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

Reason: to retain and protect significant planting on development sites.

**19. 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)

20. **Swimming Pool Requirements (existing pool modified by works)**

The existing onsite Swimming Pool / Spa fencing enclosure shall be upgraded to comply with:

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

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

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 a Interim / Final Occupation Certificate.

Reason: To protect human life. (DACPLF10)

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

Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy is to be completed and submitted to the Principal Certifying Authority.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

22. **Landscape maintenance**

Any existing landscaping including trees required to be retained together with any additional landscaping required by this Consent is to be maintained for the life of the development.

A 12 month establishment period shall apply for all new landscaping. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. All planting must be maintained for the life of the development, or for their safe useful life expectancy. Planting that may die or is approved for removal must be replaced.

Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.

23. **Environmental and priority weed control**

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: preservation of environmental amenity.

24. **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.

25. **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.

26. **Works to cease if item found**

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

**Reason:** To protect Aboriginal Heritage.

27. **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.

28. **Domestic Animals Exclusion**

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

**Reason:** Wildlife protection

29. **Fencing for Wildlife Passage**

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

**Reason:** Management of wildlife corridors

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

**Signed**



**Jordan Davies, Planner**

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



**Matthew Edmonds, Manager Development Assessments**