

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1836
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 13 DP 16345, 1 King Edward Avenue BAYVIEW NSW 2104
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Matthew Glenn Donald Claire Alexandra Donald
Applicant:	AMDE Construction
Application lodged:	16/11/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	22/11/2018 to 10/12/2018
Advertised:	Not Advertised
Submissions Received:	3
Recommendation:	Approval
Estimated Cost of Works:	\$ 834,532.00

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 - C1.3 View Sharing
 Pittwater 21 Development Control Plan - C1.4 Solar Access
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy
 Pittwater 21 Development Control Plan - D4.5 Front building line
 Pittwater 21 Development Control Plan - D4.6 Side and rear building line
 Pittwater 21 Development Control Plan - D4.8 Building envelope

SITE DESCRIPTION

Property Description:	Lot 13 DP 16345 , 1 King Edward Avenue BAYVIEW NSW 2104
Detailed Site Description:	The subject site consists of one (1) allotment located on the south-eastern side of King Edward Avenue. The site is irregular in shape with a frontage of 15.24m along King Edward Avenue and a depth of 61m. The site has a surveyed area of 912.5m². The site is located within the R2 Low Density Residential zone and accommodates a dwelling house. The site slopes gently from the south-western side to the north-eastern side of the property approximately 1m. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential development typically single storey and multi storey residential development.

Map:



SITE HISTORY

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

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

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for the construction of a two storey detached dwelling house with double garage, construction of a driveway and crossover and associated landscaping works. The existing swimming pool on site is to be retained.

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)(iia) – 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)	Division 8A 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.

Section 4.15 Matters for Consideration'	Comments
	Clause 50(1A) 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. Clauses 54 and 109 of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 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. Clause 98 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. Clause 143A 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.
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental

Section 4.15 Matters for Consideration'	Comments
	economic impact on the locality considering the nature of the existing and proposed land use.
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 3 submission/s from:

Name:	Address:
Roger Baxter	1875 Pittwater Road BAYVIEW NSW 2104
Mr James Robert Fairley	1877 Pittwater Road BAYVIEW NSW 2104
Mr Heath Smith	3 King Edward Avenue BAYVIEW NSW 2104

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

- **View Sharing (Loss of Views).**
- **Solar Access.**
- **Visual Privacy.**
- **Bulk and Scale.**
- **Stormwater Management.**
- **Level of detail on submitted plans.**
- **On site parking.**

The matters raised within the submissions are addressed as follows:

- **View sharing (Loss of views)**
Comment:

Concern was raised in regards to view loss from bedroom and living rooms to Pittwater waterways.

The proposal has been assessed against the view loss provisions under Section C 1.3 of the Pittwater 21 DCP and the Land and Environment Court Case of *Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140* in this report (refer to section C 1.3 of the Pittwater 21 DCP of this report). In summary, the level of view loss to and from adjoining properties is not considered to be unreasonable.

- **Solar Access**

Comment:

Concern is raised that the proposed development will result in unreasonable levels of overshadowing to the south-western property (no. 3 King Edward Avenue, Bayview) particularly to living room and the rear outdoor deck areas that adjoin the subject site.

This matter has been addressed elsewhere within the report (refer to Section C 1.4 of the Pittwater 21 DCP in this report). In summary, the development allows for adequate sunlight access to private open space and living room windows throughout the winter solstice (21 June) between 9 am and 3pm. The proposal is consistent with the requirements under Section C 1.4 of the Pittwater 21 DCP.

- **Visual Privacy**

Comment:

Concern was raised about resulting privacy impacts from the dwelling house, particularly from first floor boundary facing windows. The proposal had been assessed against the privacy provisions under section C1.5 Visual Privacy of the Pittwater 21 DCP in this report. In summary, the proposal complies with the relevant provision under this clause, subject to conditions of consent. A window on both the east and south side of the dwelling house has been conditioned to be reduced in size or opaque to reduce the potential for any overlooking.

- **Bulk and Scale**

Comment:

The proposed new dwelling house allow is sympathetic to the existing topography on and landscape character of the surrounding area and nearby foreshore to the east, allow for substantial landscaping throughout the site, consistent with the numerical control under the Pittwater DCP 21. The proposal is consistent with the Height of Buildings Development Standard the primary control for moderating bulk and scale. The bulk and scale of the proposed dwelling house is not unreasonable, and doesn't warrant the refusal of the application.

- **Stormwater Management**

Comment:

Concern was raised in regards to the resulting stormwater runoff from the proposed works. The application was referred to the development engineers with suitable stormwater conditions imposed as part of this consent to mitigate stormwater impacts to adjoining properties.

- **Level of detail on submitted plans**

Comment:

Concern was raised from a neighbouring property owners in relation to the level of details

provided within the lodged plans. This included not detail of the existing pool filter and air conditioning units. The proposed application does not propose any changes to the swimming pool and as such there is onus on the applicant for this to be provided on the plans. In regards to air conditioning units and rainwater tanks, no details are provided on the plans. As such, a conditions of consent has been included as part of this recommendation to ensure no approval is provided for any air conditioning units or rainwater tanks as part of any consent.

- **On site parking**

Comment:

Suitable parking is provided on site. The proposed parking provisions and associated driveway works are consistent with relevant Australian standards and Council requirements.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application has been reviewed by Council's Landscape Officer who raised no objection to the development, subject to conditions contained within the recommendation of this report. The Landscape Officer provided the following comment: <i>"The Landscape Plan GJG-A11 revision C, as prepared by G.J.Gardner Homes is only a landscape calculations plan, and as such conditions are imposed including the requirement for canopy tree and screen planting.</i> <i>Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP 2014 Controls: B4.22 Preservation of Trees or Bushland Vegetation C1.1 Landscaping."</i>
NECC (Development Engineering)	The application has been reviewed by Development Engineer's who has provided the following comments: <i>"1. No flood concern.</i> <i>2. The site is not located within the Geotechnical Hazard Area.</i> <i>3. There is council pipeline in King Edward Avenue. The site drains to the front.</i> <i>4. The existing crossing is to be removed and a new crossing is to be constructed. Normal High profile is to apply. The proposed new crossing is too close to pit lintel. To satisfy Council's requirements, the new crossing should be located at least 0.5 meter away from the existing pit lintel.</i> <i>5. No OSD is required as the impervious area increase is less than 50 square meters in accordance with Pittwater DCP21</i>

Internal Referral Body	Comments
	<i>2014 Clause B5.7."</i>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 976323S).

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

Commitment	Required Target	Proposed
Water	40	44
Thermal Comfort	Pass	Pass
Energy	40	51

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.

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	8.2m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

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Built Form Control- Site area- 912.5m ²	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	6.45	0.8%	No
Rear building line	6.5m	30m	-	Yes
Side building line	2.5m	2.07- 3.9m	0- 17%	No
	1m	1.04-3.2m	-	Yes
Building envelope	3.5m (north east)	Outside envelope	3.76%	No
	3.5m (south west)	Inside envelope	-	Yes
Landscaped area	50% (456.25m ²)	62.4% (571.6m ²)	-	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 x 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
A4.4 Church Point and Bayview Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.5 Off-Street Vehicle Parking Requirements - Low Density Residential (Amended 14/11/15 See B6.3)	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
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D4.1 Character as viewed from a public place	Yes	Yes
D4.2 Scenic protection - General	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	No	Yes
D4.6 Side and rear building line	No	Yes
D4.8 Building envelope	No	Yes
D4.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes

Detailed Assessment

C1.3 View Sharing

Following a preliminary site inspection and assessment of views, Council in its assessment of the application formerly requested the application to erect height poles on the 26 February 2019.

Subsequently, the applicant erected height poles with certification of the height and location of the poles provided by a registered surveyor on 20 March 2019.

Merit consideration:

The proposal results in a disruption of views from a neighbouring property. The level of view loss is not unreasonable and has been assessed below with regard to the planning principle established by the NSW Land and Environment Court.

Council received one (1) submission from neighbouring properties in relation to view loss from the plans submitted. In determining the extent of potential view loss to adjoining and nearby properties, the four planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

1. Nature of the view affected

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

Comment to Principle 1:

No. 3 King Edward Avenue, Bayview

The nature of the view affected from this property are water views (Pittwater) to the east. The views would be filtered through existing development and vegetation as pictured below. A large portion of the existing views are to the front and over the top of the existing dwelling house (No. 1 King Edward Avenue).

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

"The second step is to consider from what part of the property the views are obtained. For

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

Comment to Principle 2:

Note: Views obtained from the sitting position are of a lesser quality than those obtained in the standing position.

No. 3 King Edward Avenue, Bayview

The views affected from this property are obtained over the side boundary of the site over the top and to the front of the dwelling house. Views are obtained from a standing position from the master bedroom dormer window.



Photo 1- First floor master bedroom looking north-east (standing).



Photo 2- First floor master bedroom looking north-east (standing).

3. Extent of Impact

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

Comment to Principle 3:

No. 3 King Edward Avenue, Bayview

This property currently enjoys partial water views from the first floor to the east. The views are obtained over the top of the existing dwelling house and through existing development. The views from the first floor are from the master bedroom east facing dormer windows that serve this room.

While it is expected that a minor view corridor will be maintained along the northern side of the proposed building from the first floor bedroom, the existing water views are expected to be lost in their majority.

Therefore, the extent of impact is considered to be severe.

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide

the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

The development provides compliance with the Height of Buildings Development Standard under Pittwater LEP 2014. Further, the development is consistent with the front and rear setback, with only a minor variation to the side boundary setback and building envelope on the western side of the house. The minor variation have been considered and supported based upon the development achieving consistency with the underlying objectives of Section 4.8 Building Envelope and Section 4.6 Side and rear Building line.

As noted above, the loss of views to Pittwater from No. 3 King Edward Avenue is severe. As noted above the water views from this property is currently obtained from the first floor master bedroom windows over a side boundary, and as such is highly vulnerable to any development east of the this property. Maintaining existing views from the master bedroom windows would essentially only allow for a single storey dwelling house to be built on the subject site.

In order to minimise the loss of views towards Pittwater to the north east of these windows the following condition of consent has been included as part of this recommendation:

The proposed roof over the front first floor balcony is to be a flat roof, or be a pitched with a maximum 2 degree roof pitch.

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

Reason: To maintain reasonable levels of views to Pittwater from neighbouring properties.

In consideration of this and having regards to the level of compliance with the Pittwater LEP and DCP, built from controls the application is supported on merit in this instance.

Accordingly, the provision of water views afforded to surrounding properties by the development is deemed to be acceptable.

C1.4 Solar Access

No. 3 King Edward Avenue, Bayview

Section C 1.4 Solar Access of the Pittwater 21 DCP requires the main private open space of adjoining dwellings receive a minimum of 3 hours sunlight between 9am and 3pm during the winter solstice (21 June). The primary private open space for the adjoining western dwelling (No. 3 King Edward Avenue, Bayview) is located to the rear of the site and includes a deck at ground floor level utilised for outdoor living and swimming pool to the rear of the property. The proposed outdoor living area will continue to enjoy sunlight access to private open space between the hours of 9am and 12pm, with no additional resulting impact. From 12pm onward, the level of overshadowing to the private open space is increased to a minor extent. The deck to the rear of the site is self shadowed at 3pm, with no impact from the proposed development at this time. The proposal complies with this control, allowing for at least 3 hours of sunlight between 9am and 3pm on June 21st.

Section C 1.4 Solar Access of the Pittwater 21 DCP requires windows to the principal living areas of

adjoining dwellings receive a minimum of 3 hours of sunlight (at least 50% of the glazed area of those windows) between 9am and 3pm during the winter solstice. The principle living area of the adjoining western property is located to the rear of the dwelling house. Two eastern facing windows directly serve this living area. The development will result in overshadowing to the living room windows at 9am, however at this time 50% of sunlight is maintained. From 9am to 12pm at least 50% of the living rooms windows will retain sunlight access. From 12pm onwards the proposed development does not impact upon the adjoining property.

Accordingly, the provision of solar access afforded to surrounding properties by the development is deemed to be acceptable.

C1.5 Visual Privacy

The privacy of surrounding properties has been considered in the assessment of this development application. From review of the plans, survey data and the surrounding properties, it is evident that there will be no adverse or unreasonable extent of overlooking from the development into surrounding properties, subject to conditions of consent.

The proposed windows off the activity room and bedroom on the western elevation (labelled as W21 and W25) have a direct view of private open space of the adjoining eastern dwelling houses (Nos. 1877 Pittwater Road). The minimal physical separation proposed in combination with the size and scale of the proposed windows exacerbates the potential for a overlooking between properties. To mitigate the potential of overlooking between both properties the following condition has been included as part of this recommendation.

Visual Privacy

The proposed first floor window (labelled as W21 and W25) is to have a sill height of at least 1.6m above finished floor level, or be fixed and frosted below 1.6m.

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

Reason: to protect the visual privacy of adjoining residences

The western side of the dwelling house has included a number of large size windows along the first floor facing the adjacent boundary. The level of overlooking is deemed reasonable given that the windows are from a bedroom and bathrooms and not living areas. The physical separation between the western facing windows and adjoining property boundary is sufficient in this residential setting (3.2m). Further, the windows have no direct view to first floor windows on the adjoining western property, nor will they overlook private open space.

Accordingly, the provision of privacy afforded to surrounding properties by the development is deemed to be acceptable.

D4.5 Front building line

The proposed building is setback 6.45m from the front boundary, a 0.8% variation to the numeric 6.5m requirement. The proposed area of non-compliance relate to the porch area to the front of the dwelling house. Given that the proposed porch is of a open style design, at single storey level and a negligible numeric non-compliance (5cm), the proposed variation is supported.

D4.6 Side and rear building line

The proposed development seeks a variation to the side line control by virtue of the following:

- 2.07- 3.9m north-east side setback, with the minimum requirement being at least 2.5, a variation of up to 17% to the control.

An assessment of the variations sought against the control objects as follows is required:

- To achieve the desired future character of the Locality.
- The bulk and scale of the built form is minimised.
- 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.
- To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.
- Substantial landscaping, a mature tree canopy and an attractive streetscape.
- Flexibility in the siting of buildings and access.
- Vegetation is retained and enhanced to visually reduce the built form.
- To ensure a landscaped buffer between commercial and residential zones is established.

Comment:

The variation sought relates to the wall adjoining the lounge room and porch to the north-eastern corner of the property. The proposed setback is sympathetic to other dwelling houses along the southern side of King Edward avenue and the overall Bayview area. The non-compliance is proposed at ground level with the whole first floor complaint ensuring a reasonable level of bulk and scale. It is noted within this report that amenity is to be reasonably reserved, the area of non-compliance does not contribute to loss of views and vistas from public and private places.

The development proposes significant landscaping, consistent with the relevant numeric control. No important existing vegetation features on site will be compromised by the proposed works.

As noted throughout the report the proposal will not unreasonable compromise reasonable levels of amenity, expected in this residential setting. The development responds appropriately to the cross fall across the site. Flexibility is provided in the situation because there are no unreasonable amenity impacts that would result from the proposed works.

Accordingly, given the acceptable impacts caused by the variations sought, the contravention to the controls can be supported in this particular circumstance.

D4.8 Building envelope

The proposed dwelling house encroaches the eastern elevation at a height of 0-0.2m, extending for a length of 3.7m. The variation equates to a 3.76% variation to the control requirement. An assessment of the variation sought against the control is as follows:

Objectives:

- To achieve the desired future character of the Locality.
- To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.

- To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.
- The bulk and scale of the built form is minimised.
- Equitable preservation of views and vistas to and/or from public/private places.
- To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties.
- Vegetation is retained and enhanced to visually reduce the built form.

Comment:

In consideration of the whole development on the site and surrounding development, the minor departure is not found to cause any adverse visual impact that would unreasonably impact upon the Bayview Locality. The building is proposed well within the 8.5m Height of Buildings development standard. The area of non-compliance would not readily be visible from the street, and as such the impact upon the streetscape is negligible.

The proposed non-compliance will not compromise views or vistas to and from public and private open places. The proposed development will not result in any unreasonable amenity impacts upon adjoining properties. Suitable landscaping is provided on site with no important vegetation features on site being proposed for removal.

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

Pittwater Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 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 DA2018/1836 for Demolition works and construction of a dwelling house on land at Lot 13 DP 16345, 1 King Edward Avenue, BAYVIEW, 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
GJG-A03/ Site Analysis/ Revision C	6 November 2018	G.J. Gardner Homes
GJG-A05/ Ground Floor Plan/ Revision C	6 November 2018	G.J. Gardner Homes
GJG-A06/ First Floor Plan/ Revision C	6 November 2018	G.J. Gardner Homes
GJG-A07/ Elevations/ Revision C	6 November 2018	G.J. Gardner Homes
GJG-A08/ Elevations/ Revision C	6 November 2018	G.J. Gardner Homes
GJG-A09/ Sections/ Revision C	6 November 2018	G.J. Gardner Homes

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 976323S	8 November 2018	Freeline Studio

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:

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Landscape Plans		
Drawing No.	Dated	Prepared By
Proposed Landscape Plan/ Revision C	6 November 2018	G.J. Gardner Homes

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

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

2. Prescribed Conditions

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

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

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

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

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

Reason: Legislative Requirement

3. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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. **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).

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

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

5. **Stormwater Disposal**

Engineering Plans in accordance with the requirements of section 3.1.2 Drainage of the Building Code of Australia Housing Provision and AS/NZS 3500.3.2:1998 - Stormwater Drainage – Acceptable solutions are to be submitted and certified by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to King Edward Avenue.

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

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

6. **Vehicle Driveway Gradients**

Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure suitable vehicular access to private property

7. **Vehicle Crossings Application**

A Driveway Levels and Formwork Inspections Application shall be made with Council subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council inspections relating to the driveway construction and must be paid.

Approval of the application by Council is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

8. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

9. **Timber Deck**

No approval is provided for any timber decking to the rear of the property.

Reason: No detail has been provided on submitted plans. (DACPLCPCC1)

10. **Privacy- Windows**

The proposed first floor windows (labelled as W21 and W25) are to have a sill height of at least 1.6m above finished floor level, or be fixed and frosted below 1.6m.

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

Reason: to protect the visual privacy of adjoining residences. (DACPLCPCC2)

11. **Balcony Roof**

The proposed roof over the front first floor balcony is to be a skillion roof with a maximum pitch of 2 degrees.

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

Reason: To maintain reasonable levels of views to Pittwater from neighbouring properties.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **Vehicle Crossings**

The provision of one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/2 NH and specifications. To satisfy Council's requirements, the new crossing should be located at least 0.5 meter away from the existing Council's pit & lintel. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be

restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

13. **Maintenance of Road Reserve**

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

Reason: Public Safety.

14. **Tree and vegetation protection**

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

i) all trees and vegetation within the site, nominated on the plans for retention, excluding exempt trees under the relevant planning instruments of legislation,

ii) all other 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, with particular reference to Section 4,

ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,

iii) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,

iv) 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,

v) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a Project Arborist on site,

vi) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,

vii) excavation for stormwater lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist,

viii) should either or all of v) vi) and vii) 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,

ix) 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, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,

x) 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.

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

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

Signed



Maxwell Duncan, Planner

The application is determined on 09/05/2019, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments