

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1036
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Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 1 DP 208499, 60 Cabarita Road AVALON BEACH NSW 2107 Lot LIC 556724, 60 Cabarita Road AVALON BEACH NSW 2107
Proposed Development:	Construction of a swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes - Zone C4 Environmental Living No - Zone W1 Natural Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Stephen Crosby & Associates Pty Ltd

Application Lodged:	02/08/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	14/08/2024 to 28/08/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 30,800.00
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PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

- Construction of a swimming pool and surrounding pool coping.

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 C4 Environmental Living

Pittwater Local Environmental Plan 2014 - Zone W1 Natural Waterways

Pittwater Local Environmental Plan 2014 - 5.7 Development below mean high water mark

Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area

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

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

Pittwater 21 Development Control Plan - D1.20 Scenic Protection Category One Areas

Pittwater 21 Development Control Plan - D15.12 Development seaward of mean high water mark

SITE DESCRIPTION

Property Description:	Lot 1 DP 208499 , 60 Cabarita Road AVALON BEACH NSW 2107 Lot LIC 556724 , 60 Cabarita Road AVALON BEACH NSW 2107
Detailed Site Description:	The subject site consists of one (1) battle-axe allotment located on the eastern side of Cabarita Road. The site is irregular in shape with a frontage of 3.96m along Cabarita Road and a depth of 87.175m. The site has a surveyed area of 860.0m². The site is located within the C4 Environmental Living zone from PLEP 2014 and accommodates a dwelling house, carport and boat shed. The site has access to a concrete ramp, timber jetty with a pontoon. The site slopes steeply from the front western boundary downwards to the rear eastern boundary over approximately 26 metres.

The site contains lawn areas, trees, and gardens.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by dwelling houses of similar scale. Directly to the east of the site is Pittwater Waterway.

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:

N0190/15

Development Application for Partial demolition of existing jetty, removal of whole of ramp and pontoon and construction of part replacement of the jetty, ramp and pontoon. There will also be a replacement of 3 berthing area piles, relocating the berthing area and the enlargement of berthing area to 9.0m x 5.0m.

Approved on 3 July 2015.

DA2021/0495

Development Application for Construction of an inclined passenger lift.

Approved on 27 May 2021.

DA2021/1123

Development Application for Alterations and additions to a dwelling house.

Approved on 27 September 2021 by Development Determination Panel.

APPLICATION HISTORY

Following the preliminary assessment of the application, on 23 August 2024 Council requested additional information in relation to the Retaining Wall & Concrete Slab Works, Inconsistency between

Master Plans and Survey Plan, Clause 7.8 Limited development on foreshore area of Pittwater Local Environmental Plan 2014, and Clause D1.14 Landscaped Area - Environmentally Sensitive Land of Pittwater 21 Development Control Plan.

The applicant submitted amended Master Plans and a Partial Structural Engineering Certificate on 5 September 2024.

It should be noted that the applicant emailed a amended Survey Plan on 30 August 2024, however this was not formally uploaded to the NSW Planning Portal. As such, the amended Survey Plans sent via email has not been assessed as part of the application in accordance with Clause 24(1)(c) of *Environmental Planning and Assessment Regulation 2021*.

The amended Master Plans constitute a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 23</u> of the EP&A Regulation 2021 requires a development application to be made by the owner of the land to which the development application relates, or another person, with the written consent of the owner of the land. The application has not been accompanied by written consent from the adjoining site being Crown Land as the proposed works are located below the mean high water mark and on the adjoining Crown Land. This will form part of the reasons for refusal. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement

Section 4.15 Matters for Consideration	Comments
	of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Retaining Wall & Concrete Slab Works, Inconsistency between Master Plans and Survey Plan, Clause 7.8 Limited development on foreshore area of Pittwater Local Environmental Plan 2014, and Clause D1.14 Landscaped Area - Environmentally Sensitive Land of Pittwater 21 Development Control Plan. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent, if the application were to be approved. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent, if the application were to be approved. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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 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 Matters for Consideration	Comments
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 application has been publicly exhibited from 14/08/2024 to 28/08/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The comments in this referral relate to the following applicable controls and provisions: - SEPP (Resilience and Hazards) 2021 - Coastal Environment Area - Pittwater LEP Clause 7.6 - Biodiversity Protection - Pittwater DCP Clause B4.7 - Pittwater Spotted Gum Forest - Endangered Ecological Community The proposal would take place in a previously disturbed area and is unlikely to impact upon native flora and fauna. However, conditions are recommended. Impacts to the marine environment will need to be assessed by the appropriate referral body. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10, 2.11 & 2.12); - Relevant LEP and DCP clauses. State Environmental Planning Policy (Resilience & Hazards) 2021

Internal Referral Body	Comments
	The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Stephen Crosby dated July 2024, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Pittwater LEP 2014 and Pittwater 21 DCP Estuarine Risk Management The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. On internal assessment, all proposed works are above the ELP for this dwelling which sits at 2.57m AHD. The pump box will sit below the EPL but will be electrically isolated above the EPL to avoid wave action. No other coastal issues identified.
NECC (Riparian Lands and Creeks)	Supported This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; • Water Management Act 2000; • Water Management (General) Regulation 2018; • Northern Beaches Water Management for Development Policy; and • Relevant LEP and DCP clauses The site abuts Pittwater estuary and is on land within the coastal environment area. As such, the proposal must not be likely to cause an adverse impact on the items listed in the Resilience and Hazards SEPP 2021. The proposal is within 40 metres of a watercourse mapped under the Water Management (General) Regulation 2018 Hydro Line spatial data and so is on waterfront land. If materials are delivered via water then no damage must be done to the offshore seagrass.

Internal Referral Body	Comments
Parks, reserves, beaches, foreshore	The development site adjoins Pittwater waterway that is located downslope of the property. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the waterway. The development is not detrimental to the landscape character of the adjoining waterway, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent, if the application were to be approved.
Aboriginal Heritage Office	Development Application No. DA2024/1036 Description: Construction of a swimming pool Address: 60 Cabarita Road AVALON BEACH Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

application hereunder.

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have can be recommended, if the application were to be approved.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 3 Coastal environment area

2.10 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 subject site is located within land identified as "coastal environment area". The proposed development is not likely to cause adverse impact to items listed under Clause 2.10(1)(a, b, c, d, f and g). However it is considered that the proposed development will result in an adverse impact Clause 2.10(1)(e) to the safe access along the foreshore area due to the location of the swimming pool below the mean high water mark that encroaches onto Crown Land. As the location of the proposed swimming is abutting and below the mean high water mark there is an impact upon the safe access to and along the foreshore area for members of the public, including persons with a disability.

- 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 subsection (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:

It is considered that the proposed development has not been designed, sited, and managed to avoid an adverse impact to items listed under Clause 2.10(1)(e). It is considered that the impact can be reasonably avoided through the relocation of the proposed swimming pool.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - 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,
 - iv) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, 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 subject site is located within land identified as "coastal use area". The proposed development is not likely to cause an adverse impact to items listed under Clause 2.11(1)(a)(ii, iv, and v). However, the proposal will result in an adverse impact to Clause 2.11(a)(i and iii). The impacts to the access to and along the foreshore area have been discussed above. However, in summary the proposed swimming pool and location abutting and below the mean high water mark will impact upon the access along the foreshore area for members of the public, including persons with a disability. The proposal will impact upon the visual amenity and scenic qualities of the coast as a result of the prominent location of the elevated swimming pool abutting and below the mean high water mark. The proposal does not allow for any separation between the mean high water mark and foreshore area and will result in an unacceptable visual impact. It is considered that the proposal has not been designed, sited, and managed to avoid any adverse impacts as detailed under Clause 2.11(1)(a)(i and iii). Furthermore, the proposed development has not taken into consideration the surrounding coastal and built environment including the bulk, scale and size of the proposed elevated swimming pool that is unacceptable.

Division 5 General

2.12 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 proposed development is not likely to cause an increased risk of coastal hazards on the land or other land.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

There is no certified coastal management program applicable to the land.

As such, it is considered that the application does not comply with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone C4 : Yes Zone W1 : No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone C4 : Yes Zone W1 : No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m (C4 Zone)	2.5m (Top of Pool Fence)	-	Yes
	4.0m (W1 Zone)	1.52m (Top of Pool)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.7 Development below mean high water mark	No
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	No
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The subject site is located in Zone C4 Environmental Living of Pittwater Local Environmental Plan 2014.

The proposal has been assessed against the objectives of zone as detailed below:

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

Comment:

The proposal will continue to provide for low-impact residential development in areas with special ecological, scientific, or aesthetic values.

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

Comment:

The residential development will not have any adverse effects on the special ecological, scientific or aesthetic values.

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

Comment:

The residential development will continue to provide a development of a low density and scale that will integrate with the landform, and landscape.

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

Comment:

The development will not impact upon any riparian, foreshore vegetation, or wildlife corridors.

Zone W1 Natural Waterways

The Survey Plan submitted with the application (prepared by Waterview Surveying Services dated 26 June 2024) details the concrete slab upon which the pool is located is below the Mean High Water Mark (MHWM). It is acknowledged that an amended Survey Plan was emailed on 30 August 2024, however as this was not formally uploaded to the NSW Planning Portal. As such, the emailed Survey Plan does not form content of the development application as detailed under Clause 24(1)(c) of *Environmental Planning and Assessment Regulation 2021*.

It is noted that a portion of the proposed swimming pool that is located on top of the concrete slab is located below the MHWM (see Figure 1) and therefore located in Zone W1 Natural Waterways of Pittwater Local Environmental Plan.

As such, the proposed swimming pool is prohibited in the Zone W1 Natural Waterways of Pittwater Local Environmental Plan 2014. The prohibition of the swimming pool in the Zone W1 Natural Waterways of Pittwater Local Environmental Plan 2014 will form part of the reasons for refusal.

5.7 Development below mean high water mark

(1) The objective of this clause is to ensure appropriate environmental assessment for development carried out on land covered by tidal waters.

(2) Development consent is required to carry out development on any land below the mean high water mark of any body of water subject to tidal influence (including the bed of any such water).

The submitted Survey Plan details the concrete slab located below the mean high water mark. It is noted that the Master Plans are inconsistent with the Survey Plan and detail the concrete slab to be located wholly within the site boundaries.

7.8 Limited development on foreshore area

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- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The proposed development is for a swimming pool and ancillary pool coping that is an exception as detailed under Clause 7.8(2)(b). Whilst a swimming pool is an exception the consent authority must be satisfied that the development meets the criteria with the remainder of Clause 7.8 as detailed below.

It should be noted that the proposed swimming pool is located above a concrete slab, and surrounded by retaining walls that have been built without prior approval and are not considered to constitute works that are exempt development. The works that have been undertaken including the concrete slab, retaining walls, and pathways in the rear of the site that appear to have been undertaken within the last 12 months. The works undertaken did not obtain any prior approval, and it should be noted that these works would necessitate an assessment against Clause 7.8, with which they fail. Had the retaining wall works and slab been proposed under a DA, a written Clause 4.6 variation request could have been made to justify the works within the foreshore area. A Structural Engineering Report (dated 18 July 2024 prepared by VDM Consulting Engineers Pty Ltd) and a subsequent Partial Structure Engineering Report (dated 4 September 2024 prepared by VDM Consulting Engineers Pty Ltd) were submitted with the application. These reports are noted, however the retaining wall works undertaken did not gain the required approval prior to the construction of the retaining walls.

It is considered if an application were made to Council prior to the undertaking of the concrete slab, retaining walls and pathways in conjunction with the pool, there would have been opportunity to locate the proposed swimming pool in a suitable location that is consistent with Clause 7.8, as the historical aerial photographs of the site show that there was opportunity to locate a swimming pool of similar proportions behind the foreshore building line or in a way in which it is visually recessive. However, in this circumstance the application has been assessed as proposed and it is found that the location of the swimming pool is unacceptable as detailed below.

Development consent must not be granted under this clause unless the consent authority is satisfied that:

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*

Comment:

The proposed development is inconsistent with the objectives of the W1 Natural Waterways zone where a portion of the proposed swimming pool is located. The proposed portion of the swimming pool located below the mean high water mark is located in the W1 Zone Natural Waterways Zone and as such is a prohibited form of development within this zone. The proposal is specifically not consistent with the objective, "*To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore*". The location of the proposed swimming pool abutting and below the mean high water mark results in unnecessary impact on public access along the foreshore area.

- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*

Comment:

The appearance of the proposed development is incompatible with the surrounding area, noting the proposal is for an elevated swimming pool structure, which due to its immediate location adjacent to the waterway is visually dominating and is a structure that is inconsistent with surrounding development. It is noted that No.58 Cabarita Road has a swimming pool, however this is located wholly within Crown Land and is not subject to Clause 7.8. The location of the swimming pool abutting and below the mean high water mark presents an unacceptable visual character that is incompatible with surrounding development.

- *the development will not cause environmental harm such as:*
 - *pollution or siltation of the waterway, or*
 - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - *an adverse effect on drainage patterns, or*
 - *the removal or disturbance of remnant riparian vegetation, and*

Comment:

The proposed development is not considered to cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation.

- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*

Comment:

The proposed development may result in conflict between people using the adjacent open space as the proposed swimming pool is abutting and below the mean high water mark. The proposal will not impact congestion or cause conflict on the waterway.

- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*

Comment:

The proposed development does not provide opportunities to provide public access along the foreshore, as the proposed swimming pool is located beneath the mean high water mark that encroaches into Crown Land. It is considered that the proposal presents disadvantages to the public access along the foreshore with the swimming pool location.

- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*

Comment:

The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land.

- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*

Comment:

N/A.

- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:

The proposed development has not considered the future impacts upon sea level rise with the location of the swimming pool located below the mean high water mark. It is considered that the proposal will not impact upon coastal erosion or recession, or change flooding patterns. However, the potential for future sea level rise has not been taken into consideration given the location of the swimming pool.

In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment:

The proposed development would obstruct the opportunity for continuous public access to and along the foreshore through and adjacent to the proposed swimming pool. The location of the proposed swimming pool encroaches below the mean high water mark, and as such may restrict public access in high tides. The proposed development would discourage public access above mean high water mark, and result in unacceptable foreshore area character with respect for existing environmental conditions such as high tides. Overall, it is considered that the proposed swimming pool would discourage continuous public access along the foreshore area, presenting an unacceptable outcome.

In summary, the inconsistency with Clause 7.8 will form part of the reasons for refusal.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m (West)	>6.5m	-	Yes
Rear building line	Foreshore Building Line (East)	Below Foreshore Building Line	N/A	No - see Clause 7.8 of PLEP 2014
Side building line	2.5m (North)	7.9m	-	Yes
	1m (South)	7.2m	-	Yes
Building envelope	3.5m (North)	Within envelope	-	Yes
	3.5m (South)	Within envelope	-	Yes

Landscaped area	60% (516.0m ²)	29% (249.4m ²)	51.67% (266.6m ²)	No
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	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
C1.17 Swimming Pool Safety	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D1.14 Landscaped Area - Environmentally Sensitive Land	No	No
D1.20 Scenic Protection Category One Areas	No	No
D1.21 Masterplan - Careel Bay	Yes	Yes
D15.12 Development seaward of mean high water mark	No	No

Detailed Assessment

D1.9 Side and rear building line

Clause D1.9 Side and rear building line of Pittwater 21 Development Control Plan, requires a side building line of 2.5 metres to one side and 1.0 metres to the other, and a rear building line above the foreshore building line.

The proposal is compliant with the side building line controls, however is inconsistent with the rear building line.

Under Clause D1.9 the following is outlined: *The Foreshore Building Line is as per the Foreshore Building Line Map in the Pittwater Local Environmental Plan 2014. The Foreshore Building Line takes precedence over this control.*

As such, a detailed assessment against the Foreshore Building Line has been conducted under Clause 7.8 Limited development on foreshore area of Pittwater Local Environmental Plan 2014 contained within this report.

D1.14 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

Clause D1.14 of the Pittwater 21 Development Control Plan requires a minimum of 60% (516.0m²) of the site area to be landscaped area.

The proposal presents a total of 29% (249.4m²) landscaped area, presenting a variation of 51.67% (266.6m²).

The Development Consent issued on site (DA2021/1123) approved a total of 34.5% (296.8m²) landscaped area that was consistent with the previous Development Consent (DA2021/0495).

It is noted that significant works have been undertaken at the rear of the site, including new retaining walls, pathways, and the provision of a concrete slab with no approval from Council. Whilst, the proposed swimming pool and surrounding pool coping does not result in a significant decrease of landscaped area, it is considered that the cumulative impact from the unauthorised works in conjunction with the further decrease of landscape from the proposed works is unacceptable.

Under Clause D1.14, variations can be made in the following circumstances:

Provided the outcomes of this control are achieved, the following may be permitted on the landscaped proportion of the site:

impervious areas less than 1 metre in width (e.g. pathways and the like);

i) for single dwellings on land zoned R2 Low Density Residential, R3 Medium Density Residential or E4 Environmental Living, up to 6% of the total site area ii) may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only (e.g. roofed or unroofed pergolas, paved private open space, patios, pathways and uncovered decks no higher than 1 metre above ground level (existing)).

However, it is considered that the proposal is inconsistent with the outcomes of the control, and as such the 6% variation is not applicable to the site.

The reduction in landscaped area, and inconsistency with the outcomes of the control as detailed below, and will form part of the reasons for refusal.

Merit consideration

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

- ***Achieve the desired future character of the Locality. (S)***

Comment:

The proposal is consistent with the desired future character statement of the Avalon Beach Locality.

The proposal satisfies this outcome.

- ***The bulk and scale of the built form is minimised. (En, S)***

Comment:

The proposed elevated swimming pool presents an unreasonable bulk and scale in comparison to a swimming pool that is integrated into the site. As such, it is considered that the elevated nature of the swimming pool coupled with the prominent location along the mean high water mark presents unreasonable bulk and scale.

The proposal does not satisfy this outcome.

- ***A reasonable level of amenity and solar access is provided and maintained. (En, S)***

Comment:

The proposal will not result in any adverse amenity impacts or solar access impacts to the site or surrounding sites.

The proposal satisfies this outcome.

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

Comment:

The proposal does not result in any further reduction in vegetation, however it is noted that the concrete slab, retaining wall works and pathway works that has been undertaken with no apparent approval has further reduced the landscaped area on site. Due to the location of the proposed swimming pool, there is not opportunity for any screen planting or vegetation to visually soften the built form.

The proposal does not satisfy this outcome.

- ***Conservation of natural vegetation and biodiversity. (En)***

Comment:

The proposal will not result in any adverse impacts to the natural vegetation or biodiversity of the site. Council's Bushland and Biodiversity Officer has reviewed the proposal and is supportable, subject to recommended conditions if the application were to be approved.

The proposal satisfies this outcome.

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

Comment:

The proposal presents an increase in hard surfaces that may increase stormwater runoff, increase soil erosion and siltation of natural drainage channels.

The proposal does not satisfy this outcome.

- ***To preserve and enhance the rural and bushland character of the area. (En, S)***

Comment:

The proposal presents further hard surfaces that is inconsistent with the rural and bushland character of the area.

The proposal does not satisfy this outcome.

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

Comment:

The proposal further reduced soft surfaces on site that will not assist with infiltration of water to the water table, minimising runoff or assisting with stormwater management.

The proposal does not satisfy this outcome.

D1.20 Scenic Protection Category One Areas

Description of non-compliance

Under Clause D1.20 Scenic Protection Category One Areas, the controls detail the following:
Screen planting shall be located between structures and boundaries facing waterways.

The location of the proposed swimming pool that is located below the mean high water mark does not allow for any screen planting between structures and boundaries facing waterways. It is considered that the location of the swimming pool results in a visual impact to Pittwater Waterway that is not supportable.

A detailed assessment has been conducted against the outcomes of the control. It is considered that the proposal is inconsistent with the outcomes of the control, and as such the inconsistency with

Clause D1.20 will form part of the reasons for refusal.

Merit consideration

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

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

Comment:

The proposal is consistent with the desired future character statement of the Avalon Beach Locality.

The proposal satisfies this outcome.

- ***Achieve the desired future character of the Locality. (En,S)***

Comment:

As detailed above the proposal will achieve the desired future character of the Locality.

The proposal satisfies this outcome.

- ***To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and the waterfront.(En,S).***

Comment:

It is considered the proposal will impact upon the visual significance of district and local views of Pittwater's natural topographical features including the waterfront. The proposed elevated swimming pool will detract for the view of the waterfront through the elevated structure that is located below the mean high water mark. It is considered that the proposed swimming pool will result in visual disturbance.

The proposal does not satisfy this outcome.

- ***Maintenance and enhancement of the tree canopy.(En,S)***

Comment:

The proposal will maintain the existing tree canopy on site.

The proposal satisfies this outcome.

- ***Colours and materials recede into a well vegetated natural environment.(En,S)***

Comment:

The proposed colours and materials of the proposed swimming pool are dark and earthy colours that are consistent with the natural environment.

The proposal satisfies this outcome.

- ***To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component (En, S)***

Comment:

It is considered that the elevated swimming pool will result in the built form being the primary component to the natural environment. It is noted along the rear of the site that the site includes an existing boat shed. The addition of the proposed swimming pool presents the built form as the predominant feature, whereas the site should be enhancing the natural environment of Pittwater.

The proposal does not satisfy this outcome.

- ***To preserve and enhance district and local views which reinforce and protect the Pittwater's bushland landscape and urban form to enhance legibility.***

Comment:

The proposal will not impact upon any district and local views when viewed from Pittwater Waterway. It is considered that the swimming pool that will sit out of the ground will not protect the Pittwater bushland landscape.

The proposal does not satisfy this outcome.

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

Comment:

The proposal will provide for appropriate view sharing from neighbouring sites. However, it is considered that the siting of the swimming pool, elevated design and absence of landscaping will result in an unacceptable outcome.

The proposal does not satisfy this outcome.

- ***To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.***

Comment:

The elevated swimming pool does not result in suitable visual integration and connectivity to the natural environment. The location and siting of the proposed swimming pool does not integrate into the site or natural environment.

The proposal does not satisfy this outcome.

- ***Development shall minimise visual impacts on the natural environment when viewed from any waterway, road or public reserve.***

Comment:

The elevated nature of the swimming pool presents unacceptable visual impacts on the natural environment when viewed from the waterway. The location of the swimming pool does not allow for any suitable screening to soften the built form, and as such the elevated swimming pool detracts from the natural environment.

The proposal does not satisfy this outcome.

D15.12 Development seaward of mean high water mark

Description of non-compliance

Under Clause D15.12 Development seaward of the mean high water mark details the following:
All new buildings are to be located landward of mean high water mark.

Only structures associated either with the accommodation, servicing or provision of access to boats shall be permitted seaward of mean high water mark.

In instances where it is proposed to alter, extend or rebuild existing buildings seaward of mean high water mark, any further encroachment of such buildings onto the waterway is to be minimised. Where development seaward of mean high water mark is proposed to occur, especially during the refurbishment of existing structures, proponents need to ensure that the structure will not harm marine vegetation, and must consult with the Department of Primary Industries.

Developments are required to ensure that public access is maintained and provided for along the foreshore.

The Survey Plan to which the application relies details a concrete slab to be located below the mean high water mark. As specified in the control above all works are to be located landward of the mean high water mark. Furthermore, the proposed swimming pool would encroach within the foreshore area that will impact upon public access along the foreshore area.

It is considered that the location of the proposed swimming pool is not acceptable, and Owners Consent from Crown Land has not been submitted for the works located below the mean high water mark. The location of the swimming pool below the mean high water mark, lack of Owners Consent, and obstruction to the public access along the foreshore area will form part of the reasons for refusal.

Merit consideration

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

- ***To ensure minimal adverse impact on the water quality hydrodynamics and estuarine habitat of Pittwater. (En)***

Comment:

The proposal has been reviewed by Council's Coast and Catchment Officer, and Council's Riparian Lands and Creek Officer. It is considered that the proposal will result in minimal adverse impact on the water quality hydrodynamics and estuarine habitat of Pittwater.

The proposal satisfies this outcome.

- ***To ensure new buildings are not susceptible to flooding. (S)***

Comment:

The proposed swimming pool will not be susceptible to flooding.

The proposal satisfies this outcome.

- ***To ensure public access is maintained and provided for along the foreshore (En)***

Comment:

The proposal will encroach upon Crown Land below the mean high water mark and impact upon the public access along the foreshore area. As such, the proposal is not supportable due to the encroachment of the structure below the mean high water mark with the lack of Owners Consent and obstruction to public access.

The proposal does not satisfy this outcome.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2024/1036 for the Construction of a swimming pool on land at Lot 1 DP 208499,60 Cabarita Road, AVALON BEACH, Lot LIC 556724,60 Cabarita Road, AVALON BEACH, for the reasons outlined as follows:

1. **Pursuant to Section 4.15(1)(a)(iv) of the of the Environmental Planning and Assessment Act 1979, the application has not been accompanied by the required information for a Development Application.**

Particulars:

- i. Section 23(1) of the Environmental Planning and Assessment Regulation 2021 provides:
 - (1) *A development application may be made by—*
 - (a) *the owner of the land to which the development application relates, or*
 - (b) *another person, with the written consent of the owner of the land.*
- ii. The proposed swimming pool is located on a structure which is partially below the mean high water mark on Crown Land as detailed on the submitted Survey Plan.
- iii. No written consent of the owner of the adjoining Crown Land has been provided with the Development Application.
- iv. In the absence of land owners consent from the owner of the Crown Lands to the making of the development application the Consent Authority is not empowered to approve the application.

2. **Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Resilience and Hazards) 2021.**

Particulars:

- i. The proposed swimming pool is inconsistent with Clause 2.10(1)(e) and Clause 2.11(1)(a)(i) that requires safe access along the foreshore for a member of the public, including persons with a disability.
- ii. The encroachment of the swimming pool below the mean high water mark will result in adverse impacts and restricted access in the foreshore area.
- iii. The proposed swimming pool is inconsistent with Clause 2.11(1)(a)(iii) that requires the visual amenity and scenic qualities of the coast to not be adversely impacted.
- iv. The proposed elevated swimming pool and location abutting and below the mean high water mark will impact upon the visual amenity and scenic qualities of the coast due to the elevated nature of the swimming pool, which is bulky and the absence of physical separation from the mean high water mark and foreshore area.
- v. The proposed swimming pool is inconsistent with Clause 2.11(1)(c) and has not taken into consideration the surrounding coast and built environment, and the bulk, scale and size of the proposed swimming pool.

3. **Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is not permissible within the W1 Zone under Pittwater**

Local Environmental Plan 2014.

Particulars:

- i. The application seeks consent for the construction of a swimming pool on a structure that is partially located on land zoned W1 Natural Waterways of Pittwater Local Environmental Plan 2014.
- ii. The proposed swimming pool is a prohibited form of development within the W1 Natural Waterways zone.

4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.8 Limited development on foreshore area of the Pittwater Local Environmental Plan 2014.

Particulars:

- i. The proposed swimming pool is inconsistent with Clause 7.8(3)(a) that requires the swimming pool to be consistent with the objectives of the W1 Natural Waterway zone. As swimming pools are a prohibited form of development in the W1 Natural Waterways zone, the proposal is inconsistent with and not capable of satisfying the objectives of the zone.
- ii. The proposed swimming pool is inconsistent with Clause 7.8(3)(c) as the elevated nature of the swimming pool is incompatible with surrounding development, and will visually detract from the foreshore, through its elevated form and in ability for it to be landscaped or screened in anyway.
- iii. The proposed swimming pool is inconsistent with Clause 7.8(3)(e) as the proposal does not provide opportunities for continuous public access along the foreshore due to the encroachment of the proposed swimming pool below the mean high water mark.
- iv. The proposed swimming pool is inconsistent with Clause 7.8(3)(h) as the proposal has not considered future sea level rising with the location of the swimming pool abutting and encroaching on the mean high water mark.
- v. The proposed swimming pool is inconsistent with Clause 7.8(4) as the proposal does not encourage continuous public access to and along the foreshore through or adjacent to the proposed development or public access above the mean high water mark.

5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1.14 Landscaped Area - Environmentally Sensitive Land of the Pittwater 21 Development Control Plan.

Particulars:

- i. Clause D1.14 requires 60% (560.0m²) of the site to be landscaped.
- ii. The proposal presents a total of 29% (249.4m²) landscaped area, presenting a variation of 51.67% (266.6m²).
- iii. Significant works have been undertaken at the rear of the site, including new retaining walls, pathways, and the provision of a concrete slab with no approval from Council.
- iv. The proposed swimming pool and surrounding pool presents a further decrease of landscaped area and it is considered that the cumulative impact from the unauthorised works in conjunction with the further decrease of landscape from the proposed works is inconsistent with the outcomes of the control.

6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1.20 Scenic Protection Category One Areas of the Pittwater 21 Development Control Plan.

Particulars:

- i. Clause D1.20 requires screen planting to be located between structures and boundaries facing waterways.
- ii. As the proposed swimming pool is abutting and located below the mean high water mark, there is no opportunity for screen planting between the proposed swimming pool and boundary facing Pittwater Waterway.
- iii. The proposal will detract from the visual significance of district and local views of Pittwater's waterfront due the elevated swimming pool located along and below the mean high water mark.
- iv. The proposal does not maintain or enhance the natural environment of Pittwater as the predominant feature being the built form due to the elevated swimming pool along the foreshore area.
- v. The proposed swimming pool does not provide for visual integration and connectivity to the natural environment due to the elevated nature and prominent location along the mean high water mark.
- vi. The elevated nature of the swimming pool presents unacceptable visual impacts on the natural environment when viewed from the waterway. The location of the swimming pool does not allow for any suitable screening to soften the built form, and as such the elevated swimming pool detracts from the natural environment.

7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D15.12 Development seaward of mean high water mark of the Pittwater 21 Development Control Plan.

Particulars:

- i. Clause D15.12 requires all new buildings are to be located landward of mean high water mark.
- ii. The proposed swimming pool is partially located below the mean high water mark, and therefore is inconsistent with the control.
- iii. The proposed swimming pool will encroach upon Crown Land below the mean high water mark and obstruct upon the public access along the foreshore area.

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

Signed



Stephanie Gelder, Planner

The application is determined on 18/09/2024, under the delegated authority of:



Adam Richardson, Manager Development Assessments