

NATIONAL FLOODPLAIN MANAGEMENT CONFERENCE 20-22 MAY, BRISBANE

I attended the Floodplain Management Conference on 20th - 22nd May in Brisbane as the Councillor delegate for Pittwater Council. This conference had 380 delegates representing 165 organizations from across Australia and overseas. The theme for this year's conference was 'Striving to Build a Flood Resilient Australia'.

The Hon Michael Keenan, Federal Minister for Justice spoke to the conference via video. He made reference to the Productivity Commission and the National Audit Office which highlighted that 97% of disaster recovery and only 3% on mitigation. Minister Keenan indicated that as a result of the two reports he would be discussing the recommendations with state and territory governments and while the funding imbalance needs to be addressed he is not proposing any severe cuts to recovery funding. He also made the point that replacing like for like flood damaged infrastructure is a waste of money and leads to the erosion of the asset base.

It is important to note that the Productivity Commission report recommends increased funding for flood mitigation it also recommends shifting the financial burden onto states and ultimately councils.

There were a number of keynote speakers John Curtain (UK Environment Agency) and Professor Bas Jonkman from Technical University, Delft, Netherlands. These speakers gave comprehensive case studies providing an international perspective to flood risk management. These case studies showed that both the UK and Netherlands Governments invest significantly higher in flood mitigation than in flood recovery.

In NSW Local Government is the major manager of flood management. The Insurance Council said 'Local Government is the organisation that best understands flood risk and can be an advocate for reasonableness with flood risk. It is suggested that the insurance companies should liaise with Local Government to understand real risk.'

Unfortunately NSW has no benchmarks for climate change. The NSW Government has funded \$16.3 grants for flood studies to 33 councils. However, the average flood damage bill in NSW is \$240 per annum. SEPP developments have resulted in properties being built in inappropriate flood locations, as private certifiers approve development under exempt and complying development which only requires flood assessments if the development is location in either high hazard, floodway, flood storage, flow path and/or high risk area, if not then the development does not require a flood assessment -particularly in rural areas.

The insurance industry was well represented at the conference. It was stated that where flood studies have been done disclosure of flood risk usually leads to a discount in premiums of an average of 4%. There is no evidence of property values falling after disclosure. New Zealand studies indicated that property values actually go up after declaration probably due to clarity of risk.

The conference had a number of professional workshops in the use of rainfall data. It was agreed that there is a need to develop a national standard for flood measurement and rainfall data.

There was a wide variety of information sessions including case studies, technical application of data, emergency flood planning, early warning systems, flood aps, flood forecasting, levee management, detention basins and many more.

Dr Melanie Schwecke from Pittwater Council presented a case study 'Risk to Life – To Shelter or to Flee' based on development in the North Narrabeen floodplain.

Some of the things that I learned:-

- Pittwater Council is considered a model council because of the quality and currency of its flood studies.
- Pittwater is in the top 50 LGAs in Australia for flood risk according to NRMA.
- No evidence that climate change is responsible for increasing the frequency or financial cost associated with natural disasters.
- Climate extremes are normal.
- Deaths due to natural disaster on a per capita basis have slightly fallen in Australia.
- Key thing influencing cost of natural disasters is intensification of development in inappropriate locations and increased exposure.
- When doing flood studies it is important to note-
- People tend to discount low probability flood risk.
- People tend to be over confident in ability to cope with disasters
- People will discount flood risk if getting benefits from living close to bush, rivers or coasts.
- Death is something that happens to other people.

Ian White
COUNCILLOR

Sustainable Towns and Villages Committee

12.0 Sustainable Towns and Villages Committee Business

C12.1	N0444/14 - 213 Whale Beach Road Whale Beach - Demolition of existing dwelling and construction of new single dwelling, garage and pool
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Meeting: Sustainable Towns & Villages Committee

Date: 20 July 2015

COMMUNITY STRATEGIC PLAN STRATEGY: Land Use & Development

COMMUNITY STRATEGIC PLAN OBJECTIVE:

- To deliver a comprehensive suite of development controls that improve the liveability of the area

DELIVERY PROGRAM ACTION:

- To provide an effective development assessment and determination process
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1.0 EXECUTIVE SUMMARY

1.1 SUMMARY

The Development Unit at its meeting held on 9 July 2015 considered the Assessing Officer's report (refer **Attachment 1**) for determination of Development Application N0444/14 for the demolition of an existing dwelling and construction of a new single dwelling, garage and pool at 213 Whale Beach Road, Whale Beach NSW 2107.

1.2 This application has been called to Council by Cr Grace.

1.3 Two (2) objectors and three (3) owners / applicants were present at the meeting. The Development Unit considered the issues raised by the objectors and the applicant's representatives as well as the issues addressed in the Assessing Officer's report and supported the Officer's recommendation for approval subject to the conditions contained in the draft consent.

2.0 RECOMMENDATION

That the Development Officer's recommendation be endorsed and Development Application N0444/14 - 213 Whale Beach Road, Whale Beach NSW 2107 for the demolition of the existing dwelling and construction of new single dwelling, garage and pool be granted development consent in accordance with the conditions contained in the draft conditions of consent.

3.0 BACKGROUND

3.1 PURPOSE

To seek endorsement of the Development Unit's recommendation following consideration of Development Application N0444/14 for the demolition of an existing dwelling and construction of a new single dwelling, garage and pool at 213 Whale Beach Road, Whale Beach NSW 2107.

3.2 BACKGROUND

The Development Unit at its meeting held on 9 July 2015 considered the Development Officer's report (refer **Attachment 1**) for determination of Development Application N0444/14.

The Unit was addressed by the objectors and by the applicant's representatives and after consideration of all the issues raised resolved to support the Assessing Officer's recommendation to the Unit for approval.

3.3 POLICY IMPLICATIONS

Cr Grace has called the matter to Council in accordance with Council Policy.

3.4 RELATED LEGISLATION

Council is the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979.

3.5 FINANCIAL ISSUES

3.5.1 Budget

No implications unless Council's decision is challenged in the Land and Environment Court.

3.5.2 Resources Implications

No implications.

4.0 KEY ISSUES

- All the key issues are addressed in the assessing officer's report

5.0 ATTACHMENTS / TABLED DOCUMENTS

Attachment 1: Assessing Officer's report to the Development Unit meeting of 9 July 2015.

6.0 SUSTAINABILITY ASSESSMENT

The relevant sustainability assessments have been addressed in the attached assessing officer's report.

Report prepared by

Warwick Lawrence
MANAGER, ADMINISTRATION & GOVERNANCE

**SUBJECT: N0444/14 - 213 Whale Beach Road, Whale Beach NSW 2107
- Demolition of existing dwelling and construction of new
single dwelling, garage and pool**

Meeting: Development Unit

Date: 9 July 2015

SUMMARY OF RECOMMENDATION

Consent with Conditions

REPORT PREPARED BY:	Cheryl Williamson
APPLICATION SUBMITTED ON:	5/12/2014
APPLICATION SUBMITTED BY:	HEATHER BUTTROSE ASSOCIATES
OWNER(S):	TARA MACKAY

RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Development Application N0444/14 for demolition of existing dwelling and construction of new single dwelling, garage and pool at 213 Whale Beach Road, Whale Beach NSW 2107 subject to the draft conditions of consent attached.

Report prepared by
Cheryl Williamson, Senior Planner

Andrew Pigott
MANAGER, PLANNING & ASSESSMENT

SUBJECT: N0444/14 - 213 WHALE BEACH ROAD, WHALE BEACH NSW 2107 demolition of existing dwelling and construction of new single dwelling, garage and pool

Determination Level:

Development Unit

SUMMARY OF RECOMMENDATION:

CONSENT WITH CONDITIONS

REPORT PREPARED BY:

Cheryl Williamson

APPLICATION SUBMITTED ON:

5 December 2014

APPLICATION SUBMITTED BY:

HEATHER BUTTROSE ASSOCIATES
1/57 COWPER WHARF ROAD
WOOLLOOMOOLOO NSW 2011

OWNER(S):

MS TARA MACKAY

1.0 SITE DETAILS

The site is known as 213 Whale Beach Road, Whale Beach and comprises two lots legally identified as Lot 20 in DP 11067 and Lot B in DP 395767. Both lots are trapezoidal in shape. Lot B of DP 395767 has an area of 801m² and is located directly to the east (lower side) of Whale Beach Road while Lot 20 of DP 11067 has an area of 346m² and does not have a public frontage, being located between Lot 20 and 2-8 The Strand, located to the east. The two lots are currently in use as one site (total area of 1147m²) and this combined site comprises an existing two storey dwelling with parking structure located within the western (front) portion of the site.

Vehicular and pedestrian access is currently gained via an existing concrete driveway within the 21 metre wide frontage to Whale Beach Road. The total combined site experiences a decrease in level of 16.4 metres from west to east resulting in a 32% or 18 degree slope. The section of land underneath the proposed development is less steep however, with a 4.38 metre decrease, resulting in a 19% or 10 degree slope. Surrounding land uses are also residential in nature, and the beach reserve and car park of Whale Beach is located approximately 12 metres to the east.

2.0 PROPOSAL IN DETAIL

The application seeks consent for the demolition of the existing dwelling and parking structure and the construction of a new dwelling of two and three storeys including a double garage at the front of the site and a swimming pool to the rear. Associated landscaping works are also proposed.

3.0 STATUTORY AND POLICY CONSIDERATIONS

The two lots are both zoned E4: Environmental Living under Pittwater Local Environmental Plan 2014. Pursuant to the land use table in Part 2 of this instrument, dwelling houses and ancillary residential development are permissible with consent. The lot immediately to the east of the site is zoned RE1: Public Recreation. This site does not form part of the development area and no works are proposed on or immediately adjacent to this land.

The following relevant state, regional and local policies and instruments apply:

- Environmental Planning and Assessment Act, 1979 (the Act)
- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)
- State Environmental Planning Policy No 71 - Coastal Protection (SEPP 71)
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
 - Acid Sulphate Soils Map - Class 5
 - Geotechnical Hazard Map - Hazard H1
 - Height of Buildings Map - 8.5 metres
- Pittwater 21 Development Control Plan (P21 DCP)
 - Palm Beach Locality
 - Geotechnical Risk Management Policy for Pittwater
 - Areas of habitat mapped as flora and fauna conservation areas category 2
- Scenic Streets Register

Variation to development standards:

The application does not involve the variation of a development standard. Refer to the discussion of clause 4.3 relating to building height.

4.0 BACKGROUND

There are no historic development consents recorded for the site which directly impact upon the development now proposed.

The development application was lodged on 5 December 2014 and was referred to Council's Development Engineer, Natural Resources Officer and Reserves and Recreation team for comments and/or recommendations. The application was publicly notified in accordance with Council's Notification Policy and a site inspection of the subject site was carried out on 23 December 2014. Site inspections from neighbouring properties 182, 184 and 211 Whale Beach Road were also carried out during the course of the application to establish the likely impacts of the development on these neighbouring properties.

During a preliminary review of the file it was noted that a breach of the height control was proposed, but that no clause 4.6 variation request had been submitted. This document was requested on 22 December 2014 and a written request was submitted by the applicant on 23 December 2014.

A letter requesting further additional and amended information was subsequently sent to the applicant on 2 February 2015 and further documentation was received on 24 February 2015. It is these amended documents (revision B) which form the basis for the below assessment.

The application was considered at the Development Unit meeting dated 25 June 2015. The determination of the matter was deferred for the following reasons:

1. The Applicant to be given the opportunity to respond formally to the draft requirements of condition B1(a) and for the assessment staff to give further consideration to that submission and the requirements of the Development Control Plan (DCP).

2. The Assessing Officer to give further consideration of the requirement of condition B1(c) (iii).

Additional information was received on 26 June 2015 comprising:

- ***Letter from Urbis***
- ***Letter from Heather Buttrose Associates***
- ***Drawings prepared by Heather Buttrose Architects referenced RFI 00 - RFI 08***

5.0 NOTIFICATION

The application was notified to nine (9) adjoining property owners for a period of 21 days from 12 December 2014 to 2 January 2015 (extended from the standard 14 days due to the Christmas break). During this time, three (3) submissions were received, from nos 180 and 182 Whale Beach Road (both on the opposite side of Whale Beach Road to the west) and 211 Whale Beach Road (directly to the north). These submissions raised concerns with regard to the following:

- Errors within the submitted documentation
- Breach of building height control
- Request for height poles to be erected
- Breach of building envelope control
- Glare from reflectivity of the roof
- Loss of view from public domain
- Loss of view from neighbouring properties
- Loss of visual privacy
- Breach of set back requirements (not specified which)
- Harm to the character of the area/excessive bulk
- Impact on existing trees
- Lack of communication from applicant prior to lodgement
- Concern regarding excavation in close proximity to the boundaries of neighbouring properties

While communication between applicant and neighbours is encouraged by Council, there is no statutory requirement for this to take place. Council has notified adjoining properties in accordance with the adopted Notification Policy and a site notice was erected at the front of the site to ensure that interested parties were made aware of the application. The remainder of the above listed matters are discussed within the below report.

Following the receipt of amended and additional information on 24 February 2015, the application was renotified to the same nine properties for a further 14 days between 26 February 2015 and 12 March 2015, and further comments invited. As a result of this renotification a further three (3) submissions were received, from the owners of 211 Whale Beach Road, from a Planning Consultant on behalf of 182 Whale Beach Road, and from the owners of 184 Whale Beach Road. These further submissions raise the following concerns relating to the revision B amended application drawings:

- Building height
- Loss of view from private property
- Loss of visual privacy
- Loss of sunlight
- Breach of building envelope control
- Lack of detail of proposed materials and finishes

Each of the above matters are discussed within the below report.

6.0 ISSUES

- 4.3 Height of buildings
- 5.10 Heritage conservation
- 7.2 Earthworks
- 3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings
- 3.6 State Environment Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs)
- A1.7 Considerations before consent is granted
- A4.12 Palm Beach Locality
- B3.6 Contaminated Land and Potentially Contaminated Land
- B4.3 Flora and Fauna Habitat Enhancement Category 2 Land
- B6.1 Access Driveways and Works on the Public Road Reserve - Low Density Residential
- B8.1 Construction and Demolition - Excavation and Landfill
- C1.1 Landscaping
- C1.2 Safety and Security
- C1.3 View Sharing
- C1.4 Solar Access
- C1.5 Visual Privacy
- C1.7 Private Open Space
- C1.9 Adaptable Housing and Accessibility
- C1.13 Pollution Control
- C1.23 Eaves
- D12.1 Character as viewed from a public place
- D12.3 Building colours and materials
- D12.5 Front building line
- D12.6 Side and rear building line
- D12.8 Building envelope
- D12.10 Landscaped Area - Environmentally Sensitive Land
- D12.12 Fences - Flora and Fauna Conservation Areas
- D12.14 Scenic Protection Category One Areas

7.0 COMPLIANCE TABLE

- T - Can the proposal satisfy the technical requirements of the control?
- O - Can the proposal achieve the control outcomes?
- N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
1.9A Suspension of covenants, agreements and instruments			Y	Y	Y
Zone E4 Environmental Living			Y	Y	Y
4.3 Height of buildings		Refer to Section 8.0.	Y	Y	N
4.6 Exceptions to development standards		Refer to discussion of 4.3 in Section 8.0.	-	-	-
5.10 Heritage conservation		Refer to Section 8.0	Y	Y	Y
7.1 Acid sulfate soils			Y	Y	Y
7.2 Earthworks		Refer to Section 8.0.	Y	Y	Y
7.7 Geotechnical hazards			Y	Y	Y
7.10 Essential services			Y	Y	Y
Pittwater 21 Development Control Plan 2014					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings		Refer to Section 8.0.	Y	Y	N
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
3.6 State Environment Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs)		Refer to Section 8.0.	Y	Y	Y
4.1 Integrated Development: Water Supply, Water Use and Water Activity			-	-	-
4.6 Integrated Development: Aboriginal Places of Heritage Significance and Aboriginal Objects			-	-	-
4.8 Integrated Development - Roads			-	-	-
5.3 Referral to NSW Office of Environment and Heritage			-	-	-
5.4 Referral to the NSW Office of Water and NSW Health			-	-	-
A1.7 Considerations before consent is granted		Refer to Section 8.0.	Y	Y	Y
A4.12 Palm Beach Locality			N	Y	N
B1.3 Heritage Conservation - General		Refer to discussion of 5.10 in Section 8.0.	Y	Y	Y
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.1 Landslip Hazard			Y	Y	Y

Control	Standard	Proposal	T	O	N
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land		Refer to Section 8.0.	Y	Y	N
B5.2 Wastewater Disposal			Y	Y	Y
B5.3 Greywater Reuse			-	-	-
B5.4 Stormwater Harvesting			Y	Y	Y
B5.7 Stormwater Management - On-Site Stormwater Detention			Y	Y	Y
B5.8 Stormwater Management - Water Quality - Low Density Residential			Y	Y	Y
B5.10 Stormwater Discharge into Public Drainage System			Y	Y	Y
B6.1 Access Driveways and Works on the Public Road Reserve - Low Density Residential		Refer to Section 8.0.	Y	Y	Y
B6.3 Internal Driveways - Low Density Residential		Refer to discussion of B6.1 in Section 8.0.	Y	Y	Y
B6.5 Off-Street Vehicle Parking Requirements - Low Density Residential	Min. 2 spaces	2 spaces plus driveway.	Y	Y	Y
B8.1 Construction and Demolition - Excavation and Landfill		Refer to Section 8.0.	Y	Y	N
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
C1.1 Landscaping		Refer to Section 8.0.	N	Y	Y
C1.2 Safety and Security		Refer to Section 8.0.	N	Y	Y
C1.3 View Sharing		Refer to Section 8.0.	Y	Y	N
C1.4 Solar Access		Refer to Section 8.0.	Y	N	N
C1.5 Visual Privacy		Refer to Section 8.0.	N	Y	N
C1.6 Acoustic Privacy			Y	Y	Y
C1.7 Private Open Space		Refer to Section 8.0.	Y	Y	Y
C1.9 Adaptable Housing and Accessibility		Refer to Section 8.0.	-	-	-
C1.12 Waste and Recycling Facilities			Y	Y	Y
C1.13 Pollution Control		Refer to Section 8.0.	Y	Y	Y
C1.14 Separately Accessible Structures			-	-	-

Control	Standard	Proposal	T	O	N
C1.16 Development ancillary to residential accommodation - Tennis Courts			-	-	-
C1.17 Swimming Pool Safety			Y	Y	Y
C1.19 Incline Passenger Lifts and Stairways			-	-	-
C1.23 Eaves		Refer to Section 8.0.	N	Y	Y
C1.24 Public Road Reserve - Landscaping and Infrastructure			-	-	-
C1.25 Plant, Equipment Boxes and Lift Over-Run			Y	Y	Y
D12.1 Character as viewed from a public place		Refer to Section 8.0.	Y	Y	N
D12.3 Building colours and materials		Refer to Section 8.0.	Y	Y	N
D12.5 Front building line		Refer to Section 8.0.	Y	Y	N
D12.6 Side and rear building line		Refer to Section 8.0.	N	Y	N
D12.8 Building envelope		Refer to Section 8.0.	N	N	N
D12.10 Landscaped Area - Environmentally Sensitive Land		Refer to Section 8.0.	N	Y	Y
D12.12 Fences - Flora and Fauna Conservation Areas		Refer to Section 8.0.	N	N	Y
D12.13 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y
D12.14 Scenic Protection Category One Areas		Refer to Section 8.0.	Y	Y	Y
State Environmental Planning Policies and other					
SEPP (Building Sustainability Index: BASIX) 2004			Y	Y	Y

8.0 DISCUSSION OF ISSUES

• 4.3 Height of buildings

Submissions have been received from neighbouring properties relating to a breach of the 8.5 metre height control, and stating that the 10 metre variation to this control should not be relied upon as an erroneous slope of the land has been stated. The submissions include the request for height poles to be erected to enable a better appreciation of the likely impacts of the proposed development; height poles were erected during the course of the application and are visible within photographs provided elsewhere within this report.

The numerical requirement of this control specifies a maximum building height of 8.5 metres for the subject site.

A range of contradictory documents have been submitted with regard to building height throughout the course of the application. The originally submitted Statement of Environmental Effects, while not specifically nominating the sought building height, refers to clause 4.3 (2D) which permits consideration of a building height up to 10 metres if the proposed building footprint is situated on a slope that is in excess of 16.7 degrees or 30%. The application was not accompanied by a clause 4.6 exception statement which would permit consideration of such a variation however, and in any case the slope of the site underneath the proposed building has been identified from levels on the submitted survey plans as approximately 10 degrees (19%) which does not trigger the provisions of this part of the clause. Further, the originally submitted architectural drawings included a black line annotated 'existing ground line to be retained' which would have placed the uppermost part of the development at 9.1 metres.

The applicant was requested to clarify this, and to provide a clause 4.6 exception statement for any part of the proposal which exceeded the 8.5 metre height control. A statement was received on 23 December 2014 placing the sought building height at 8.7 metres and providing reasons why a variation should be granted in this instance. On 27 March 2015, a further letter was submitted which placed the sought building height at 8.2 metres, and again referred to the applicable building height for the site as being 10 metres.

The LEP specifies that building height is to be measured from existing ground level (and not from natural ground level, as was the case with the previous set of planning controls). In this case, an existing dwelling house exists on the site, much of which is located lower than the surrounding ground level; the submitted survey plans show that the existing covered parking area at the front of the property is located at RL 20.30, and that the lower of the two levels of the existing dwelling is located at RL 18.40. The proposed replacement dwelling is located largely within the same footprint as this existing dwelling, and is not as wide as this existing dwelling, meaning that the relevant existing ground levels can be easily understood. The proposed dwelling extends approximately 2.4 metres further to the rear than the existing dwelling however, and so the grassed ground level of RL 17.82 has been taken as the relevant existing ground level for the assessment of this section of the building. Figure 1 below demonstrates the existing ground levels relative to the development now proposed:

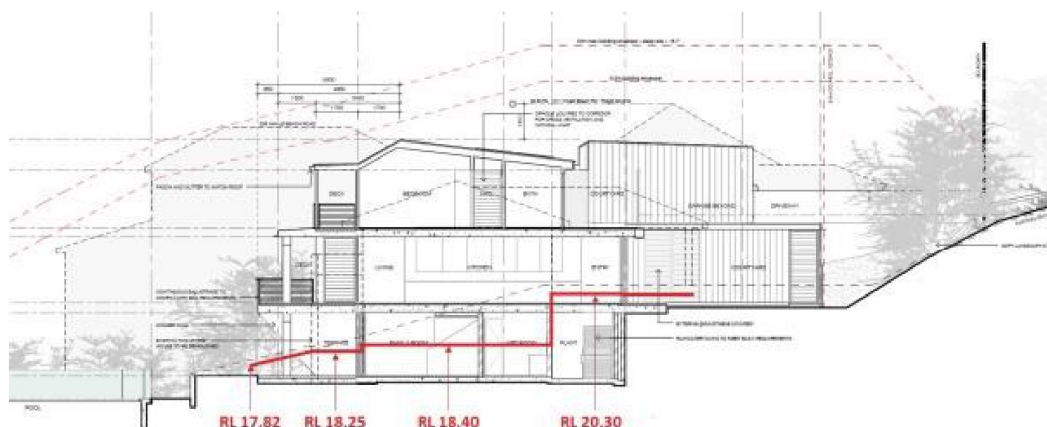


Figure 1: Existing ground levels relative to the development now proposed.

The uppermost ridge of the new dwelling is noted as RL 26.85, which is 8.45 metres above the RL 18.40 ground level of the existing dwelling at this point. The frontmost part of the proposed dwelling, comprising the garage also has an uppermost RL of 26.85 which is 6.55 metres above the RL 20.30 of the ground level below. The rearmost portion of the dwelling steps down to two storeys and measures 5.34 metres above the grassed rear slope. Each of the building elements are within the maximum control of 8.5 metres and as such the development complies with the numerical requirements of this control.

In addition to compliance with the numerical requirements, the development is considered to be consistent with the overarching objectives of the control. The development is of a similar form and scale to surrounding development and will not have an adverse visual impact upon the built or natural environment. The development provides appropriate solar access and view sharing to surrounding properties (discussed below) and will not adversely impact upon the natural environment or heritage items, including the Norfolk Island Pines within the adjacent reserve.

- **5.10 Heritage conservation**

The site is not heritage listed and is not located within a heritage conservation area. A heritage item is located approximately 22 metres to the west of the site within the beach reserve, which has been identified as a row of Norfolk Pine trees. The proposed development will be located approximately 30 metres away from these trees. The health and stability of the trees will not be compromised and the dwelling will not detract from their character. Council's Natural Resources Officer and Reserves and Recreation team have raised no concerns relating to the impact of the development upon these trees.

- **7.2 Earthworks**

The proposal includes excavation in the centre of the site, involving the location of rainwater tanks and plant below the existing ground level. The extent of excavation is considered reasonable, and allows the bulk of the development to be minimised from the public domain and from neighbouring properties. Council's Development Engineer has raised no concerns with regard to stormwater drainage or geotechnical issues arising from the proposed groundworks.

Concerns have been raised by neighbouring properties regarding excavation close to site boundaries and dilapidation reports have been requested. A condition to require the carrying out of pre-commencement and post-completion dilapidation reports is recommended to ensure that no adjacent structures are adversely impacted.

There is no evidence to suggest that the soil to be excavated is contaminated or that it contains relics or heritage items; a condition is also recommended which will require works to stop in the event of discovery of such an item. The development is consistent with the provisions of this clause.

- **3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings**

Submissions have been received which raise concerns regarding errors within the submitted documentation. These relate to the stated slope of the land, the lack of an additional section drawings and a lack of digital model. The erroneous stated slope of the land within the written documentation has been noted, and the correct slope of the land can be established using the levels on the submitted survey drawings. The drawings submitted are held to be sufficient in assessing the likely impacts of the development.

A digital model was submitted as part of the application, however the size of the digital file resulted in issues with the display of this on Council's website. Council provided the digital model to this objector in a different format, and this objector has now been able to view the submitted model.

- **3.6 State Environment Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs)**

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The application is accompanied by a BASIX certificate in line with the requirements of this SEPP. This certificate has been referenced within the conditions of consent.

State Environmental Planning Policy 71 - Coastal Protection

The site is not located within the coastal zone as defined within this instrument, however the eastern boundary of the site is also the landward boundary of the coastal zone, and for this reason the provisions of the instrument have been considered. The development will not have a harmful impact upon the visual amenity of the coast; the site is screened from the coast and the beach reserve by mature trees which will screen the majority of the new development. The development will not harm the environmental or ecological processes of the coastline or its vegetation. There are no known aboriginal artefacts or relics on the site and the proposed development will not inhibit existing or future public access to the foreshore. The development is consistent with the provisions of this Policy.

- **A1.7 Considerations before consent is granted**

Whale Beach Road is listed within Pittwater's Most Scenic Street Register. Within the description of Whale Beach Road, the register primarily discusses the significance of Hordern Park at the western end, but also discusses the presence of Cabbage Trees and ocean views as contributing to its overall character. The proposed development will not jeopardise these features; the development will not result in the unreasonable loss of trees and the development will not remove an existing ocean view from the public domain. The front of the site is currently vegetated by trees and shrubs which prevent ocean views, and the proposed development includes the retention and enhancement of this landscaping.

- **A4.12 Palm Beach Locality**

Submissions have been received which object to the bulk and scale of the development, stating that the dwelling would be out of character with the surrounding area and harmful to visual amenity. Submissions also object to the three storey nature of the rear portion of the dwelling.

The subject development seeks to replace the existing part single and part two storey dwelling with a dwelling which is part two and part three storeys. The kerb and roadway of Whale Beach Road is level with the uppermost storey of the dwelling, meaning that the dwelling will appear as single storey when standing in the road reserve. The development comprises three storeys at its rearmost point, and these storeys are subtly stepped down toward the beach reserve.

The character statement for Palm Beach speaks of a predominantly low-density residential area, characterised mainly by two storey dwelling houses. A diverse range of architectural styles is identified, however the presence of landscaped, treed frontages and subdued external finishes are noted as elements which unify the area. The subject development is of a similar scale to the many dwellings around it, and integrates successfully with the landform and existing landscaping; the existing landscaping at the front of the site is to be retained and additional planting will take place at the rear of the site, subject to the recommended conditions.

The control seeks dwelling houses with a maximum of two storeys in any one place. However, the prevailing character of existing development within the locality does not necessarily reflect this. In terms of Whale Beach Road, a number of dwellings on the western side of Whale Beach Road include three storeys, (including 182 and 184 which were inspected as part of the view loss assessment of the application and are located directly opposite the subject site). From Whale Beach and the public reserve to the east, there are also examples of dwellings which exceed two storeys in nature and are located much closer to the public reserve than the development now proposed (such as 227 Whale Beach Road). The road serving the car park of Whale Beach (known as the Strand) curves toward Whale Beach Road as it travels north, bringing the public view much closer to the rear of the houses in Whale Beach Road and reducing the amount of intervening landscaping. With the subject site, a distance of 44.5 metres will remain between the house and the car park, with landscaping and swimming pool structures set lower and separated from the car park by approximately 31 metres. The application proposes dark, recessive colours which will assist the dwelling in integrating successfully into the surrounding natural environment.

As part of the application documentation, the applicant has provided two visual impact assessments which demonstrate the appearance of the dwelling as viewed from Whale Beach. These are referenced as drawings DA 23 and DA24, and demonstrate that the development will sit amongst the existing landscaping and will not appear overly obtrusive from this vantage point.

It should be noted that when standing in the car park adjacent to Whale Beach, the westward view in front of the subject site is largely that of trees and vegetation with only the uppermost part of the existing house and neighbouring houses visible. From the sand of Whale Beach the houses within Whale Beach Road become more visible, however views become intermittent through the row of mature Norfolk Island Pines along the sand line.

In this regard the proposed development is consistent with the prevailing character of the locality and would not appear as overly obtrusive or visual harmful when viewed from the public domain to the east or west of the site

- **B3.6 Contaminated Land and Potentially Contaminated Land**

The site is currently residential and will continue to be so; no change of use is proposed and there is no information to suggest that the land is contaminated; Council can be satisfied that the land is suitable for its intended use in this regard.

- **B4.3 Flora and Fauna Habitat Enhancement Category 2 Land**

A submission has been received raising concern regarding the potential impact of the development on three existing trees at the front of the site. These trees are listed for retention and conditions have been included within the consent to ensure that works in the vicinity of these trees are carried out appropriately to ensure the retention and continued health of these trees.

Council's Natural Resources Officer provides the following advice on the proposed development:

The property contains a modified landscape typical of a suburban garden with a weedy rear yard. The proposed works include demolition of the existing dwelling and construction of a new dwelling and driveway. All native trees in the front yard are to be retained. Arborist supervision will be required for all works within 5 metres of these trees. A landscape plan has been submitted (Scenic Blue Design, Dec 2014) which proposes a weed tree species, Acer Negunda. This must be removed from the plant schedule and replace with a locally native species such as a coastal banksia. Raphiolepis indica has also been proposed and must be removed from the plant schedule as this is a listed Noxious Weed. It should be replaced with a locally native species. Replacement species can be chosen from the list provided in the Native Plants for your Garden booklet available on the Council website. All other proposed species are acceptable. There are no further natural environment issues.

- **B6.1 Access Driveways and Works on the Public Road Reserve - Low Density Residential**

The application seeks to remove and revegetate the existing concrete crossover and to create a new crossover towards the southern end of the site's frontage. Only one access way will exist, in line with the control, and adequate sightlines will be present from this new crossover. The newly located crossover has been designed to avoid the loss of existing trees within the front setback of the site.

Council's Urban Infrastructure team has advised that the development complies with Council's 'extra low' driveway profile subject to the imposition of two conditions relating to the incline of part of the driveway and the detail of the intersection with the roadway. These conditions do not materially alter the proposed development, nor do they result in a loss of vegetation or safety impacts. The conditions are included within the attached draft conditions.

- **B8.1 Construction and Demolition - Excavation and Landfill**

The proposed works include a minor amount of excavation to facilitate the construction of the proposed new building. The level of excavation proposed is not considered to be excessive, and will not result in unreasonable impacts to the natural environment or existing trees on the site. Council's Urban Infrastructure Unit has raised no concerns of a geotechnical or stormwater nature arising from the proposed excavation on the site.

Concerns have been raised relating to adverse impacts to neighbouring properties resulting from the proposed groundworks. The new dwelling will be located further away from the two side boundaries than the existing dwelling. Conditions to require the carrying out of pre-commencement and post-completion dilapidation reports are included within the consent in this regard.

- **C1.1 Landscaping**

The site currently includes a number of existing trees, and these are all shown on the Landscape Plan as being retained. Additional mid and low level landscaping are proposed to supplement the existing vegetation on the site. While no new trees are proposed to be planted on site, the existing seven trees at the front of the site (within the site's front setback and on the Council verge) as well as the existing trees within the rear portion of the site are considered sufficient to ensure a softened built form. The variations to the control permit an assessment on merit basis in such circumstances and this is considered warranted in this instance. A condition to require additional screen planting relating to the eastern edge of the proposed swimming pool is also included and will further add to the landscaping of the site.

- **C1.2 Safety and Security**

In terms of surveillance and access control, the front elevation of the dwelling is such that the front door to the property cannot be clearly identified, and it would not be possible for occupants to see visitors approaching without opening the front door. A condition is recommended to require that the currently proposed external louvres to the south of the garage entry are amended to form a clear front door, and to allow views of those approaching while inside the house.

- **C1.3 View Sharing**

The control requires a reasonable sharing of views amongst dwellings and seeks to protect and maintain views from public places. The technical requirements of the control call for an assessment against the Land and Environment Court's Planning Principles regarding view sharing. In this regard, two Principles are pertinent; *Tenacity Consulting v Warringah Council 2004* deals with views from private properties and *Rose Bay Marina Pty Limited v Woollahra Municipal Council 2013* deals with views from the public domain.

A number of submissions have been received which raise concerns regarding a loss of private view. Site inspections from the internal and external areas of 182, 184 and 211 Whale Beach Road have taken place during the course of the application, as well as inspections from the roadway of Whale Beach Road. The advisory notes to the control indicate the requirement for height poles to be erected in some instances; height poles were erected during the course of this application and were visible during these inspections. These poles can also be seen in the following photographs.

Assessment against the two relevant Planning Principles is provided below:

Planning Principle: Tenacity Consulting v Warringah Council 2004

The Principle outlines that the notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. For each of the three properties who have raised concerns, this is considered to be the case; the proposed development would result in some degree of view loss in all cases, however each of the three properties would retain significant ocean views. For this reason, the proposal can be said to be sharing views. The Principle provides a four step process to provide guidance as to whether the extent of view loss proposed can be considered reasonable and acceptable. These steps are as follows:

- Assessment of views to be affected.
The Principle notes that water views are valued more highly than land views, that iconic views are valued more highly than views without icons and that whole views are valued more highly than partial views, (e.g. a water view in which the interface between land and water is visible)
- Identification of the parts of a property from which the views are obtained.
The Principle notes that views across side boundaries are more difficult to maintain than those gained from the front or rear, noting that the expectation to retain side views and sitting views is often unrealistic.
- Assessment of the extent of the impact.
The Principle notes that views from living areas can often be more significant than from bedrooms or service areas due to the amount of waking time spent in them. The Principal calls for a qualitative assessment, identifying the extent of the loss as either negligible, minor, moderate, severe or devastating.
- Assessment of the reasonableness of the proposal that is causing the impact.

The Principle notes that a development that complies with all planning controls would be considered more reasonable than one that breaches them. With a complying proposal, the Principal questions 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.

182 Whale Beach Road

This property benefits from significant ocean views from both habitable levels, the upper level of which comprises the living/kitchen area and principal area of private open space and the lower of which comprises a secondary lounge area and home office. These views are oriented to the north east, east and south east of the property (to the front of the property). The elevated position of this neighbouring property is such that views are gained above the roofs of houses on the eastern side of the road. Neighbouring dwellings and vegetation comprise the foreground of the view with ocean and sky views beyond. Partial views of Whale Beach and rocky headland are visible in between trees and dwellings. Figure 2 below demonstrates the existing view from the property's upper level east-facing balcony:



Figure 2: Existing view as seen from upper level balcony of 182 Whale Beach Road looking east

In terms of the extent of the impact, the height poles demonstrate that a small section of the sand would be obscured by the new dwelling, as well as the mid-sections of three Norfolk Pine trees which are located further east within the Council reserve. However, the majority of the view of the ocean, including views of breaking waves on the foreshore and rocky headland, will remain. In terms of a qualitative description, it is considered that this view loss is most appropriately considered as 'minor' within the scale put forward within the Principle.

In terms of the reasonableness of the proposal, the proposed dwelling is compliant with the site's 8.5 metre height control and is compliant with the front, side and rear setback controls. A non-compliance with the building envelope setback has been identified, and a condition has been recommended to remedy this, meaning that the dwelling would also comply in this regard.

Following the deferral of the matter from the Development Unit meeting on 25 June 2015, additional information has been submitted with regard to the relationship of the requested 1.5 metre setback to the side of the proposed upper level and this neighbouring property. Drawing RFI 08 in particular identifies that any view corridor opened up by such a view corridor would align with a lift well within this neighbouring property, and would not be likely to open up significant views from the habitable areas of the dwelling. This point is considered valid, and it can be seen from the above photograph that such a side setback would be largely obscured by existing vegetation in any case. Therefore, the minor non-compliance with the building envelope control is held to be acceptable in terms of the flow-on impact of this to the views enjoyed by this neighbouring property.

The extent and nature of the view loss which would be experienced by this neighbouring property is considered to be of a minor and acceptable nature, and that the proposed development represents a reasonable sharing of views in this regard.

184 Whale Beach Road

Similarly to no. 182, this property benefits from significant ocean views to the east, north east and south east. Given the location of this neighbouring site in relation to the subject site, the views in question in this instance are located to the south east only and comprise vegetation and dwellings in the foreground, ocean and sky beyond, with partial views of an ocean pool, beach and rocks. This three storey property includes bedrooms on the lowest level which do not benefit from a view, living areas and balcony on the mid-level and bedrooms on the uppermost level. Figure 3 below demonstrates the view, looking south-eastward, from the site's mid-level front balcony:



Figure 3: Existing view as seen from front balcony of 184 Whale Beach Road looking south east.

Within the additional information submitted to Council on 26 June 2015 was a letter from Heather Buttrose Associates, which questions the veracity of the above photograph and includes the following statements:

"The photo provides an unclear perspective to us of the view from 184 on the upper side of Whale Beach Road"

"The exaggerated angle of the photo appears not without enhancement"

"HBA assert that the image provided may not be the primary aspect from the living areas or entertaining deck"

The assertion that a Council Officer would seek to enhance a photograph taken in this regard is a serious allegation and one which is wholly without foundation. It is unfortunate that the applicant would seek to disparage Council staff in this way rather than seeking to understand the impact first-hand by contacting the relevant property owner either prior to or during the assessment of the application. For the purposes of clarification, this photograph was taken by the assessing Council Officer, Cheryl Williamson, on 23 April 2015 in the attendance of Mr Ian Everingham who was the property owner at that time (ownership is now understood to have passed to Mr McCarthy, who has also objected to the application). The photograph was taken using a Council-issued iPhone, without the use of a zoom or any other device or program which would alter the resultant image. The photograph was taken whilst standing adjacent to the front balustrade of the front-facing deck of the mid-level of this neighbouring property, which is located adjacent to the main living and kitchen area of the property. Additional photographs taken during the same visit will be made available at the forthcoming Development Unit meeting to provide further context to the Development Unit panel.

In terms of the drawings submitted to Council on 26 June 2015, prepared by Heather Buttrose Associates, there is no information as to the relationship between the proposed dwelling and 184 Whale Beach Road; the relationships between the site and 180 and 182 Whale Beach Road are shown, but not 184, notwithstanding the fact that 184 is referred to within the submitted letters.

In terms of the extent of the impact, the height poles demonstrate that the building will be located amongst the vegetation within the foreground of this neighbouring property's view. A small section of sand and rock would be obscured by the dwelling, however it will still be possible to see areas of beach, rocks, ocean pool, headland and the ocean beyond. For this reason, the extent of this impact is considered to be 'minor' within the scale put forward within the Principle.

In terms of the reasonableness of the proposal, the proposed dwelling is compliant with the site's 8.5 metre height control and is compliant with the front, side and rear setback controls. A non-compliance with the building envelope setback has been identified, and a condition has been recommended to remedy this, meaning that the dwelling would also comply in this regard.

Following the deferral of the matter from the 25 June 2015 Development Unit meeting, the applicant has provided additional information in support of the application as proposed, and seeking the deletion of condition B1(a), which required a further 1.5 metre setback to the northern elevation to achieve compliance and maximise the extent of view retained by this neighbouring property. The additional information indicates that the extent of the non-compliance is of a more minor nature than initially anticipated, and that the non-compliance relates to the north easternmost corner of the upper level only. The letter submitted by Urbis (also received on 25 June 2015) makes the point that control C1.3, and the Planning Principle referenced therein, require a reasonable sharing of views rather than the retention of the whole of an existing view. This point is considered valid, and it is again noted that this property will retain a significant view of the ocean and sky, waves breaking on the beach, ocean pool, headland and vegetation. On balance therefore, it is considered acceptable to remove the requirement for a further setback to the northern portion of the proposed upper level, and condition B1(a) has been struck through accordingly.

The extent and nature of the view loss which would be experienced by this neighbouring property is considered to be of a minor and acceptable nature, and that the proposed development represents a reasonable sharing of views in this regard.

211 Whale Beach Road

This property benefits from significant ocean views from the rear (east) of the property. No. 211 is positioned further to the front (west) of its site than its northern and southern neighbours, meaning that while there are views to the north east and south east, these are of a more limited nature, being obscured in part by existing buildings. Existing vegetation within the rear yard of 211 as well as trees and lower level landscaping within the Council reserve also serve to screen parts of the view enjoyed by this property. While this is a two storey dwelling, the subject views are primarily gained from the upper level, where the living/kitchen/dining room is located, along with a rear balcony accessed directly from this space. Ocean views from the lower level are largely obscured by vegetation. Figure 4 below demonstrates the existing north easterly view from this property:



Figure 4: Looking north east from south western corner of upper level rear deck of 211 Whale Beach Road

In terms of the extent of the impact, the principal view enjoyed by this property directly to the rear (east) will remain unobstructed by the proposed development. It is apparent that from some positions on this balcony and within the internal living area, that glimpses of headland to the north east may also be partially obscured. For this reason, the extent is identified as 'moderate' within the scale put forward within the Principle, although it should be noted that this headland would remain visible from a large proportion of the site's rear balcony.

In terms of the reasonableness of the proposed development, the development is compliant with the site's height control and with the front, side and rear setbacks specified within the DCP. A non-compliance with the building envelope control has also been identified, and a condition has been recommended to remedy this, meaning that the dwelling would also comply in this regard.

Further, in terms of where it can reasonably be expected that a house will be located, it is pertinent to note that the majority of dwellings within this part of Whale Beach Road are built to a similar rear setback to that now proposed. This can be understood from drawing DA01 which forms a location plan and site analysis. No. 211 is located significantly further to the west than other properties in this locality, meaning that the effects of development on either side are likely to be felt more keenly. This does not make the proposed development unreasonable however. It is also important to note that the uppermost level of the proposed development does not project materially further to the rear than the existing house; the easternmost point of the uppermost level of the proposed dwelling is located approximately 600mm further east than that of the existing dwelling. While lower levels project further to the east, these do not have the effect of obscuring a headland view. The setting back of this upper level has the effect of preserving as much of the north easterly view as is practical.

For the above reasons, the proposed development is considered to represent a reasonable sharing of views within this neighbouring property and is supported in this regard.

Planning Principle: Rose Bay Marina Pty Limited v Woollahra Municipal Council 2013

With regard to views gained from the public domain, the dense vegetation currently present within the front setback of the site means that eastward ocean views are largely precluded, other than a small glimpse between the vegetation where the current driveway is located. Figure 5 below demonstrates the view from Whale Beach Road:



Figure 5: View gained from Whale Beach Road to the west of the subject site

With regard to the protection and maintenance of views from public places, the Principal establishes a five step process to assist assessment:

- Step 1: identification of the nature and scope of the existing views
As can be seen above, the scope of the existing view is extremely limited and the nature of the view is a glimpse of the ocean.
- Step 2: identification of the locations within the public domain from which the view is enjoyed
This glimpse view is available only when standing directly west of the site's existing concrete crossover Whale Beach Road; diagonal views are obscured by existing landscaping on this and adjoining sites.
- Step 3: identification of the extent of the obstruction
Views of the ocean are currently obstructed by vegetation within the front setback of this and adjoining sites. This vegetation is proposed to be retained and is likely to further restrict the view in future as it grows. Council's DCP control states that views are not to be obtained at the expense of vegetation. While the proposed dwelling is approximately half a storey higher than the existing house, it is not this structure which causes the restriction of view in this instance.
- Step 4: identification of the intensity of the public use

This section of Whale Beach Road is identified as being of a relatively low intensity in terms of public use. This part of Whale Beach Road is a narrow roadway with cars parked along much of the western side. A narrow (approximately 700mm) concrete footpath exists along the eastern side. The scope of the existing view is of such a minor nature that when driving or walking along Whale Beach Road only a momentary glimpse of the ocean would be afforded; this is not a location to which the public would be likely to travel to particularly appreciate the view from in front of this property.

- Step 5: identification of any document which identifies the importance of the view.
The Pittwater 21 DCP seeks the protection and maintenance of public views generally, and the whole of Whale Beach Road (approximately 4km in length) is also listed within Council's Scenic Streets Register. The principle states however, that the weight to be given to such documents should depend on the status of that document and that 'merely adopting and applying such a presumption would be entirely inappropriate'. With regard to the Scenic Streets Register, this is an informative guideline document only, which is not understood to carry any legal weight and does not include any planning controls or objectives.

Given the current nature of views gained from in front of this property, and the retention of the vegetation which is already restricting views, the proposed development is considered acceptable in terms of its impacts on views from the public domain.

- **C1.4 Solar Access**

The outcomes of the control seek to ensure that a reasonable level of solar access is maintained to existing residential properties. An objection has been received from the southern neighbouring property raising concern regarding an increased amount of overshadowing to the rear areas of private open space resulting from the proposed development, particularly during the afternoon.

The technical requirements of the control specify that the main private open space of any adjoining dwelling is to receive a minimum of 3 hours of sunlight daily between the hours of 9.00am and 3.00pm on June 21st. The control also specifies that windows to principal living areas benefit from a minimum of 3 hours sunlight to at least 50% of the glazing.

The application is accompanied by shadow diagrams in plan and elevation form, which demonstrate the impact of the development on this southern neighbour. The plan diagrams show that the majority of the rear grassed area will remain sunlit between 9.00am and 12.00midday, and that the rear upper level deck will remain in full sunlight between 9.00am and 12.00midday. Similarly, shadows will not reach the rear or northern side windows of this property until 12midday meaning that these windows will also be fully sunlit between 9.00am and 12.00midday.

Therefore, while it is true that there will be additional shading to the grassed rear yard and rear deck of the property at 3.00pm, the level of solar access to the neighbouring property is such that the development is compliant with the minimum requirement for 3 hours of sunlight. The development is therefore supported in this regard.

The proposal must demonstrate that appropriate solar access is achieved through the application of the Land and Environment Court planning principle for solar access.

The advisory notes accompanying this control call for consideration of two Land and Environment Court planning principles relating to solar access; *Parsonage v Ku-Ring-Gai* and *The Benevolent Society v Waverley Council*. However, it is noted that the Benevolent Society judgement does in fact supersede the Parsonage Principle, with paragraph 143 of the Benevolent Society judgement stating 'I publish below a replacement planning principle on solar access' and 'It will no longer be appropriate to cite Parsonage as a planning principle.' Therefore, consideration of the Benevolent Society principle only is outlined below.

Benevolent Society vs Waverley Council

The judgement provides a revised, consolidated planning principle based on consideration of seven points:

- The first point relates to the density of the site and surrounding area, and notes that higher densities often result in a lesser amount of retained solar access. The area is held to be of a relatively low density, and the 3 hour control specified within the DCP control is held to be reasonable.
- The second point notes that the amount of sunlight lost should be considered alongside the amount of sunlight to be retained. In this case, a meaningful level of sunlight will be retained to the internal and external areas of this neighbouring property during the morning.
- The third point notes that overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. In this instance the proposed design is not considered to be poor, and includes compliant building height and setbacks which assist in its relationship with neighbouring properties and the surrounding area.
- The fourth point notes that a quantitative calculation of the amount of sunlight falling onto a glazed surface is often unhelpful and seeks consideration of the size of that glazed area and the proportion of sunlight falling upon it. In this instance, the eastern (rear) elevation of the neighbouring dwelling includes a large amount of windows and glazed doors, which will retain a meaningful amount of sunlight for much of the day.
- The fifth point relates to private open space and seeks consideration of the size of the space as well as the amount of sunlight received. The discussion notes that 'a useable strip adjoining the living area in sunlight usually provides better solar amenity'. In this instance, the shadow diagrams show that the eastern balcony off the living, kitchen and dining area (the principal area of private open space) will remain sunlit for a good proportion of the day and that the larger, grassed area below will also receive sunlight to the majority of the area during the morning.
- The sixth point notes that overshadowing by fences and other structures should be considered, but that overshadowing by vegetation should not be considered. The submitted shadow diagrams are consistent with this point.
- The seventh point calls for consideration of the likely future development of adjoining sites. In this case, 213 Whale Beach Road is the only neighbouring property which is likely to result in material shading to 211 Whale Beach Road. The redevelopment of

sites further to the north or on the western side of Whale Beach Road are not likely to significantly prejudice this property regarding solar access.

In light of the above, the proposed development is held to be in line with the outcomes and technical requirements of this control and is supported accordingly.

- **C1.5 Visual Privacy**

In order to preserve the visual privacy of new development and existing adjoining buildings, the control specifies that living rooms and areas of private open space must be protected from direct overlooking within a distance of 9 metres. The control suggests the use of building layout, landscaping, screening devices or greater spatial separation in order to achieve this. Concerns have been raised by the southern neighbouring property relating to a harm to visual privacy resulting from the proposed development.

The subject development includes windows, decks and walkways on all four elevations. The windows and decks facing front and rear are not of concern given the orientation of the outlook and distance to neighbouring properties. A number of areas of potential conflict were identified however on the two side elevations; large sections of glazing, windows, and walkways were proposed which had the potential to directly overlook both the northern and southern neighbouring properties, and result in an unacceptable loss of privacy. This matter was raised with the applicant who, through the submission of amended drawings, has resolved many of these potential conflicts through the removal of windows entirely, or through the use of screening methods such as obscure glazing. However, not all of the identified conflicts were addressed, and the following concerns remain:

- Louvres
The proposal includes a number of windows annotated as including opaque louvres, which are positive in terms of protecting privacy while also permitting daylight and natural ventilation to enter the dwelling. However, there is nothing to stop these louvres from being fully opened, rendering them the same as an unobscured window and allowing direct views northwards and southwards. To address this, conditions are included to require that these louvres be restricted to prevent direct views into neighbouring windows.
- Northern glazing to mid-level
The northern elevation of the mid-level of the proposed dwelling is comprised almost entirely of glazing. This level has a walkway wrapping around the western, northern and eastern part of the level which includes one 2.5 metre wide sliding privacy screen. It is understood that the intent of this sliding screen is to afford privacy to the occupants of the dwelling as and when they need it. Unfortunately this leaves the privacy of the northern neighbouring property (the side windows of which are located just 3.5 metres away) solely to the discretion of the future occupant of 213. This is not an acceptable arrangement. In order to address this, a condition is recommended which provides a number of options for securing the ongoing visual privacy of this northern neighbour; either a privacy screen is to be erected along the whole northern edge of this walkway, or the northern wall of this level is to become solid rather than glazed, or mature screen planting is to be planted and maintained along the northern boundary of the site. With one of these three measures in place, the visual privacy of both properties will be adequately maintained.

In applying the abovementioned conditions it is considered that the proposal adequately allows the maintenance of visual privacy to the neighbouring properties.

Privacy concerns raised by southern neighbouring property

At the Development Unit meeting on 25 June 2015, concern was raised by the owner of the southern neighbouring property regarding the position and proximity of two proposed rear balconies, and the impact that these would have on the visual privacy of 211 Whale Beach Road. A request was made for a condition to be added to any future consent which required fixed privacy screens to be installed along the southern elevations of these balconies.

Control C1.5 requires the protection of visual privacy to windows and areas of outdoor space within a distance of 9 metres. The mid-level and upper level rear balconies are separated from the rear deck of this southern neighbouring property and from the northern and eastern windows of this neighbouring property by a distance of at least 10.5 metres. This distance is held to be sufficient to protect visual privacy particularly given that the two proposed outdoor areas are offset from the rear deck of the neighbouring property and not directly adjacent. Further, the primary outlook to these two proposed balconies will be to the east where there is an expansive ocean view; an occupant would need to stand at the southernmost end of these balconies and look back toward 211 Whale Beach Road to be afforded any view of the deck or rear windows of this neighbouring property.

The application drawings show sliding privacy screens to the southern elevations of both decks, and these are considered to be sufficient in this instance.

Modification of condition B1(c) regarding visual privacy to the northern elevation

During the consideration of the matter at the Development Unit meeting dated 25 June 2015, a panel member raised concern with the wording of condition B1(c), relating to the protection of visual privacy to the northern neighbouring property. This condition provides a range of options open to the applicant to ensure the adequate protection of privacy to this northern neighbour. The panel member advised that while options (i) and (ii) were likely to be successful, that option (iii) which proposes screen planting, would not be likely to have the desired effect. It was suggested that part (iii) of the condition be deleted on this basis, and this is now shown struck through within the revised wording of condition B1.

- **C1.7 Private Open Space**

The development includes approximately 350m² of useable private open space, exceeding the minimum control of 80m². This takes the form of a series of courtyards, balconies, decks and a level area of lawn to the rear which will allow for a range of passive and recreational activities to be undertaken.

- **C1.9 Adaptable Housing and Accessibility**

As a single dwelling, the control permits a variation from providing full accessibility. Nonetheless, each of the levels provides space for a future lift which could connect the three levels if required.

- **C1.13 Pollution Control**

An outdoor fireplace is identified on the submitted landscape plan, but not on the application drawings. It is not clear where this fireplace would be located, its scale or its proximity to neighbouring properties, raising a concern in terms of the potential for smoke and odour to neighbouring properties. A condition is recommended to delete this from the development.

- **C1.23 Eaves**

The development does not include eaves of 450mm to every elevation, although many do comply. The contemporary design of the dwelling is such that deep eaves are not provided on all elevations, but are substituted by deep verandahs and covered walkways to ensure that an appropriate level of shading is provided. The dwelling is BASIX-compliant, and the resulting dwelling will not have a detrimental impact on the character of the area. A variation to the numerical requirements of this control is supported in this instance.

- **D12.1 Character as viewed from a public place**

Submissions have been received raising objections to the amount of bulk proposed, and suggesting that the development would be out of character with the surrounding area. However, the dwelling appears to be similar in terms of form and scale to many others within the locality, and the dwelling will be of a similar or lower height than neighbouring properties as viewed from Whale Beach Road and the public reserve to the east. The proposed development is held to be compliant with the provisions of this control.

The design of the dwelling includes a satisfactory amount of articulation and visual interest and the double garage is integral to the dwelling and not overly prominent from the public domain. Landscaping is proposed to the front and rear of the site further softening the visual impact of the development from Whale Beach Road and from Whale Beach.

- **D12.3 Building colours and materials**

A submission has been received raising concern regarding a lack of detail of relating to colours and finishes. A further submission has been received regarding the potential of glare from reflective copper roof covering.

The submitted schedule of finishes includes details of the proposed external finishes, which include timber, copper, anodised aluminium and stone. The schedule references 'concrete textured' and 'bagged or rendered concrete block or brick' but does not specify a colour for these. A condition is included to ensure that these elements, and all elements, are finished in dark, earthy and non-reflective tones in order to ensure that the resulting building will integrate appropriately with the surrounding natural environment.

- **D12.5 Front building line**

A submission has been received objecting to the set backs of the proposed development, but not specifying which setback. The development is fully compliant with the front setback control for the site.

The control specifies a minimum front building line of 6.5 metres or the established building line, whichever is greater. The lowest level is set back by 6.5 metres, the mid-level is set back by 9.5 metres and the upper level is set back by 14.5 metres. In addition to exceeding the stated minimum distance, the dwelling also exceeds the established front building line within the locality which is approximately 5 metres.

The existing vegetation located in the front setback is proposed to be retained and this already prevents ocean views from the public domain meaning that no unreasonable loss of public view will result. The dwelling is of an appropriate scale and will respond appropriately to the existing surrounding built form and the existing natural environment. The amenity of neighbouring properties is also maintained; the dwelling represents a reasonable sharing of views, maintains sufficient solar access, and the privacy of neighbouring properties is ensured subject to conditions of consent discussed elsewhere within this report. The development is consistent with the outcomes and technical requirements of this control.

- **D12.6 Side and rear building line**

A submission has been received relating to the proposed setbacks of the development, but the submission does not specify which setback is of concern.

The control, requires setbacks of 1 metre to one side and 2.5 metres to the other; the proposed dwelling includes a setback of 1 metre from the southern side and 2.5 metres from the northern side, other than 7 x 350mm thick upright timbers, which support a pergola along the northern elevation of the dwelling. These are point encroachments which are considered minor, and the overall dwelling can be perceived as having a 2.5 metre setback to the northern side. These timber beams will not cause an adverse amenity impact to the northern neighbour, will not result in an unreasonable restriction of views from Whale Beach Road and will not unreasonable add to the level of bulk on this side of the dwelling. This minor variation is supported.

The development is consistent with the specified 6.5 metre rear setback, with all proposed structures located at least 9.8 metres from the site's rear boundary.

- **D12.8 Building envelope**

The majority of the proposed development complies with the numerical requirements of the control. The envelope study, provided by the applicant and referenced DA13, demonstrates compliance in this regard, but shows only the westernmost point and mid-point of the building. Non-compliances with the stated envelope occur at the easternmost portion of the development, where the level of the land falls away both from west to east and south to north.

On the southern side, the non-compliances relate to the eaves of the uppermost level and (further toward the front) a section of open timber framing above a bathroom. This timber framing does not appear to serve a structural purpose given that the bathroom below includes a flat roof and the area does not appear to serve as a walkway. A condition has been included to delete this element, with a view to reducing this non-compliance and the amount of perceived bulk.

To the north, the non-compliance relates to a more substantial portion of the upper level, including approximately half of the northernmost bedroom and an associated section of roof and eaves. The variations to the control permit assessment on a merit basis where the building footprint is situated on a slope over 16.7 degrees (i.e. 30%). While the applicant asserts that the slope of the land exceeds this, it has been established that the portion of land below the building footprint (i.e. not including any other parts of the site) is closer to 10 degrees and so does not qualify for this variation.

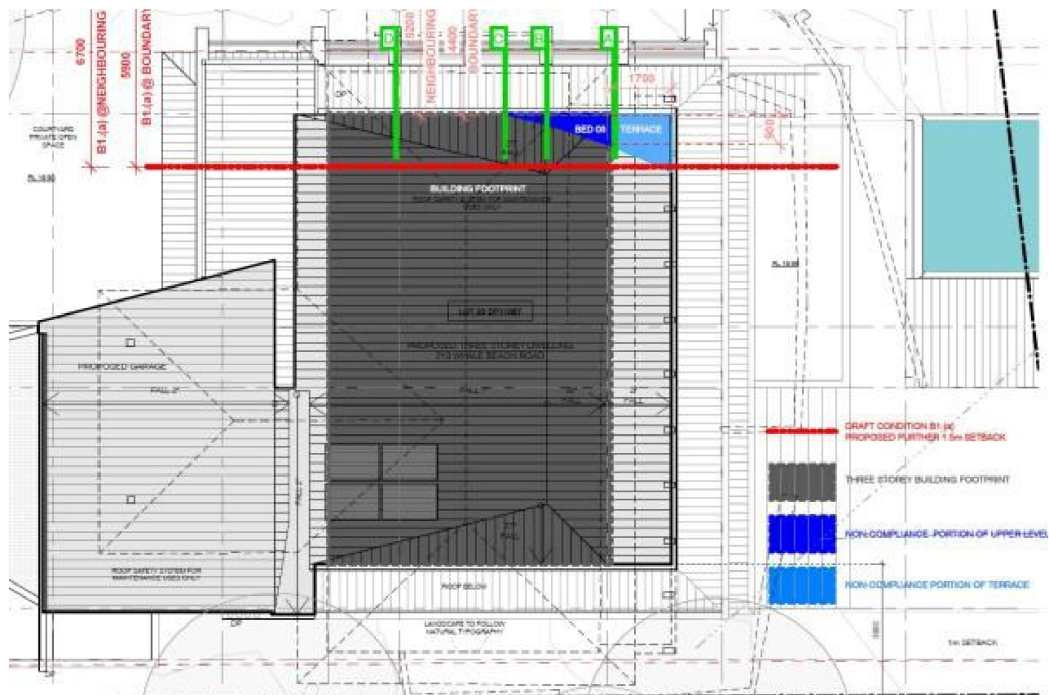
The outcomes of the control require new development to achieve the desired future character of the area and to minimise bulk and scale, as well as preserving views. Objections have been received from neighbouring properties to the proposed exceedence of this control specifically due to the impact of this on views. The protrudance of this part of the upper level outside of the building envelope will contribute to the view loss experienced by the properties on the western side of Whale Beach Road. While this view loss has been identified as minimal, it does not follow that a more skilful design should not be sought to preserve as much of this view as possible. This is a large dwelling, and the reduction in the extent of this upper floor will not render the house unduly small or result in the removal of an unreasonable amount of floorspace.

For this reason, a condition is recommended for the northern wall of this upper level to be set further back from the northern boundary by at least 1.5 metres, and the interior layout adjusted to suit. Such a setback would eliminate the non-compliance other than the outermost part of the eaves, which is considered acceptable.

The angled pergola uprights of the mid-level also protrude outside of the building envelope; these point encroachments are considered acceptable however given their location at a lower point of the site and the fact that they are slim elements which permit views and daylight through, rather than forming a solid object.

At the Development Unit meeting dated 25 June 2015 discussion was undertaken as to the slope of the land, the extent of non-compliance with the building envelope control and the impact of this non-compliance on the amenity enjoyed by neighbouring properties. Determination of the matter was deferred from the Development Unit meeting to allow the applicant to provide further information in this regard, and to allow a further assessment of this information. Additional information was received on 26 June 2015.

The additional information demonstrates that the extent of non-compliance is limited to a smaller section of the development than was previously anticipated. Drawing RFI 01, received on 26 June 2015, demonstrates this, and is reproduced below:



The intent of imposing condition B1(a) was to enable the extent of retained view from 184 Whale Beach Road to be maximised as far as possible. Further information relating to this can be found within the discussion of C1.3 above. In light of the additional information received, and given that the majority of this upper level has been demonstrated to comply with the DCP building envelope control, it is considered acceptable to remove the requirement for the uppermost level to be set in by a further 1.5 metres from the northern boundary. This is reflected in the revised wording of condition B1, which sees this original requirement struck through.

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

The control requires that at least 60% of the site area is landscaped area. The drawings show that 625m² of the site will be landscaped area, equating to 54.8% of the site area. The control permits the consideration of variations however, relating to paths of less than 1 metre in width and areas of open space up to 6% of the total site area, provided that the outcomes of the control are met. When taking into account the pathways and some of the areas of open space, the landscaped area rises to 712m² equating to 62% of the site area and exceeding the minimum control. The development is consistent with the outcomes of the control in that it presents an appropriate amount of built form on the site which is surrounded by landscaping. The development appropriately deals with stormwater and does not include excessive amounts of hard landscaped area.

- **D12.12 Fences - Flora and Fauna Conservation Areas**

The drawings note the construction of a 1.8 metre high open fence within the front setback of the site. It is not clear whether this would be along the front boundary of the site or the two side boundaries of the site, or whether this relates to existing fencing. This control does not permit the construction of a fence of this height within the front setback, and this is not characteristic of the surrounding locality; a condition to specify no new fences within the front setback of the site is recommended.

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

A sufficient level of vegetation already exists between the site and the beach reserve and further screen planting is required through the recommended consent conditions in relation to the eastern elevation of the proposed swimming pool. The development, through its use of dark, recessive finishes, will integrate appropriately with the natural environment and achieve an appropriate presentation as viewed from the public domain.

9.0 CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan, Pittwater 21 Development Control Plan and other relevant policies as listed at item 3.0.

RECOMMENDATION OF DEVELOPMENT OFFICER/PLANNER

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Development Application N0444/14 for the demolition of the existing dwelling and construction of a new dwelling, garage and swimming pool at 213 Whale Beach Road, Whale Beach, subject to the conditions of consent.

Report prepared by

Cheryl Williamson
SENIOR PLANNER

Date: 29 June 2015

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**CONSENT NO: N0444/14
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)
NOTICE TO APPLICANT OF DETERMINATION
OF A DEVELOPMENT APPLICATION**

Applicant's Name and Address:
HEATHER BUTTROSE ASSOCIATES
1/57 COWPER WHARF ROAD
WOOLLOOMOOLOO NSW 2011

Being the applicant in respect of Development Application No N0444/14

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Pittwater Council, as the consent authority, of Development Application No **N0444/14** for:

demolition of existing dwelling and construction of new single dwelling, garage and pool

At: 213 WHALE BEACH ROAD, WHALE BEACH NSW 2107 (Lot 20 DP 11067)

Decision:

The Development Application has been determined by the granting of consent based on information provided by the applicant in support of the application, including the Statement of Environmental Effects, and in accordance with

- **Architectural drawings prepared by Heather Buttrose Architects dated 20 February 2015 as follows:**
 - DA01 revision B: Location plan & site analysis;
 - DA02 revision B: Site plan;
 - DA03 revision B: Ground plan;
 - DA04 revision B: Upper ground;
 - DA05 revision B: Lower ground & pool room plan;
 - DA06 revision B: Street elevation;
 - DA07 revision B: West elevation;
 - DA08 revision B: North elevation;
 - DA09 revision B: South elevation;
 - DA10 revision B: East elevation;
 - DA11 revision B: Section 01;
 - DA12 revision B: Section 02;
 - DA20 revision B: Internal driveway details;
 - DA21 revision A: Schedule of Finishes - dated 3 December 2012 (as amended by the following conditions of consent)
- **Hydraulic Services Drawings prepared by Partridge Structural Pty Ltd as follows:**
 - H6.1 revision P1: Water management plan authority service connections - dated 28 November 2014;
 - H5.1 revision P2: Water management plan erosion & sediment control plan and details - dated 26 November 2014;
 - H4.1 revision P1: Water management plan details sheet - dated 24 November 2014;
 - H3.1 revision P2: Water management plan lower ground - dated 26 November 2014;
 - H2.1 revision P2: Water management plan upper ground and ground floor layout - dated 26 November 2014;
 - H1.1 revision P3: Water management plan notes and drawing legend - dated 28

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November 2014.

- **BASIX certificate ref. 5859745 dated 3 December 2014;**
- **Landscape Plan A1 revision B prepared by Scenic Blue Design and dated February 2015;**
- **Geotechnical Assessment Report ref. 27948LBrpt prepared by JK Geotechnics and dated 1 December 2014.**

as amended in red (shown clouded) or as modified by any conditions of this consent.

The reason for the imposition of the attached conditions is to ensure that the development consented to is carried out in such a manner as to achieve the objectives of the Environmental Planning and Assessment Act 1979 (as amended), pursuant to section 5(a) of the Act, having regard to the relevant matters for consideration contained in section 79C of the Act and the Environmental Planning Instruments applying to the land, as well as section 80A of the Act which authorises the imposing of the consent conditions.

Endorsement of date of consent _____

Mark Ferguson
GENERAL MANAGER
Per:

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Conditions of Approval

This consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

Note: Persons having the benefit of development consent may appoint either a council or an accredited certifier as the principal certifying authority for the development or for the purpose of issuing certificates under Part 4A of the Environmental Planning and Assessment Act. When considering engaging an accredited certifier a person should contact the relevant accreditation body to ensure that the person is appropriately certified and authorised to act in respect of the development.

A. Prescribed Conditions:

1. All works are to be carried out in accordance with the requirements of the Building Code of Australia.
2. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
3. A sign must be erected in a prominent position onsite only showing:
 - a) the name, address and telephone number of the Principal Certifying Authority for the work, and
 - b) the name of the principal contractor or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
 - c) that unauthorised entry to the work site is prohibited.The sign must 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.
4. 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:
 - a) in the case of work for which a principal contractor is required to be appointed:
 - i) The name and licence number of the principal contractor, and
 - ii) The name of the insurer by which the work is insured under Part 6 of that Act.
 - b) in the case of work to be done by an owner-builder:
 - i) The name of the owner-builder, and
 - ii) If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
 - c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under a or b above 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
5. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) 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.

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6. This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve.
7. Any building work in relation to the development consent is to be carried out in accordance with the requirements of the Building Code of Australia.

B. Matters to be incorporated into the development and maintained over the life of the development:

1. The following amendments shall be made to the approved plans:

~~(a) The northern wall of the upper ground level shall be further set back from the northern boundary by an additional 1.5 metres, with the internal layout of the upper ground level adjusted to suit.~~

(b) The front door to the dwelling, located within the western elevation of the upper ground level shall be modified such that it permits views of approaching visitors without the need to open the door, and to ensure that it is easily identifiable as the entry point of the dwelling when viewed from Whale Beach Road.

(c) The design of the northern elevation of the ground floor plan shall be amended such that the privacy of the northern neighbouring property is preserved. In this regard one of the following measures must be implemented:

(i) The elevation is amended to comprise primarily solid wall with any openings being fitted with obscure glass or an alternative screening device; or

(ii) The privacy screen shown along the northern edge of the northern walkway shall be extended along the length of this walkway and fixed in position; or

~~(iii) Screen planting shall be installed which prevents direct views between the northern walkway and the southern windows of the northern neighbouring property.~~

(d) The opaque louvres shown within the south-facing ground floor window serving the stairwell and the two south facing upper ground floor windows serving the hall shall be designed such that they do not open by more than a 45 degree angle, and do not permit direct views of the southern neighbouring property.

(e) The northern and southern side facing windows within the lower ground floor, serving the staircase and the bar, shall be fixed shut and fitted with obscure glazing to prevent the direct overlooking of neighbouring properties.

(f) The outdoor fireplace shown on the Landscape Plan is not approved as part of this consent and shall be deleted from the development.

(g) The open timber structure to the south of the front door and above the bathroom shall be deleted.

Amended drawings demonstrating compliance with each of the above design amendments must be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

2. The height of the building measured to Australian Height Datum (AHD) must not exceed relative (RL) 26.85 AHD to the top of the building.
3. The commitments identified in the BASIX Certificate and on the plans or specifications are to be fulfilled and maintained for the life of the development.

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4. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.
5. The recommendation of the risk assessment required to manage the hazards as identified in Geotechnical Report prepared by JK Geotechnics are to be incorporated into the construction plans.
6. Prior to the completion of works, all declared noxious weeds are to be removed/controlled in accordance with the Noxious Weeds Act 1993. Environmental weeds are to be removed and controlled. Refer to Pittwater Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds for noxious/environmental weed lists.
7. No environmental weeds are to be planted on the site. Refer to Pittwater Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds for environmental weed lists.
8. Domestic pet animals are to be kept from entering wildlife habitat areas at all times. Dogs and cats are to be kept in an enclosed area or on a leash such that they cannot enter areas of bushland or foreshore, unrestrained, on the site or on surrounding properties or reserves. Ferrets and rabbits are to be kept in a locked hutch/run at all times.
9. Any vegetation planted onsite outside approved landscape zones is to be consistent with locally native species selected from the list pertaining to the vegetation community growing in the locality as per the vegetation mapping and Native Plants for Your Garden available on the Pittwater Council website http://www.pittwater.nsw.gov.au/environment/species_lists
10. No building materials or other materials are to be placed on Bushland vegetation. Sediment is not to leave the site or enter areas of Bushland vegetation, and the appropriate sediment fencing is to be installed.
11. The spa/pool backwash and any overflow waters are to be disposed to the Sydney Water sewer.
12. The Stormwater Harvesting and Reuse Scheme shall be installed and operated in accordance with the accepted BASIX certificate.
13. As part of the integrated stormwater management plan, suitably positioned stormwater quality improvement devices shall be installed and operated in accordance with Manufacturer's Specifications and associated operational guidelines.
14. The internal driveway finish is:
 - a) to be a stable surface for all weather conditions
 - b) to be constructed of materials that blend with the environment and are of dark or earthy tones or natural materials.
15. To satisfy the off-street parking requirements for development, the minimum number of 2 vehicle space requirements shall be provided.

These spaces are to be provided and retained over the life of the development.
16. Screen planting is to be provided to screen the whole of the east-facing rendered masonry wall of the proposed swimming pool. Species selection is to incorporate locally native species. This screen planting is to be retained over the life of the development and replaced if any part of it should die or be destroyed or removed.

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17. All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.
18. In accordance with Pittwater Councils DCP Control B4.22 Protection of Trees and Bushland Vegetation, all existing trees as indicated in the Survey Plan and/or approved Landscape Plan shall be retained except where Council's prior written consent has been obtained, for trees that stand within the envelope of approved development areas and removal is approved through an arborist report. For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers.
19. Pool fencing is to be designed, located and maintained in accordance with the Swimming Pools Act 1992, Regulation and Australian Standard 1926.1-2012, Safety barriers for swimming pools
20. A warning notice (resuscitation chart) and External Cardiac Compression Chart is to be affixed and maintained in a prominent location adjacent to the pool / spa.
 - a) The warning notice (i.e. sign) must contain all of the following words:
 - i) "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL" and
 - ii) "POOL GATES MUST BE KEPT CLOSED AT ALL TIMES", and
 - iii) "KEEP ARTICLES, OBJECTS AND STRUCTURES AT LEAST 900 MILLIMETRES CLEAR OF THE POOL FENCE AT ALL TIMES",
 - b) In addition, the notice must contain a simple flow sequence (which may be the flow sequence depicted in the Cardiopulmonary Resuscitation Guideline) containing details of resuscitation techniques (for infants, children and adults):
 - i) that are set out in accordance with the relevant provisions of that Guideline, and
 - ii) that comply with the other relevant guidelines of the Australian Resuscitation Council, and
 - iii) that are illustrated by drawings with key words only in bold print,
 - c) a statement to the effect that formal instruction in resuscitation is essential,
 - d) the name of the teaching organisation or other body that published the sign and the date of its publication.
21. All external glazing and all roof coverings are to have a maximum reflectivity index of 25%.
22. Materials and colour schemes are to be in accordance with the submitted schedule of finishes referenced DA21 revision A: Schedule of Finishes prepared by Heather Buttrose Associates and dated 3/12/2014. The finished colour of the proposed 'rendered concrete block' must be a dark and earthy tone, in line with the specified colours within Pittwater 21 DC clause D12.3.
23. The underside of the elevated pool is to be painted in dark, earthy and natural tones to blend with the surrounding landscape and be of a non-reflective finish.
24. No new fences along the front (western) boundary of the site, or within the front setback of the site, are approved as part of this consent.

C. Matters to be satisfied prior to the issue of the Construction Certificate:

Note: All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications / details cannot be accepted.

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1. Submission of construction plans and specifications and documentation which are consistent with the approved Development Consent plans, the requirements of Building Code of Australia and satisfy all conditions shown in Part B above are to be submitted to the Principal Certifying Authority.
2. The Principal Certifying Authority must be provided with a copy of plans that a Quick Check agent/Sydney Water has stamped before the issue of any Construction Certificate.
3. The person having the benefit of this consent is required to notify the Principal Certifying Authority to ensure that the following critical stage inspections are undertaken, as required under clause 162A(4) of the Environmental Planning and Assessment Regulation 2000:
 - a) after excavation for, and prior to the placement of, any footings, and
 - b) prior to pouring any in-situ reinforced concrete building element, and
 - c) prior to covering of the framework for any floor, wall, roof or other building element, and
 - d) prior to covering waterproofing in any wet areas, and
 - e) prior to covering any stormwater drainage connections, and
 - f) after building work has been completed and prior to any occupation certificate being issued in relation to the building.

To allow a Principal Certifying Authority to carry out critical stage inspections, at least 48 hours notice must be given before building work is commenced and prior to further work being undertaken.

4. Construction works approved by this consent must not commence until:
 - a) Construction Certificate has been issued by a Principal Certifying Authority
 - b) a Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment, and
 - c) at least 2 days notice, in writing has been given to Council of the intention to commence work.
5. In accordance with section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the prescribed rate of 0.0035 of the total cost of the work to either the Long Service Payment Corporation or Council for any work costing \$25,000 or more.
6. A Schedule of Works prepared by a qualified practising Structural Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a corporate member and has appropriate experience and competence in the related field is to be submitted to the Accredited Certifier or Council in respect of the following items:
 - a) The details and location of all intercept drains, provided uphill of the excavation, to control runoff through the cut area.
 - b) The proposed method of disposal of collected surface waters is to be clearly detailed
 - c) Procedures for excavation and retention of cuts, to ensure the site stability is maintained during earthworks.
7. Plans and details demonstrating that the commitments identified in the BASIX Certificate that apply to the construction certificate plans and specifications are fulfilled.

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8. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
9. An amended landscape plan is required to be submitted which shows removal of the species, *Acer Negunda* and *Raphiolepis indica* as they are weeds. These must be replaced with locally native species chosen from the Native Plants for your Garden booklet. The booklet is available on the Council website.
10. Engineering plans including specifications and details of the on-site stormwater detention system, are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Such details are to be accompanied by a certification by a qualified experienced practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a corporate member and has appropriate experience and competence in the related field, confirming that the plans/details comply with B5.7 of Pittwater 21 DCP.

Note: Where Council is the Principal Certifying Authority, 3 sets of engineering plans are to be submitted.

11. Drainage plans including specifications and details showing the site stormwater management are to be submitted to the Accredited Certifier with the Construction Certificate application. Such details are to be accompanied by a certificate from (as appropriate) either a Licensed plumber or qualified practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field, that the stormwater management system complies with the requirements of section 3.1.2 Drainage of the Building Code of Australia Housing Provision and AS/NZS 3500.3.2 - Stormwater Drainage. The details shall include disposal of site stormwater (if the site is in a known slip area the stormwater disposal system must comply with the recommendations of a Geotechnical Engineers Report).

Note: Where Council is the Principal Certifying Authority 3 sets of plans/specifications are to be submitted.

12. Plans and details demonstrating that the following issues have been addressed are to be submitted to the Accredited Certifier with the Construction Certificate application.
 - a) Driveway profiles must be obtained from Council for all access driveways across the public road verge to road edge. The driveway profiles provided by Council must be incorporated into and attached to design plans for the access driveway and internal driveway.
 - b) All construction of the access driveway across the public road verge must be undertaken by a Council authorised contractor.
 - c) The driveway layout is to be amended to provide for the entrance from the road at right angles to the kerb face.
 - d) The design of the driveway is to be amended such that the ease from 1 in 5 to level is 2 metres long at 1 in 10.
13. Applicants will be required to obtain prior to the issue of a Construction Certificate, a Section 139 Consent for Works on a Public Road Reserve issued by the Council under the provisions of Section 138 of the *Roads Act 1993* for the design and construction of any works located on the road reserve including Access Driveways.

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14. Civil engineering details of the proposed excavation/landfill are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Each plan/sheet is to be signed by a qualified practising Civil Engineer who has corporate membership of the Institution of Engineers Australia (M.I.E) or who is eligible to become a corporate member and has appropriate experience and competence in the related field.
15. The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public and private properties and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

D. Matters to be satisfied prior to the commencement of works and maintained during the works:

Note: It is an offence to commence works prior to issue of a Construction Certificate.

1. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.

Note: This condition does not apply in relation to Crown building work that is certified, in accordance with Section 116G of the Act, to comply with the technical provisions of the States building laws.

2. Any proposed demolition works shall be carried out in accordance with the requirements of AS2601-2001 The Demolition of Structures.

Amongst others, precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:

- a) Protection of site workers and the general public.
- b) Erection of hoardings where appropriate.
- c) Asbestos handling and disposal where applicable.
- d) Any disused service connections shall be capped off.

Council is to be given 48 hours written notice of the destination/s of any excavation or demolition material. The disposal of refuse is to be to an approved waste disposal depot.

3. A certificate prepared by an appropriate qualified person is to be submitted to the Principal Certifying Authority for the following building components, certifying to the satisfaction of Principal Certifying Authority that the nominated works have been carried out in accordance with the Building Code of Australia, relevant Australian Standards and any conditions of Development Consent. Works are not to progress past this point until the Principal Certifying Authority has confirmed that this condition has been satisfied (see copy of form attached).

Where this confirmation of compliance is issued by a private Principal Certifying Authority certifier, for the purposes of keeping a public record, a copy of the letter is to be forwarded to Council within 5 working days of the date of issue.

4. A stamped copy of the approved plans is to be kept on the site at all times, during construction.
5. The following facilities must be provided on the site:

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- a) toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
- b) a garbage receptacle for food scrapes and papers, with a tight fitting lid.

Toilet facilities are to be provided in a location which will not detrimentally affect the amenity of any adjoining residents at or in the vicinity of the work site during the duration of the development.

- 6. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must give the owner of the adjoining property at least seven (7) days written notice of their intention to excavate below the level of the base of the footing and furnish the adjoining property owner with particulars of the proposed work.
- 7. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 8. The site must be fenced throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
- 9. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.
- 10. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
- 11. Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.
- 12. Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.
- 13. The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and not cause interference to adjoining or nearby occupations
- 14. Personnel with appropriate training, or demonstrated knowledge and experience in erosion and sediment control shall be responsible for supervising the installation and maintenance of approved erosion and sediment control measures – during and after construction and until the site has been restored to the satisfaction of council.
- 15. The site must be fenced throughout construction and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
- 16. No works are to be carried out in Council's Road Reserve without the written approval of the Council.
Note: Separate approval is required for access driveways, paths, connections to underground services (stormwater, gas, sewer, electricity, etc.), and landscaping works within Council's Road Reserve.

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17. A Road Opening Permit, issued by Council, must be obtained for any road openings, or excavation within Council's Road Reserve associated with the development on the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
18. No skip bins or materials are to be stored on Council's Road Reserve.
19. A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:
 - a) The builder's name, builder's telephone contact number both during work hours and after hours.
 - b) That no works are to be carried out in Council's Road Reserve without prior application and approval of a Road Opening Permit from Council.
 - c) That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
 - d) That no skip bins or materials are to be stored on Council's Road Reserve.
 - e) That the contact number for Pittwater Council for permits is 9970 1111.
20. All construction in the public road reserve must be undertaken by a Council authorised contractor.
21. No storage of building materials or building waste, excavated fill or topsoil storage is to occur within the dripline of trees shown on the approved landscape working drawing(s) as being retained or within protective fenced areas.

Drainage is to be arranged such that fill, building materials or contaminants are not washed into protective fenced areas.
22. All works within 5 metres of the existing trees to be retained including pruning, demolition, excavation, civil works, fencing and the like must be carried out by hand under the supervision of an experienced and qualified Arborist. Should roots larger than 50mm be encountered all excavation works are to cease immediately and a qualified Arborist is to advise on the impacts of the roots removal on the tree's survival and report to the Principal Certifying Authority prior to works recommencing. If tree roots are present a pier and beam method of footing construction is to be adopted so as to bridge/span any identified lateral roots.

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23. Demolition works must be carried out in compliance with WorkCovers *Short Guide to Working with Asbestos Cement* and Australian Standard AS 2601 2001 The Demolition of Structures.
The site must be provided with a sign containing the words *DANGER ASBESTOS REMOVAL IN PROGRESS* measuring not less than 400mm x 300mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.
All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.
Adjoining property owners are to be given at least seven (7) days notice in writing of the intention to disturb and remove asbestos from the development site.

E. Matters to be satisfied prior to the issue of Occupation Certificate:

Note: Prior to the issue of an Occupation Certificate the principal certifying authority is to ensure that Council's assets, including road, kerb and gutter and drainage facilities adjacent or near to the site have not been damaged as a result of the works. Where such damage has occurred, it is to be repaired to Council's written satisfaction prior to the issue of an Occupation Certificate or suitable arrangements put in place to effect those repairs at a future date to Council's written satisfaction. Should this process not be followed, Council will pursue action against the principal accredited certifier in relation to the recovery of costs to effect such works.

Note: It is an offence to occupy the building or part thereof to which this consent relates prior to the issue of an Occupation Certificate.

1. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.
2. The following documents must be submitted:
 - (a) A certificate from a suitably Qualified Engineer, certifying:
 - (i) the stormwater drainage system
 - (ii) the car parking arrangement and area
 - (iii) any related footpath crossing works
 - (iv) the proposed basement pump and well system
 - (v) the proposed driveway and layback, and/or
 - (vi) other civil works, have been constructed in accordance with the approved plans and conditions of consent.
 - (b) A "Works-as-executed" plan of the engineering and/or drainage works.

Where Council is not the Principal Certifying Authority, two copies of the above documents are to be provided to Council prior to issue of any Occupation Certificate.

3. A copy of the Section 73 Compliance Certificate issued under the provisions of the *Sydney Water Act, 1994*, is to be forwarded to Council or the Private Certifying Authority with the Occupation Certificate.
4. All existing and /or proposed dwellings/sole occupancy units are to have approved hard-wired smoke alarms installed and maintained over the life of the development. All hard-wired smoke alarms are to be Australian Standard compliant and must be installed and certified by any appropriately qualified electrician prior to the issue of any Occupation Certificate.

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5. Certification is to be provided that the commitments identified in the BASIX Certificate have been fulfilled.
6. Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
7. The stormwater drainage system must be constructed and completed in accordance with the approved design and relevant Australian Standards.

A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a Licensed Plumber or qualified practicing Civil Engineer that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards must be provided.

8. The stormwater drainage system must be constructed and completed in accordance with the approved design and relevant Australian Standards.

A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a Licensed Plumber or qualified practicing Civil Engineer that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards must be provided.

9. The applicant must obtain written confirmation from Council that all works in the road reserve have been completed in accordance with the conditions of the Roadworks Permit (Section 139 Roads Act 1993).
10. The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.
11. A certificate submitted by a Chartered Professional Engineer confirming to the satisfaction of the Principal Certifying Authority that the works in the public road reserve comply with Council requirements is to be provided with the Occupation Certificate application.
12. Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Occupation Certificate application.
13. Street numbers are to be affixed so that they are clearly displayed and visible from a public place.

G. Advice:

1. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.
2. Dial before you dig: Prior to excavation the applicant is advised to contact Australia's National Referral Service for Information on Underground Pipes and Cables telephone 1100 or www.1100.com.au

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3. It is the Project Managers responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.
4. In accordance with Section 95(1) of the EPA Act 1979, this development consent lapses 5 years after the date from which this consent operates if the development is not commenced.
5. To ascertain the date upon which a consent operates, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979* (as amended).
6. Should any of the determination not be acceptable, you are entitled to request reconsideration under Section 82A of the Environmental Planning and Assessment Act, 1979. Such request to Council must be made in writing, together with appropriate fees as advised at the time of lodgement of such request, within 6 months of the determination.
7. If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act, 1979, gives you a right of appeal to the Land and Environment Court within 6 months of the date of endorsement of this Consent.
8. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Waters sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to the web site at www.sydneywater.com.au then see Building Developing and Plumbing then Quick Check, or telephone 13 20 92.