



Agenda

Council Meeting

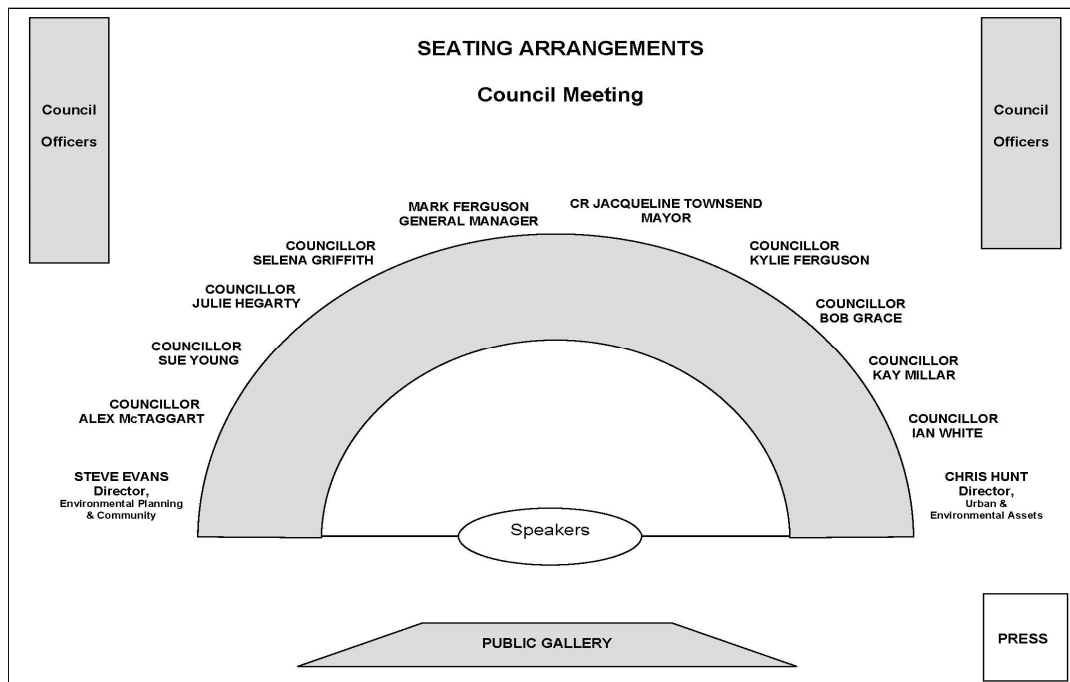
Notice is hereby given that a Council Meeting of Pittwater Council will be held at Mona Vale Memorial Hall on

19 October 2015

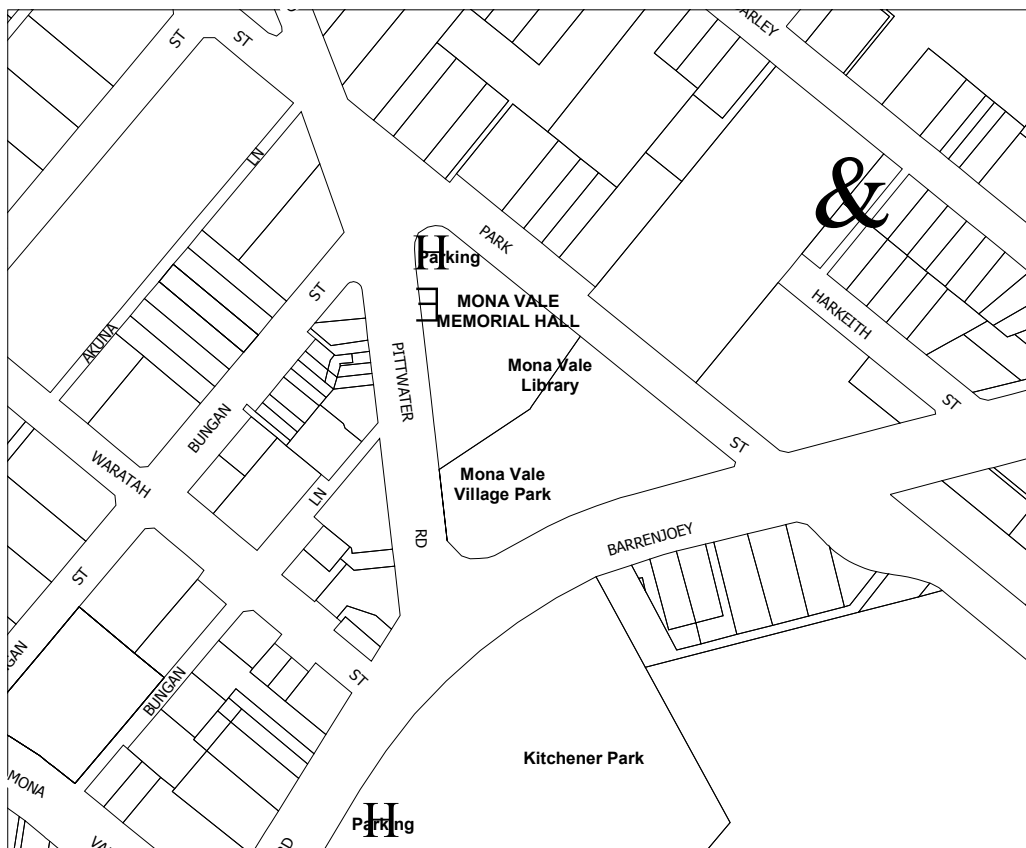
Commencing at 6.30pm for the purpose of considering the items included on the Agenda.

Mark Ferguson
GENERAL MANAGER

Seating Arrangements



Meeting Location



All Pittwater Council's Agenda and Minutes are available on the Pittwater website at www.pittwater.nsw.gov.au

Acknowledgement of Country

**Pittwater Council honours and respects the spirits of the
Guringai people.**

**Council acknowledges their traditional custodianship of
the Pittwater area.**

Statement of Respect

**Pittwater Council promotes and strives to achieve a climate of respect
for all and endeavours to inspire in our community shared civic pride by
valuing and protecting our unique environment, both natural and built,
for current and future generations.**

**We, the elected members and staff of Pittwater Council, undertake to
act with honesty and integrity, to conduct ourselves in a way that
engenders trust and confidence in the decisions we make on behalf
of the Pittwater Community.**

Council Meeting

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**The Senior Management Team
has approved the inclusion of
all reports in this agenda.**

Council Meeting

Presentation of Subsidies to Pittwater Surf Clubs

As in previous years, the Mayor will present a cheque to a representative of each of the Surf Life Saving Clubs, being the annual subsidy by Council to Surf Clubs in the Pittwater area.

1.0 Public Forum

GUIDELINES FOR RESIDENTS - PUBLIC FORUM

Objective

The purpose of the Public Forum is to gain information or suggestions from the community on new and positive initiatives that Council can consider in order to better serve the Pittwater community.

- The Public Forum is not a decision making forum for the Council;
- Residents should not use the Public Forum to raise routine matters or complaints. Such matters should be forwarded in writing to Council's Customer Service Centres at Mona Vale or Avalon where they will be responded to by appropriate Council Officers;
- There will be no debate or questions with, or by, Councillors during/following a resident submission;
- Council's general meeting procedures apply to Public Forums, in particular, no insults or inferences of improper behaviour in relation to any other person/s is permitted;
- No defamatory or slanderous comments will be permitted. Should a resident make such a comment, their submission will be immediately terminated by the Chair of the Meeting;
- Up to 20 minutes is allocated to the Public Forum;
- A maximum of 1 submission per person per meeting is permitted, with a maximum of 4 submissions in total per meeting;
- A maximum of 5 minutes is allocated to each submission;
- Public submissions will not be permitted in relation to the following matters:
 - Matters involving current dealings with Council (eg. development applications, contractual matters, tenders, legal matters, Council matters under investigation, etc);
 - Items on the current Council Meeting agenda;
- The subject matter of a submission is not to be repeated by a subsequent submission on the same topic by the same person within a 3 month period;
- Participants are not permitted to use Council's audio visual or computer equipment as part of their submission. However, photographs, documents etc may be circulated to Councillors as part of the submission;
- Any requests to participate in the Public Forum shall be lodged with Council staff by 12 noon on the day of the Council Meeting. To register a request for a submission, please contact Warwick Lawrence, phone 9970 1112.

Mark Ferguson
GENERAL MANAGER

2.0 Resident Questions

RESIDENT QUESTION TIME

Objective

The purpose of Resident Question Time is to provide the community with a forum to ask questions of the elected Council on matters that concern or interest individual members of the community.

The following guidelines apply to any person addressing a Council / Committee meeting in relation to a Resident Question:

- 1. Residents Question Time is conducted at the commencement of the second Council Meeting of the month and prior to the handling of General Business.*
- 2. A maximum of 10 minutes is allocated to Residents Question Time.*
- 3. Each Resident is restricted to two (2) questions per meeting.*
- 4. All questions are to be in writing or made electronically and lodged with the General Manager no later than 6.15pm on the day of the Council meeting at which it is to be considered.*
- 5. Questions must be precise and succinct and free of ambiguity and not contain any comments that may be offensive, defamatory or slanderous in any way.*
- 6. A brief preamble may accompany the question to clarify the issue however only the actual question will be included in the minutes of the Council meeting.*
- 7. Responses to residents questions made at the meeting will also be included in the minutes of the Council meeting.*
- 8. Resident's questions taken on notice shall be the subject of a report to Council setting out both the question and response and shall be included in the agenda at the second meeting of the month following the resident's question.*
- 9. There will be no debate or questions with, or by, Councillors during / following a resident question and response.*

3.0 Apologies

Apologies must be received and accepted from absent Members and leave of absence from the Council Meeting must be granted.

4.0 Declarations of Pecuniary and Conflict of Interest including any Political Donations and Gifts

Councillors are advised of the following definitions of a "pecuniary" or "conflict" of interest for their assistance:

* Section 442 of the Local Government Act, 1993 states that a "pecuniary" interest is as follows:

- "(1) [Pecuniary interest] A Pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.*
- (2) [Remoteness] A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter."*

Councillors should reference the Local Government Act, 1993 for detailed provisions relating to pecuniary interests.

* Council's Code of Conduct states that a "conflict of interest" exists when you could be influenced, or a reasonable person would perceive that you could be influenced by a personal interest when carrying out your public duty.

Councillors are also reminded of their responsibility to declare any Political donation or Gift in relation to the Local Government & Planning Legislation Amendment (Political Donations) Act 2008.

* A reportable political donation is a donation of:

- \$1,000 or more made to or for the benefit of the party, elected member, group or candidate; or
- \$1,000 or more made by a major political donor to or for the benefit of a party, elected member, group or candidate, or made to the major political donor; or
- Less than \$1,000 if the aggregated total of the donations made by the entity or person to the same party, elected member, group, candidate or person within the same financial year (ending 30 June) is \$1,000 or more.

5.0 Confirmation of Minutes

"Councillors are advised that when the confirmation of minutes is being considered, the only question that can arise is whether they faithfully record the proceedings at the meeting referred to. A member of a council who votes for the confirmation of the minutes does not thereby make himself a party to the resolutions recorded: **Re Lands Allotment Co (1894) 1 Ch 616, 63 LJ Ch 291.**"

Minutes of the Council Meeting held on 6 October 2015.

6.0 Public Addresses

The following guidelines apply to any person addressing a Council / Committee meeting in relation to an item on the Council / Committee meeting agenda:

1. *A member of the public may be granted leave to address a meeting of Council or a Committee, where such a request is received by the General Manager no later than 3.00pm on the day of the meeting. This is subject to:*
 - (a) *A maximum of up to six speakers may address on any one item, with a maximum of three speakers in support of the recommendation in the report, and three speakers in opposition.*
 - (b) *A limitation of three minutes is allowed for any one speaker, with no extensions.*
 - (c) *An objector/s to a development application is to speak first with the applicant always being given the right to reply.*

Exceptions to these requirements may apply where:

- (a) *The Meeting specifically requests that a person be interviewed at a meeting.*
 - (b) *The Meeting resolves that a person be heard at the meeting without having given prior notice to the General Manager*
2. *Once a public/resident speaker has completed their submission and responded to any Councillor questions, they are to return to their seat in the public gallery prior to the formal debate commencing.*
3. *No defamatory or slanderous comments will be permitted. Should a resident make such a comment, their address will be immediately terminated by the Chair of the meeting.*
4. *Council's general meeting procedures apply to Public Addresses, in particular, no insults or inferences of improper behaviour in relation to any other person is permitted.*
5. *Residents are not permitted to use Council's audio visual or computer equipment as part of their address. However, photographs, documents etc may be circulated to Councillors as part of their address.*

7.0 Councillor Questions with Notice

Nil.

8.0 Mayoral Minutes

Nil.

9.0 Business by Exception

Items that are dealt with by exception are items where the recommendations contained in the reports in the Agenda are adopted without discussion.

10.0 Council Meeting Business

Nil.

Leading and Learning Committee

11.0 Leading and Learning Committee Business

C11.1	Presentation of Financial Reports and Related Auditor's Report for the Year Ended 30 June 2015
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Meeting: Leading & Learning Committee

Date: 19 October 2015

COMMUNITY STRATEGIC PLAN STRATEGY: Corporate Management

COMMUNITY STRATEGIC PLAN OBJECTIVE:

- To ensure Council's future financial sustainability

DELIVERY PROGRAM ACTION:

- Produce monthly, quarterly and annual budgets and statements
-

1.0 EXECUTIVE SUMMARY

- In addressing the statutory requirements under the Local Government Act, Council's Audited Financial Reports together with the Auditor's Report are presented to Council.
 - Council's financial position is summarised in section 3.3.8 of this Report, including an Operating Result (Before Capital Amounts) of a \$1,711,000 surplus.
 - It is the opinion of Council's Auditors, Hill Rogers Spencer Steer, that Pittwater Council's financial position is sound for the Financial Year Ended 30 June 2015.
-

2.0 RECOMMENDATION

- 1. That the presentation of the 2014/15 Financial Reports and the Auditor's Report be noted.*
-

3.0 BACKGROUND

3.1 PURPOSE OF REPORT

To address the statutory requirements under the Local Government Act, 1993 Council must hold a public meeting to present Council's Audited Financial Reports together with the Auditor's Report.

3.2 BACKGROUND

The Local Government Act, 1993, requires a Council to present its Audited Financial Reports, together with the Auditor's Report, at a meeting of Council within 5 weeks of receipt of the Auditor's Report.

3.3 ISSUES

- 3.3.1 At Council's Audit and Risk Committee Meeting of 18 August 2015, the Committee endorsed Council's 2014/15 Financial Reports.
- 3.3.2 At Council's Ordinary Meeting of 6 October 2015, the Financial Reports for the period 1 July 2014 to 30 June 2015 were adopted and referred to Council's Auditors, Hill Rogers Spencer Steer Chartered Accountants.

- 3.3.3 The Auditor's Report was completed and signed off in the week beginning 12 October 2015.
- 3.3.4 In accordance with S.418, an advertisement was placed in the local press notifying ratepayers and interested persons that the presentation of the Financial Reports and Auditor's Report to Council would take place on Monday 19 October 2015. Public submissions were invited over the period up to and including Monday 26 October 2015 in accordance with S.418 & S.420.
- 3.3.5 Council at its Ordinary Meeting of 6 October 2015 resolved to invite the Council's Auditors, Hill Rogers Spencer Steer, to attend the meeting and present their Report. Council's Auditor will be in attendance and their audit report will be tabled at that meeting.
- 3.3.6 Council's 2014/15 Financial Reports and Auditor's Report have been available for public inspection at the Avalon and Mona Vale Customer Service Centres and Libraries and on Council's website.
- 3.3.7 A copy of Council's 2014/15 Financial Reports are tabled.
- 3.3.8 A summary of Council's Financial Results:

A summary of the Financial Statements is provided below:

	2015	2014
	\$'000	\$'000
Income Statement		
Total Income from Continuing Operations	92,340	77,221
Total Expenses from Continuing Operations	77,799	72,476
Operating Result from Continuing Operations	14,541	4,745
Net Operating Result for the year	14,541	4,745
Net Operating Result before Grants & Contributions provided for Capital Purposes	1,711	872
Statement of Financial Position		
Total Current Assets	41,904	35,227
Total Current Liabilities	(18,402)	(15,244)
Total Non Current Assets	1,070,646	1,059,915
Total Non Current Liabilities	(14,369)	(14,206)
Total Equity	1,079,779	1,065,692
Other Financial Information		
Unrestricted Current Ratio (times)	2.12x	2.31x
Operating Performance Ratio (%)	0.12%	0.35%
Debt Service Cover Ratio (times)	4.51x	4.55x
Rates & Annual Charges Outstanding Ratio (%)	4.45%	4.54%
Building, Infrastructure & Other Structures Renewals Ratio (%)	113.9%	129.2%
Own Source Operating Revenue Ratio (%)	81.0%	91.2%
Cash Expense Cover Ratio (months)	5.91 mths	5.3 mths

3.4 POLICY IMPLICATIONS

Nil Implications

3.5 RELATED LEGISLATION

Council's 2014/15 Financial Reports comply with all necessary Sections of the Local Government Act, 1993 (S.413, S.415, S416) and S.418 that states as soon as practicable but not more than 5 weeks after the Audit Report is received, Council must give notice that a Meeting will be held to present the Financial Reports and the Auditor's Report to the public. Such public notice must include a summary of the Financial Reports.

4.0 ATTACHMENTS / TABLED DOCUMENTS

Tabled Document: Auditors Report - Pittwater Council's 2014/15 Financial Reports

5.0 SUSTAINABILITY ASSESSMENT

5.1 GOVERNANCE & RISK

5.1.1 Community Engagement

- Not Applicable

5.1.2 Risk Management

- Not Applicable

5.2 ENVIRONMENT

5.2.1. Environmental Impact

- Not Applicable

5.2.2 Mitigation Measures

- Not Applicable

5.3 SOCIAL

5.3.1 Address Community Need & Aspirations

- Not Applicable

5.3.2 Strengthening Local community

- Not Applicable

5.4 ECONOMIC

5.4.1 Economic Development

- The 2014/15 Financial Results provide a financial basis for Council in the delivery of sustainable services to the community.

5.4.2 Integrating our Built Environment (Infrastructure)

- Not Applicable

Report prepared by

Mark Jones

CHIEF FINANCIAL OFFICER

C11.2 Investment Balances as at 30 September 2015

Meeting: Leading and Learning Committee

Date: 19 October 2015

COMMUNITY STRATEGIC PLAN STRATEGY: Corporate Management

COMMUNITY STRATEGIC PLAN OBJECTIVE:

- To ensure Council's future financial sustainability

DELIVERY PROGRAM ACTION:

- To Provide Effective Investment of Council's Funds
-

1.0 EXECUTIVE SUMMARY

1.1 SUMMARY

- The net investment return as at 30 September 2015 is \$260,969.
 - All investments have been made in accordance with the NSW Local Government Act, 1993, the Local Government (General) Regulations and Council's Investment Policy.
-

2.0 RECOMMENDATION

That the information provided in the report be noted.

3.0 BACKGROUND

3.1 PURPOSE

A report listing Council's investments must be presented.

3.2 BACKGROUND

As provided for in Regulation 212 of the Local Government (General) Regulation, 2005, a report listing Council's investments must be presented.

3.3 POLICY IMPLICATIONS

Council's Investment Policy (No 143)

3.4 RELATED LEGISLATION

Regulation 212 of the Local Government (General) Regulation, 2005, states that a report listing Council's investments must be presented. The responsible Accounting Officer certifies that all investments have been made in accordance with Section 625 of the NSW Local Government Act, 1993, the Local Government (General) Regulations and Council's Investment Policy (No 143).

3.5 FINANCIAL ISSUES

3.5.1 Budget

- The net investment return as at 30 September 2015 is \$260,969
- The projected investment return budget for the financial year (subject to quarterly budget review) is \$1,119,938

3.5.2 Resources Implications

Nil Implication

4.0 KEY ISSUES

4.1 MONTHLY RETURN

Investment return for the month of September 2015:	
Term deposits interest income:	<u>\$96,563</u>
Net investment return for September 2015:	\$96,563

YEAR TO DATE RETURN

Investment return year to date September 2015:	
Term deposits interest income:	<u>\$260,969</u>
Net investment return year to date:	\$260,969

Projected investment return budget for financial year: \$1,119,938

4.2 PERFORMANCE OF COUNCIL'S PORTFOLIO FOR THE LAST FIVE YEARS

Annual return of Council's portfolio for the last five years:

Year to	Net Return	Return on average funds invested
June 2012	\$1,679,693	6.4%
June 2013	\$1,656,908	4.8%
June 2014	\$1,227,105	3.8%
June 2015	\$1,150,799	3.3%
September 2015	\$260,969	2.9%
Projected Budget	\$1,119,938	2.9%

5.0 ATTACHMENTS / TABLED DOCUMENTS

Attachment 1: Investment Balance Table and Associated Graphs

6.0 SUSTAINABILITY ASSESSMENT

6.1 GOVERNANCE & RISK

6.1.1 Community Engagement
Not Applicable

6.1.2 Risk Management
Investments and Interest Income form a part of Council's 2015/16 Budget. Investment risk is mitigated by Council's conservative portfolio structure and compliance with associated legislation and regulations.

6.2 ENVIRONMENT

6.2.1 Environmental Impact
Not Applicable

6.2.2 Mitigation Measures
Not Applicable

6.3 SOCIAL

6.3.1 Address Community Need & Aspirations
Not Applicable

6.3.2 Strengthening Local community
Not Applicable

6.4 ECONOMIC

6.4.1 Economic Development
Investments and Interest Income form a part of Council's 2015/16 Budget.

Report prepared by
Renae Wilde, Senior Project Accountant

Mark Jones
CHIEF FINANCIAL OFFICER



PITTWATER COUNCIL

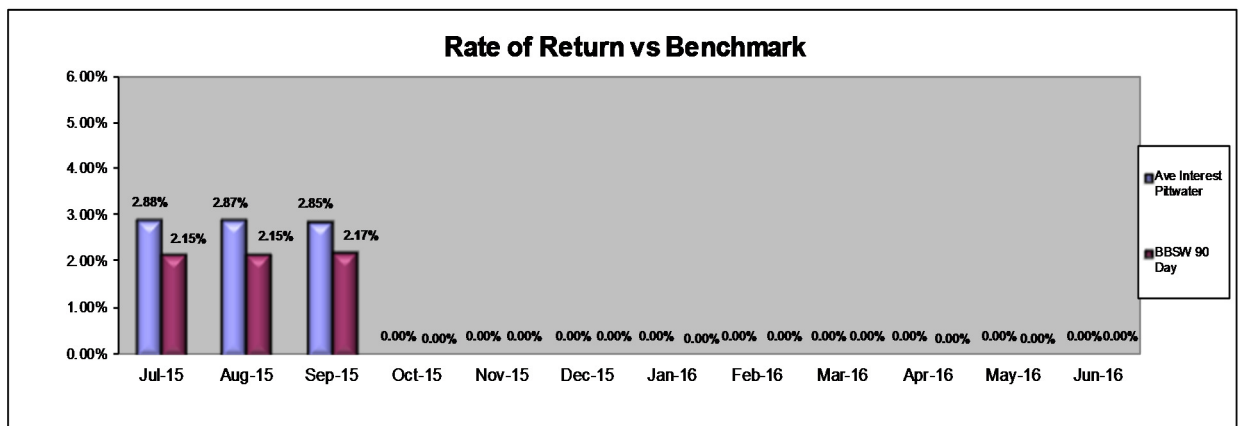
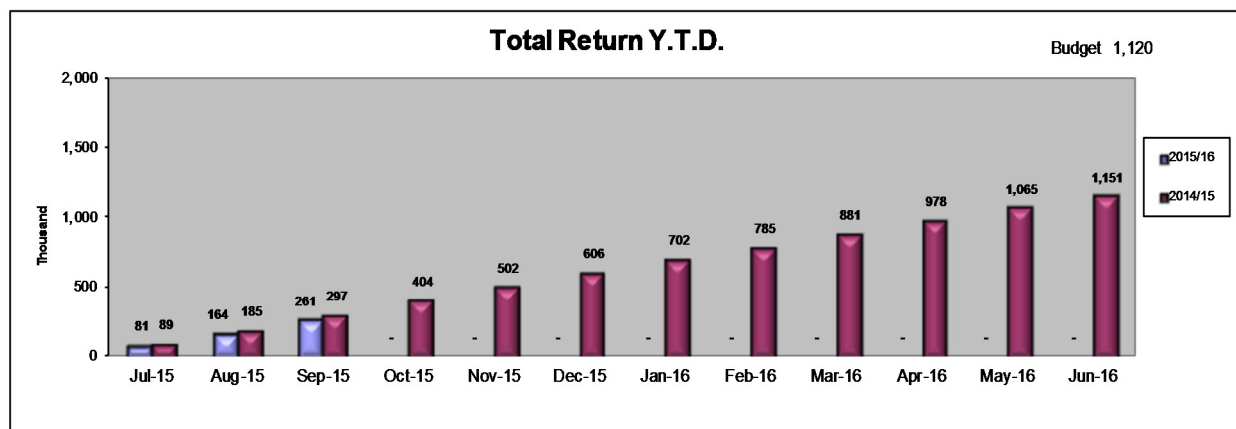
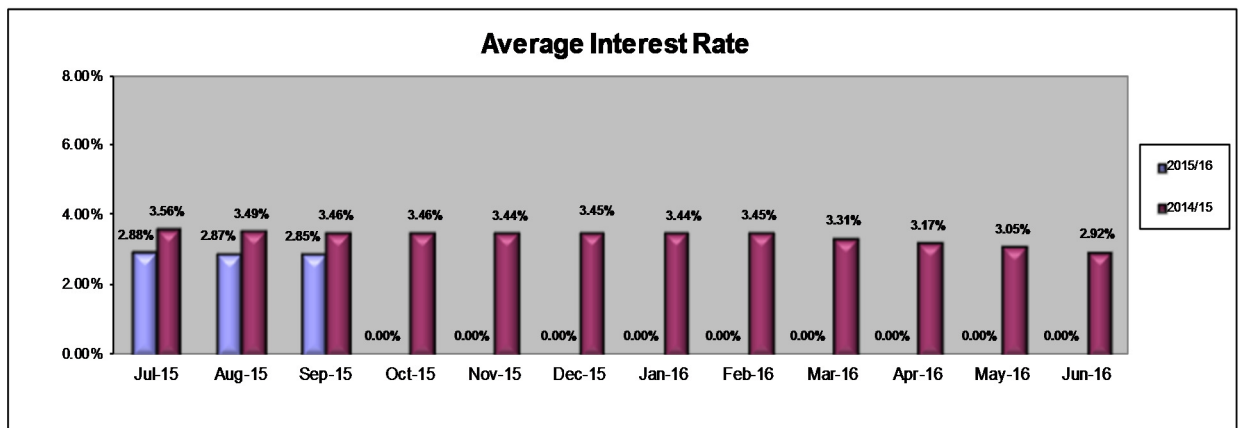
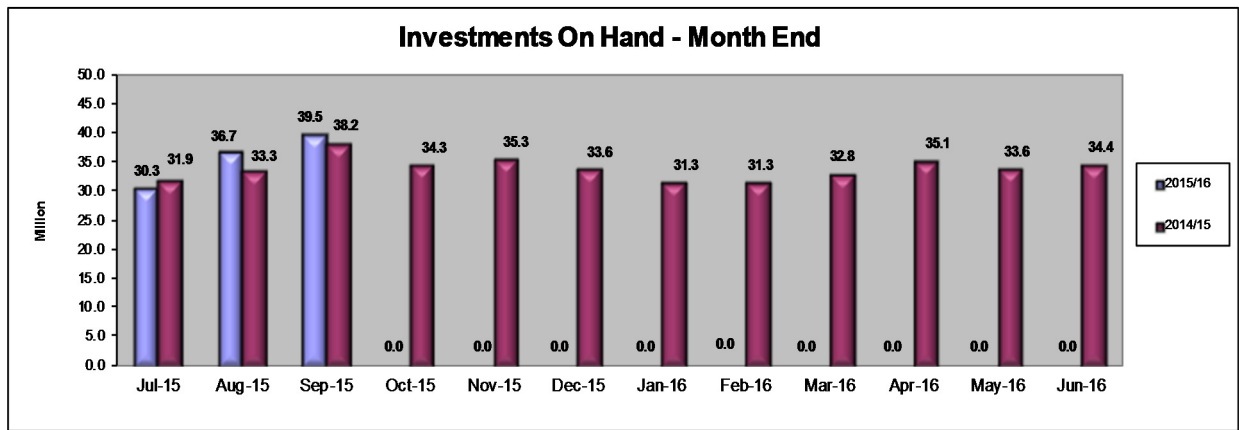
INVESTMENT BALANCES

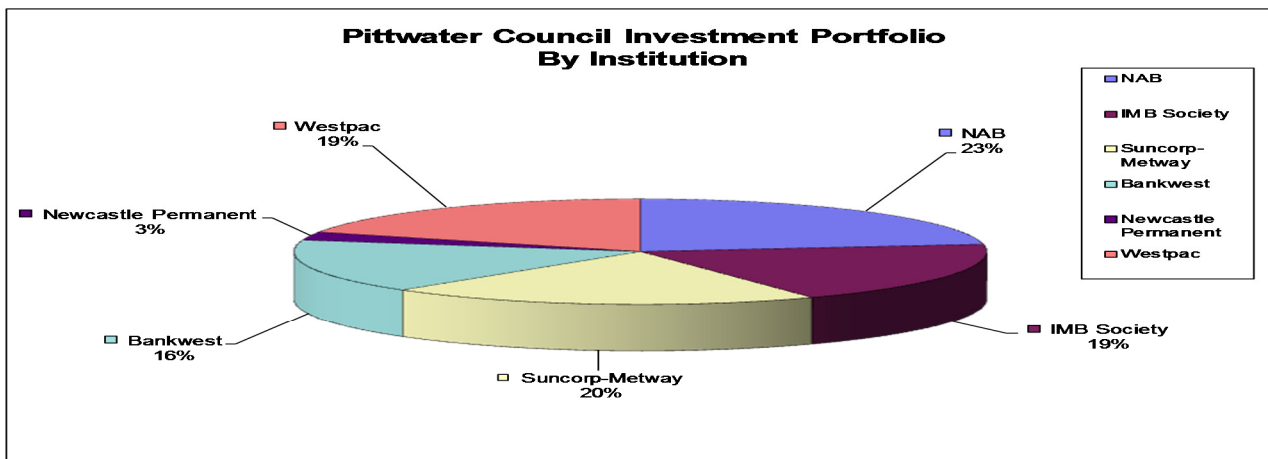
As at 30th September 2015

TYPE	INSTITUTION	Rating	AMOUNT \$	DATE INVESTED	MATURITY DATE	TERM (DAYS)	INTEREST RATE
At Call	NAB	AA-	3,000,000.00 *	At Call	At Call	1	2.50%
At Call Total			3,000,000.00				
Term Dep	IMB Society	BBB+	1,000,000.00	27-Apr-15	6-Oct-15	162	2.80%
Term Dep	IMB Society	BBB+	500,000.00	6-Jul-15	26-Oct-15	112	2.75%
Term Dep	IMB Society	BBB+	1,000,000.00	4-Aug-15	1-Feb-16	181	2.85%
Term Dep	IMB Society	BBB+	1,000,000.00	10-Aug-15	25-Jan-16	168	2.78%
Term Dep	IMB Society	BBB+	500,000.00	24-Aug-15	18-Jan-16	147	2.75%
Term Dep	IMB Society	BBB+	1,000,000.00	31-Aug-15	29-Feb-16	182	2.80%
Term Dep	IMB Society	BBB+	1,000,000.00	2-Sep-15	7-Mar-16	187	2.80%
Term Dep	IMB Society	BBB+	1,000,000.00	2-Sep-15	4-Apr-16	215	2.80%
Term Dep	IMB Society	BBB+	500,000.00	8-Sep-15	29-Mar-16	203	2.80%
Investee Total			7,500,000.00				
Term Dep	Suncorp-Metway	A+	750,000.00	25-May-15	23-Nov-15	182	2.90%
Term Dep	Suncorp-Metway	A+	1,000,000.00	4-Jun-15	30-Nov-15	179	2.95%
Term Dep	Suncorp-Metway	A+	500,000.00	15-Jun-15	14-Dec-15	182	2.95%
Term Dep	Suncorp-Metway	A+	1,000,000.00	29-Jun-15	21-Dec-15	175	3.00%
Term Dep	Suncorp-Metway	A+	1,000,000.00	10-Aug-15	8-Feb-16	182	2.81%
Term Dep	Suncorp-Metway	A+	1,000,000.00	13-Aug-15	15-Feb-16	186	2.87%
Term Dep	Suncorp-Metway	A+	750,000.00	20-Aug-15	22-Feb-16	186	2.90%
Term Dep	Suncorp-Metway	A+	500,000.00	2-Sep-15	7-Mar-16	187	2.84%
Term Dep	Suncorp-Metway	A+	500,000.00	8-Sep-15	29-Mar-16	203	2.90%
Term Dep	Suncorp-Metway	A+	1,000,000.00	14-Sep-15	11-Apr-16	210	2.85%
Investee Total			8,000,000.00				
Term Dep	Bankwest	AA-	1,000,000.00	11-May-15	13-Oct-15	155	2.85%
Term Dep	Bankwest	AA-	1,000,000.00	1-Jun-15	19-Oct-15	140	2.90%
Term Dep	Bankwest	AA-	1,000,000.00	22-Jun-15	26-Oct-15	126	3.00%
Term Dep	Bankwest	AA-	1,000,000.00	22-Jun-15	16-Nov-15	147	3.00%
Term Dep	Bankwest	AA-	1,000,000.00	31-Aug-15	4-Jan-16	126	2.75%
Term Dep	Bankwest	AA-	1,000,000.00	8-Sep-15	21-Mar-16	195	2.80%
Term Dep	Bankwest	AA-	500,000.00	21-Sep-15	1-Feb-16	133	2.85%
Investee Total			6,500,000.00				
Term Dep	Newcastle Permanent	BBB+	1,000,000.00	8-Jul-15	4-Jan-16	180	2.90%
Investee Total			1,000,000.00				
Term Dep	Westpac	AA-	1,000,000.00	29-Jun-15	2-Nov-15	126	2.88%
Term Dep	Westpac	AA-	1,000,000.00	13-Jul-15	23-Nov-15	133	2.89%
Term Dep	Westpac	AA-	750,000.00	27-Jul-15	2-Nov-15	98	2.88%
Term Dep	Westpac	AA-	1,000,000.00	4-Aug-15	16-Nov-15	104	2.90%
Term Dep	Westpac	AA-	750,000.00	7-Aug-15	21-Dec-15	136	2.90%
Term Dep	Westpac	AA-	750,000.00	10-Aug-15	14-Dec-15	126	2.89%
Term Dep	Westpac	AA-	1,000,000.00	17-Aug-15	11-Jan-16	147	2.88%
Term Dep	Westpac	AA-	750,000.00	31-Aug-15	18-Jan-16	140	2.87%
Term Dep	Westpac	AA-	500,000.00	2-Sep-15	25-Jan-16	145	2.85%
Investee Total			7,500,000.00				
Term Dep	NAB	AA-	1,000,000.00	6-Jul-15	9-Nov-15	126	2.95%
Term Dep	NAB	AA-	1,000,000.00	20-Jul-15	7-Dec-15	140	2.91%
Term Dep	NAB	AA-	1,000,000.00	27-Jul-15	14-Dec-15	140	2.90%
Term Dep	NAB	AA-	500,000.00	7-Aug-15	7-Dec-15	122	2.91%
Term Dep	NAB	AA-	500,000.00	17-Aug-15	11-Jan-16	147	2.90%
Term Dep	NAB	AA-	1,000,000.00	24-Aug-15	22-Feb-16	182	2.90%
Term Dep	NAB	AA-	1,000,000.00	2-Sep-15	14-Mar-16	194	2.88%
Investee Total			6,000,000.00				
Sept BBSW Close							2.17%
TOTAL INVESTMENTS			\$39,500,000.00				

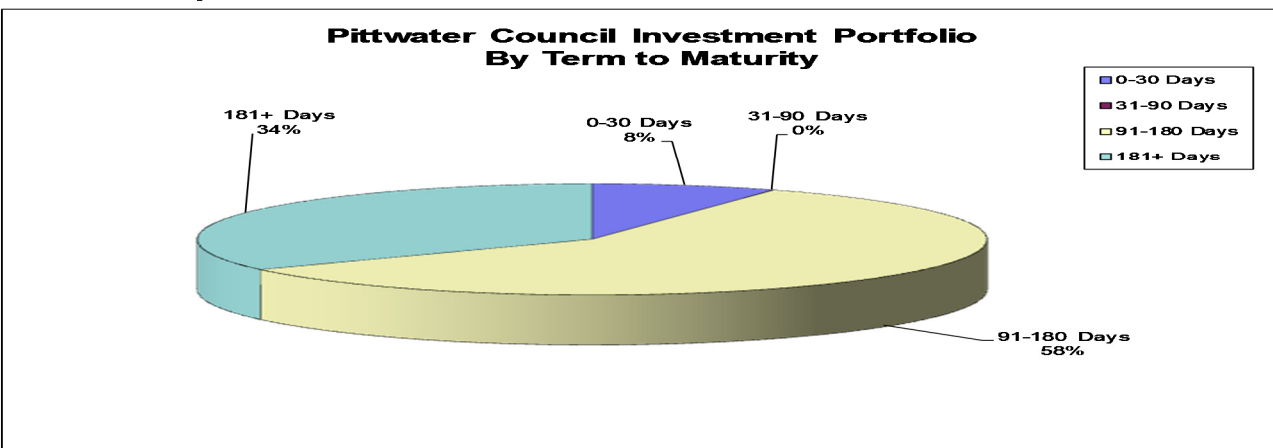
Note: Investments denoted with an * are held in Cash and Cash Equivalents in Council's Balance Sheet along with Cash at Bank and Floats.

All other investments are held as Investment Securities in Council's Balance Sheet

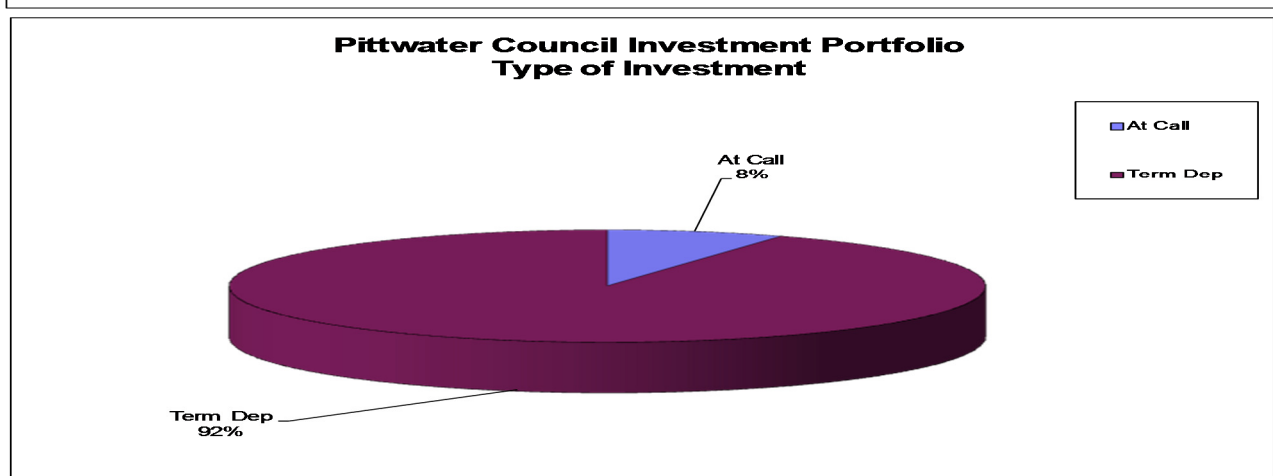
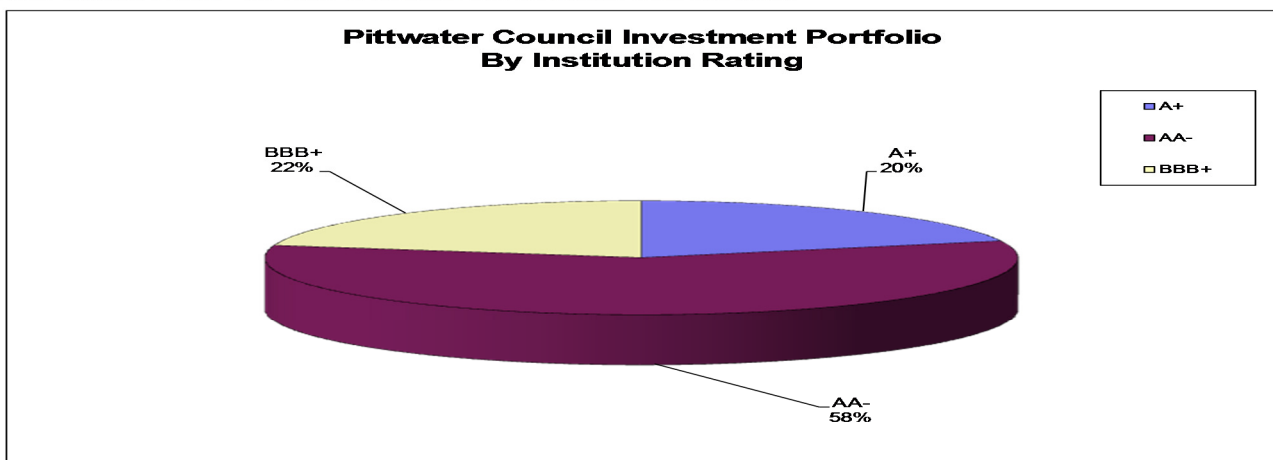




Note: Council Policy - No Institution can hold more than 25% of Council's Total Portfolio



Note: Council Policy - No Term to Maturity can be greater than two years



Investment Information:

Types of Investments -

At Call refers to funds held at a financial institution and can be recalled by Council either same day or on an overnight basis.

A **Term Deposit** is a short term deposit held at a financial institution for a fixed term and attracting interest at a deemed rate.

Credit Rating Information -

Credit ratings are generally a statement as to the institutions credit quality.

Ratings ranging from BBB- to AAA (long term) are considered investment grade.

A general guide as to the meaning of each credit rating is as follows:

AAA	<i>Extremely strong capacity to meet financial commitments (highest rating)</i>
AA	<i>Very strong capacity to meet financial commitments</i>
A	<i>Strong capacity to meet financial commitments, but somewhat more susceptible to adverse economic conditions and changes in circumstances</i>
BBB	<i>Adequate capacity to meet financial commitments with adverse economic conditions or changing circumstances more likely to lead to a weakened capacity of the obligor to meet its financial commitments</i>
BB	<i>Less vulnerable in the near term, but faces major ongoing uncertainties and exposures to adverse business, financial, and economic conditions</i>
B	<i>More vulnerable to non-payment than obligations rated 'BB', but the obligor currently has the capacity to meet its financial commitment on the obligation</i>
CCC	<i>Currently vulnerable, and is dependent upon favourable business, financial, and economic conditions to meet its financial commitments</i>
CC	<i>Currently highly vulnerable</i>
C	<i>Highly likely to default</i>
D	<i>Defaulted</i>

The **Bank Bill Swap Rate (BBSW)** is the average mid-rate, for Australian Dollar bills of exchange, accepted by an approved bank, having regard to a designated maturity.

Sustainable Towns and Villages Committee

12.0 Sustainable Towns and Villages Committee Business

C12.1	N0307/15 - 106 Iluka Road Palm Beach - Alterations and additions to existing dwelling
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Meeting: Sustainable Towns & Villages Committee

Date: 19 October 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
-

1.0 EXECUTIVE SUMMARY

1.1 SUMMARY

The Development Unit at its meeting held on the 1 October 2015 considered the Assessing Officers report (refer **Attachment 1**) for determination of Development Application N0307/15 for alterations and additions to an existing dwelling at 106 Iluka Road, Palm Beach NSW 2108 - Alterations and additions to existing dwelling.

- 1.2 It is a policy requirement of the NSW Department of Planning that applications involving a variation to a development standard of more than 10% be referred to the elected Council for determination.
- 1.3 Discussion in relation to these variations is contained within Section 8.0 (Discussion of Issues) of the Assessing Officer's report.
- 1.4 The Development Unit considered 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 and the following additional condition of consent:

Additional Condition E3:

All existing and /or proposed dwellings/sole occupancy units are to have approved hardwired smoke alarms installed and maintained over the life of the development. All hardwired smoke alarms are to be Australian Standard compliant and must be installed and certified by an appropriately qualified electrician prior to the issue of any Occupation Certificate.

Note: That the reference to Architectural drawings listed in the draft consent decision to be amended to include the words "As amended by:" at the end of the first dot point.

2.0 RECOMMENDATION

That the recommendation in the Development Officer's report be endorsed and Development Application - N0307/15 - 106 Iluka Road, Palm Beach NSW 2108 for alterations and additions to existing dwelling be granted approval subject to the conditions contained in the draft consent and the following additional condition of consent:

Additional Condition E3:

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 an appropriately qualified electrician prior to the issue of any Occupation Certificate.

Note: *That the reference to architectural drawings listed in the draft consent decision to be amended to include the words "As amended by:" at the end of the first dot point.*

3.0 BACKGROUND

3.1 PURPOSE

To seek endorsement of the Development Unit's recommendation following consideration of Development Application - N0307/15 - 106 Iluka Road, Palm Beach NSW 2108 for alterations and additions to existing dwelling.

3.2 BACKGROUND

The Development Unit at its meeting held on the 1 October 2015 considered the Development Officer's report (refer **Attachment 1**) for determination of Development Application N0307/15 - 106 Iluka Road, Palm Beach NSW 2108 for alterations and additions to existing dwelling.

Despite the height variation the Development Unit considered that the merits of the application warranted support of the Assessing Officer's recommendation for approval. (Refer to discussion at Section 8.0 of the Assessing Officer's report)

3.3 POLICY IMPLICATIONS

There are no policy implications in relation to this application.

3.4 RELATED LEGISLATION

Council are 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

- Variation of the Development standard for height
- Other issues as addressed within the assessing officer's report

5.0 ATTACHMENTS / TABLED DOCUMENTS

Attachment 1: Assessing Officer's report to the Development Unit meeting of 1 October 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: N0307/15 - 106 Iluka Road, Palm Beach NSW 2108 -
Alterations and additions to existing dwelling**

Meeting: Development Unit

Date: 1 October 2015

SUMMARY OF RECOMMENDATION

Consent with Conditions

REPORT PREPARED BY:	Christopher Nguyen
APPLICATION SUBMITTED ON:	17/08/2015
APPLICATION SUBMITTED BY:	JOHN ARTHUR CHARLES MCNIVEN
OWNER(S):	JOHN A C MCNIVEN

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 N0307/15 for Alterations and additions to existing dwelling at 106 Iluka Road, Palm Beach NSW 2108 subject to the draft conditions of consent attached.

Report prepared by
Christopher Nguyen, Planner

Andrew Pigott
MANAGER, PLANNING & ASSESSMENT

SUBJECT: N0307/15 - 106 ILUKA ROAD, PALM BEACH NSW 2108 Alterations and additions to existing dwelling

Determination Level:

Development Unit

SUMMARY OF RECOMMENDATION:

CONSENT WITH CONDITIONS

REPORT PREPARED BY:

Christopher Nguyen

APPLICATION SUBMITTED ON:

17 August 2015

JOHN & JOANNA McNIVEN

APPLICATION SUBMITTED BY:

C/O - TKD ARCHITECTS
PO BOX 660
DARLINGHURST NSW 1300

OWNER(S):

MR JOHN ARTHUR CHARLES MCNIVEN

1.0 SITE DETAILS

The site is known as 106 Iluka Road, Palm Beach and legally referred to as Lot 13 Section B DP 12979. The site is rectangular in shape and the total area of the site is 617.5m² with a frontage of 13.715m, facing the west of Iluka Road. The site contains a single three (3) storey brick house that is located to the rear of the site. Adjoining the site are low density residential dwelling and Snapperman Beach Reserve to the west. The slope of the site is approx. 1.38% and is relatively flat.

2.0 PROPOSAL IN DETAIL

The application seeks consent for alterations and additions. In particular the application seeks approval for a new staircase from the first floor to the attic, an extension of the first floor bathroom, an extension of the attic floor to allow for a new bathroom and walk-in robe and the extension of the roof to cover the existing pergola.

3.0 STATUTORY AND POLICY CONSIDERATIONS

The site is zoned E4 Environmental Living under Pittwater Local Environmental Plan 2014. Pursuant to the land use table in Part 2 of this instrument, alterations and additions are permissible with consent.

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 No 71 - Coastal Protection (SEPP 71)

- Pittwater Local Environmental Plan 2014 (PLEP 2014)
 - ◊ Acid Sulphate Soils Map - Class 3 and 5
 - ◊ Foreshore Building Line Map
 - ◊ Height of Buildings Map - I ~ 8.5m
 - ◊ Lot Size Map - Q ~ 700sqm
- Pittwater 21 Development Control Plan (P21 DCP)
 - ◊ Palm Beach Locality
 - ◊ Coastline Risk Management Policy for Development in Pittwater
 - ◊ Estuarine Risk Management Policy for Development in Pittwater
 - ◊ Landscaped Area Map: Area 1
 - ◊ Land containing areas of Saltmarsh Endangered Ecological Community and other foreshore vegetation other than mangroves

Variation to development standards:

Please see 8.0 Discussion of Issues

4.0 BACKGROUND

N0307/15 was lodged at council at 17/08/2015 and referred to council's Development Engineer, Natural Resources Officer, Catchment Management and Reserves and Recreation.

A search of council's records revealed no related documentation.

The variation to the height of buildings development standard is a 16% variation. The application should be determined by the elected Council in accordance with the requirements of the Department of Planning and Environment.

5.0 NOTIFICATION

N0307/15 was notified from 20/08/2015 to 03/09/2015 to adjoining property owners in accordance with council's notification policy. The site inspection on the 27/08/2015 confirmed the placement of the notification sign. During the notification period, zero (0) submissions were received.

6.0 ISSUES

- 4.3 Height of buildings
- 4.6 Exceptions to development standards
- 7.1 Acid sulfate soils

- 3.4 Notification
- B4.15 Saltmarsh Endangered Ecological Community
- B5.8 Stormwater Management - Water Quality - Low Density Residential
- C1.4 Solar Access
- C1.5 Visual Privacy
- D12.1 Character as viewed from a public place
- D12.3 Building colours and materials
- D12.8 Building envelope
- D12.10 Landscaped Area - Environmentally Sensitive Land

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		Please see 8.0 Discussion of Issues	N	Y	Y
4.6 Exceptions to development standards		Please see 8.0 Discussion of Issues	N	Y	Y
5.5 Development within the coastal zone			Y	Y	Y
5.10 Heritage conservation			Y	Y	Y
7.1 Acid sulfate soils			Y	Y	Y
7.8 Limited development on foreshore area			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

Control	Standard	Proposal	T	O	N
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
A1.7 Considerations before consent is granted			Y	Y	Y
A4.12 Palm Beach Locality			Y	Y	Y
B1.3 Heritage Conservation - General			Y	Y	Y
B1.4 Aboriginal Heritage Significance		Council's Nat Res Officer provided the following comments: <i>No apparent issues.</i>	Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B3.7 Estuarine Hazard - Low density residential			Y	Y	Y
B4.15 Saltmarsh Endangered Ecological Community			Y	Y	Y
B5.2 Wastewater Disposal			Y	Y	Y
B5.8 Stormwater Management - Water Quality - Low Density Residential			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
C1.1 Landscaping		Council's Nat Res Officer provided the following comments: <i>For comment see B4.15</i>	Y	Y	Y
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing			Y	Y	Y
C1.4 Solar Access			Y	Y	Y
C1.5 Visual Privacy			Y	Y	Y
C1.6 Acoustic Privacy			Y	Y	Y
C1.7 Private Open Space		The lot will have over 80m ² of private open space. Complies.	Y	Y	Y
C1.12 Waste and Recycling Facilities			Y	Y	Y

Control	Standard	Proposal	T	O	N
C1.13 Pollution Control			Y	Y	Y
C1.23 Eaves		Proposed eaves of the extension on the attic level are 500mm. Complies.	Y	Y	Y
C1.24 Public Road Reserve - Landscaping and Infrastructure			Y	Y	Y
D12.1 Character as viewed from a public place			Y	Y	Y
D12.3 Building colours and materials			Y	Y	Y
D12.5 Front building line		The proposed works are within the front building line requirement.	Y	Y	Y
D12.6 Side and rear building line		The proposed works are within the side and rear setback requirements.	Y	Y	Y
D12.8 Building envelope			N	Y	Y
D12.10 Landscaped Area - Environmentally Sensitive Land			N	Y	Y
D12.13 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y
D12.14 Scenic Protection Category One Areas			Y	Y	Y
D15.11 Waterfront lighting			Y	Y	Y
D15.12 Development seaward of mean high water mark			Y	Y	Y
State Environmental Planning Policies and other					
SEPP (Building Sustainability Index: BASIX) 2004		Proposed works are below \$50,000.	Y	Y	Y
EPA Act 1979 No 203 section 147 Disclosure of political donations and gifts			Y	Y	Y

8.0 DISCUSSION OF ISSUES

- **4.3 Height of buildings**

Refer to comments in 4.6 Exceptions to development standards

- **4.6 Exceptions to development standards**

The existing dwelling contains an attic floor level with a height of approx. 9.88m above the existing ground level at its highest point. As the proposal seeks to extend the attic floor towards the front of the dwelling, the extension will also have a height of approx. 9.88m. The applicant is seeking a Clause 4.6 exemption to development standards regarding the maximum building height. It is determined that the proposal meets the objectives of this clause as outlined below and the applicant has provided sufficient evidence and reasoning within their Clause 4.6 statement to support the application. There are no heritage items or heritage conservation areas within the vicinity of the dwelling.

The proposed attic floor extension is supported as it meets the objectives of Clause 4.3 Height of Buildings. After conducting a site inspection and reviewing the proposed plans submitted by the applicant, it has been determined that the extension of the attic floor will not impact on the sharing of views for neighbouring properties. The impact and change in overshadowing on the neighbouring properties is minimal and this is supported by the shadow diagrams submitted by the applicant. The roof of the attic floor extension is set back from the side eaves of the main roof by approx. 2.4m and therefore the bulk and scale of the extension is minimised and in character with the surrounding area. The existing dwelling's attic roof extends two metres outwards towards the front of the dwelling which is apparent when viewing the dwelling from Iluka Road. The application seeks to lessen this visual impact by reducing the attic roof's front gable area and having the front eave extend by the recommended amount of 500mm. This proposed change will have a positive impact on the visual scale of the dwelling when viewed from Iluka Road and it will be consistent with the character of the area. The applicant has provided a schedule of finishes which indicates that the external walls and roof form will be in dark and earthy tones, which will be recessive as viewed from a public domain.

The proposal also seeks to extend the attic roof to the rear of the dwelling to cover the existing deck area. There is currently an existing pergola at the rear of the attic floor with a timber framed roof. When viewing the dwelling from the adjacent Snapperman Beach Reserve, this timber pergola is the highest and most noticeable built form among the surrounding dwellings. The proposal seeks to remove the timber framed roof of the pergola and extend the roof outwards to cover the existing deck. The proposed roof extension over the deck is set back approx. 1.5m from the existing pergola to be removed as can be seen in drawing AR-DA-3001. This is a positive change as the removal of the timber framed pergola roof will lessen the visual bulk of the dwelling and improve the character of the dwelling to be consistent with the surrounding locality.

- The desired character of the locality is outlined in Pittwater Council's 21 Development Control Plan under section A4.12 Palm Beach Locality. The desired character description outlines that the locality will remain a low-density residential area with dwelling houses containing a maximum of two storeys. As the existing dwelling contains an attic level, the proposal is technically non-compliant with this requirement. Although the existing dwelling is non-compliant with this requirement, the attic level is considerably contained within the roof space of the dwelling, reducing the visual scale of the attic floor.

• 7.1 Acid sulfate soils

Council's Nat Res Officer provided the following comments:

Acid Sulphate Region 3. No ground works proposed.

• 3.4 Notification

N0307/15 was notified from 20/08/2015 to 03/09/2015 to adjoining property owners in accordance with council's notification policy. The site inspection on the 27/08/2015 confirmed the placement of the notification sign. During the notification period, zero (0) submissions were received.

- **B4.15 Saltmarsh Endangered Ecological Community**

Council's Nat Res Officer provided the following comments:

The property contains a modified landscape typical of a suburban garden. The proposed works include internal alterations and additions. All works are within the existing building footprint. Proposed new roofing for pergola may require pruning of existing vegetation which is acceptable as this is mostly exotic planted species. No new landscaping has been proposed. There are no further natural environment issues.

- **B5.8 Stormwater Management - Water Quality - Low Density Residential**

Reserves and recreation have recommend approval subject to conditions regarding stormwater management.

- **C1.4 Solar Access**

The shadow diagrams show there is minimal change to the shadows cast on the neighbouring property if the proposed works were to be constructed.

- **C1.5 Visual Privacy**

The extension of the attic level will include a new bathroom. A condition will be imposed for the bathroom window to be opaque to maintain privacy between neighbours. Looking north from the attic level overlooks the neighbouring dwelling however there are no views of private spaces. There are no visual privacy concerns for the neighbours to the south.

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

The proposed attic floor extension to the front of the dwelling is considered to be at an acceptable density and scale. The works are in character with the surrounding locality. The removal of the timber pergola over the attic floor deck and the reduction of the attic roof gable at the front of the dwelling will improve the visual amenity of the dwelling and surrounding locality.

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

A schedule of finishes was provided showing the external walls and roof to be in dark and earthy tones. Conditions will be imposed for the external finishes to comply with the submitted colour scheme and also for the metal roof sheeting to be non-reflective.

- **D12.8 Building envelope**

The existing dwelling, particularly the attic floor level, falls outside of the maximum building envelope parameters. The proposed extension to the existing attic level are considerably low impact and therefore a variation is considered acceptable. Privacy and amenity between neighbours is maintained and there are no foreseeable negative impacts on the neighbouring dwellings. The proposed extension would be consistent with the character of the surrounding locality.

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

The proposed landscaped area is approx. 21.89%. As the application does not propose any change to the existing landscaping on the site, a variation is supported as the changes are only on the attic level.

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.

The proposal has been found to be consistent with the outcomes of the relevant controls of P21 DCP. The proposal is considered to be consistent with the existing character of Palm Beach and the desired future character of the Palm Beach Locality. As a result of these considerations the proposal is recommended for approval subject to conditions.

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 N0307/15 for the alterations and additions at 106 Iluka Road, Palm Beach subject to the conditions of consent.

Report prepared by

Christopher Nguyen
PLANNER

Date: 1 October 2015

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**CONSENT NO: N0307/15
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)
NOTICE TO APPLICANT OF DETERMINATION
OF A DEVELOPMENT APPLICATION**

Applicant's Name and Address:
JOHN & JOANNA McNIVEN

C/O - TKD ARCHITECTS
PO BOX 660
DARLINGHURST NSW 1300

Being the applicant in respect of Development Application No N0307/15

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 **N0307/15** for:

Alterations and additions to existing dwelling

At: **106 ILUKA ROAD, PALM BEACH NSW 2108 (Lot 13 DP 12979)**

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 AR-DA-1101, AR-DA-2001, AR-DA-2002, prepared by TKD Architects, all dated 24/07/2015**
- **Architectural Drawings AR-DA-3001, prepared by TKD Architects, dated 22/09/2015**

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:

DRAFT

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:
 1. the name, address and telephone number of the Principal Certifying Authority for the work, and
 2. 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
 3. 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:
 1. 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.
 2. 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.
 3. 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

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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.
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. 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.
2. The Estuarine Planning level is 2.5m in AHD.
3. There shall be no damage to intertidal habitats including rocky shores, seagrass beds, salt marshes or mangroves.
4. 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.
5. 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.
6. Any new fencing (with the exception of swimming pool fencing) is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide x 100mm high at ground level spaced at 6 metre intervals.
7. 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.

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8. Any vegetation planted onsite outside approved landscape zones is to be consistent with:
 - a. Species listed in the Ecological Sustainability Plan or Bushland Management Plan (if applicable)
 - b. Species listed from the Endangered Ecological Community
 - c. Locally native species growing onsite and/or 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
9. No building materials or other materials are to be placed on Saltmarsh or other foreshore vegetation. Sediment is not to leave the site or enter areas of Saltmarsh or other foreshore vegetation, and the appropriate sediment fencing is to be installed.
10. The existing stormwater system is inspected to see if it discharges into the Estuary and if so, whether it contains a permanent treatment device to treat water before discharging into the Estuary.
11. That pollution and sedimentation measures are undertaken to manage stormwater runoff and minimise potential impacts on the adjoining Beach and Estuary.
12. In accordance with Pittwater Council's 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.
13. The bathroom window within the attic floor extension is to be opaque throughout the life of the development.
14. Materials and colour schemes are to be in accordance with the sample scheme approved by Council.
15. Roofs to all structures are to be of dark or mid grey, brown and/or green tones only. No white or light coloured roofs are permitted. If metal roof sheeting is used, it is to be of non-reflective material.

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.

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.

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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:
 1. after excavation for, and prior to the placement of, any footings, and
 2. prior to pouring any in-situ reinforced concrete building element, and
 3. prior to covering of the framework for any floor, wall, roof or other building element, and
 4. prior to covering waterproofing in any wet areas, and
 5. prior to covering any stormwater drainage connections, and
 6. 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:
 1. Construction Certificate has been issued by a Principal Certifying Authority
 2. a Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment, and
 3. 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.

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.

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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:

1. Protection of site workers and the general public.
2. Erection of hoardings where appropriate.
3. Asbestos handling and disposal where applicable.
4. 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 stamped copy of the approved plans is to be kept on the site at all times, during construction.
4. 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.
5. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
6. 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.
7. Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.
8. 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.
9. 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.
10. No skip bins or materials are to be stored on Council's Road Reserve.

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11. Access to the site through an adjoining park/reserve is prohibited without the written approval of the Council
12. 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:
 1. The builder's name, builder's telephone contact number both during work hours and after hours.
 2. 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.
 3. 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.
 4. That no skip bins or materials are to be stored on Council's Road Reserve.
 5. That the contact number for Pittwater Council for permits is 9970 1111.
13. 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.

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.

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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. 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.

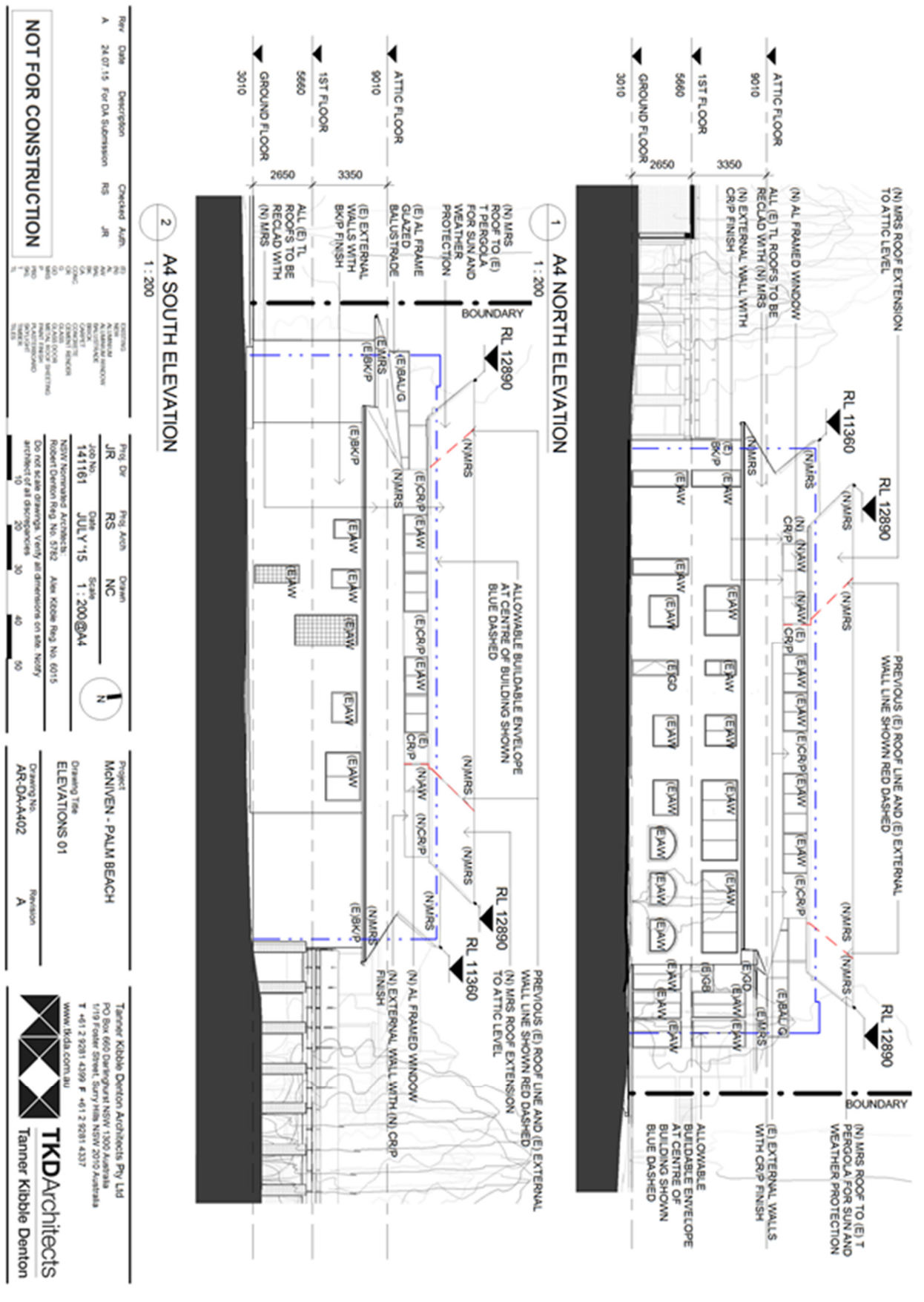
G. Advice:

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
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.

LOCALITY MAP



NOTIFICATION PLANS



Rev	Date	Description	Checked	Auth.	Revised	By	For	Scale	Notes
A	24.07.15	For OA Submission	RS	JR					

Proj. Dir	Proj. Auth	Drawn
JR	RS	NC

Iss. No.	Date	Scale
141161	JULY '15	1:200@A4

NSW Notifying Authorities:
 Project Director Reg No. 51722
 Alan Kiddle Reg No. 60115
 Do not seal drawings until after dimensions on site. Notify architect of all discrepancies.

Revised	By	For	Scale
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NOT FOR CONSTRUCTION

Project
McNIVEN - PALM BEACH
Drawing Title
SITE & PROPOSED ROOF PLAN
Drawing No.
AR-DA-A401
Revision
A

 **TKD Architects**
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C12.2	N0593/06/S96/R - 42 The Serpentine Bilgola Beach - S96AB Review of Modification of Consent which approved demolition of the existing driveway, garage and existing roof and alterations and additions including a new swimming pool, garage and driveway
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Meeting: Sustainable Towns & Villages Committee

Date: 19 October 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
-

1.0 EXECUTIVE SUMMARY

1.1 SUMMARY

The Development Unit at its meeting held on the 1st October 2015 considered the Assessing Officers report (refer **Attachment 1**) for determination of N0593/06/S96/R – 42 The Serpentine Bilgola Beach – S96AB Review of Modification of Consent which approved demolition of the existing driveway, garage, and existing roof and alterations and additions including a new swimming pool, new garage and driveway.

- 1.2 It is a policy requirement that S82A reviews previously dealt with by the DU are referred to Council.
 - 1.3 Discussion in relation to the reason for refusal is contained within Section 7.0 (Assessment and Discussion of Issues) of the Assessing Officer's report.
 - 1.4 One objector and the applicant's representative were present at the meeting. The Development Unit considered the issues raised by the objector and the applicant's representative as well as the issues addressed in the Assessing Officer's report and supported the Officer's recommendation for refusal subject to the draft reason for refusal attached to this report.
-

2.0 RECOMMENDATION

That the Development Unit's recommendation for refusal be endorsed and Development Application N0593/06/S96/R - 42 The Serpentine, Bilgola Beach - S96AB Review of Modification of Consent which approved demolition of the existing driveway, garage, and existing roof and alterations and additions including a new swimming pool, new garage and driveway be refused subject to the draft Reasons for Refusal.

3.0 BACKGROUND

3.1 PURPOSE

To seek endorsement of the Development Unit's recommendation following consideration of Development Application - N0593/06/S96/R – 42 The Serpentine Bilgola Beach – S96AB Review of Modification of Consent which approved demolition of the existing driveway, garage, and existing roof and alternations and additions including a new swimming pool, new garage and driveway.

3.2 BACKGROUND

The Development Unit at its meeting held on the 1 October 2015 considered the Development Officer's report (refer **Attachment 1**) for determination of Development Application N0593/06/S96/R – 42 The Serpentine Bilgola Beach – S96AB Review of Modification of Consent.

The Development Unit previously refused the application under delegated authority at its meeting held on the 26 May 2015 and the applicant now seeks a review of that decision.

The applicant sought a review and relied on the previous architectural drawings with no amendment and no additional information provided.

The applicants review has been based on reasons provided in "Section 1 Introduction" of the attached report.

3.3 POLICY IMPLICATIONS

Council's policy has been maintained in referring such applications for review to Council.

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

The applicant has failed to either amend or provide any additional information and as such the issues that were present in the original application that was refused are still relevant now.

5.0 ATTACHMENTS / TABLED DOCUMENTS

Attachment 1: Assessing Officer's report to the Development Unit meeting of 1 October 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: N0593/06/S96/R - 42 The Serpentine, Bilgola Beach - S96AB
Review of Modification of Consent which approved
demolition of the existing driveway, garage, and existing
roof and alterations and additions including a new
swimming pool, new garage and driveway**

Meeting: Development Unit

Date: 1 October 2015

SUMMARY OF RECOMMENDATION

Refusal

REPORT PREPARED BY:	Angela Manahan
APPLICATION SUBMITTED ON:	17/06/2015
APPLICATION SUBMITTED BY:	WALLY MCDONALD
OWNER(S):	WALTER L MCDONALD

RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 uphold the refusal to modify Development Consent N0593/06 which approved demolition of the existing driveway, garage and existing roof and the construction of alterations and additions including a new swimming pool, new garage and driveway at 42 The Serpentine Bilgola Beach for the reasons outlined in the draft refusal notice attached.

In accordance with Section 96AB(3) of the EP&A Act the application will be required to be determined by Council.

Report prepared by
Angela Manahan, Senior Planner

Andrew Pigott
MANAGER, PLANNING & ASSESSMENT

SUBJECT: N0593/06/S96/R – Section 96AB Review of Modification Application
Modification to Development Consent N0593/06 which approved demolition of the existing driveway, garage, and existing roof and the construction of alterations and additions including a new swimming pool new garage and driveway (Lot 105 DP 16393)

Determination Level: Council

Date: 22 September 2015

SUMMARY OF RECOMMENDATION

REFUSAL

REPORT PREPARED BY:	Angela Manahan
APPLICATION SUBMITTED ON:	17 June 2015
S.96AB REVIEW MUST BE DETERMINED BY:	26 November 2015
APPLICATION SUBMITTED BY:	WALLY McDONALD 39 THE BOULEVARDE LEWISHAM NSW 2049
OWNERS:	McDONALD, WALTER LEONARD

1.0 INTRODUCTION

This assessment has been undertaken following the request for a review of the determination made in respect to an application to modify development consent N0593/06 (s96 Modification Application N0593/06/S96/1). This request has been made pursuant to section 96AB of the *Environmental Planning and Assessment Act 1979*. N0593/06/S96/1 sought consent for various modifications to the approved development of demolition, alterations and additions to the existing dwelling at 42 The Serpentine. The modification application was refused by Council, under the delegation of the Development Unit, on 26 May 2015. N0593/06/S96/1 was refused for the following reasons;

- 1. The proposed modifications result in an increase to the apparent size of the development and directly attribute to the overall bulk and scale of the development as viewed from Bilgola Beach, the waterway and The Serpentine. The resultant development shall result in non-compliance with Clause D3.1 Character as viewed from a public place, D3.2 Scenic Protection, D3.11 Site Coverage and D3.9 Building Envelope of P21 DCP. The modifications intensify the existing building envelope non-compliance and are considered to attribute to further bulk and scale to a development that is at its maximum allowable built form. As such the outcomes of these development controls are no longer able to be achieved.*
- 2. The proposed modifications will result in an unacceptable view loss from the public domain. The views to the headland, beach and water obtained through the western side setback will be significantly compromised as a result of the proposed development, in particular the extension*

of Level 3 and Level 4. It is considered that a more skilful design could be achieved to provide accessibility but maintain the existing public view as approved.

- 3. The extent of excavation required on Level 1 and Level 2 for the proposed passenger lift is considered to be excessive and is not warranted given that an alternative solution could be achieved with minimal excavation required. Furthermore, the excavation subsequently results in the proposed development changing from a two-three storey dwelling to a three-four storey dwelling, in complete contradiction to the desired future character of the Bilgola Beach locality which states dwelling should be a maximum of two-storey in any one place.*
- 4. The application is not considered to be in accordance with Section 96(1A) of the Environmental Planning and Assessment Act 1979. The modified development is not considered to be of minimal environmental impact or substantially the same development as that which was originally approved. The original development consent relied on upper levels being substantially setback from the side boundaries in order to reduce bulk and scale, and minimise view loss. The additions to the structure change the nature of the development and as such the justification for non-compliances with P21 DCP would no longer be applicable. This section of the act is not considered to be achieved as the modified development would not be substantially the same development as the original approved development.*

The review application relies on the previous architectural drawings submitted with application N0593/06/S96/1. The proposed development remains unchanged with no amendments proposed to the original modification drawings and no additional information provided. Refer to Section 3.0 of this report for details of the amendments proposed under application N0593/06/S96/1 and subsequent s96AB review.

The applicant has requested a review of Council's decision to refuse the application for the following reasons;

- 1. Excavation - the suggested potential landslip and coastline hazards on the site and surrounding properties can be dealt by requiring an the appropriate Geotechnical Report confirming that the excavation works shall not adversely affect the site and surrounding properties in the normal course of these matters.*
- 2. Obstruction of View from public spaces- the loss of view of the beach, ocean and headland is hardly discernible.*
- 3. Shadow - there is no relevant shadowing impacts on adjoining neighbours.*
- 4. The section 96, as regards landscaping ratios, complies with relevant DCP controls or is otherwise of immaterial variance and is capable of a SEPP 1 application.*

The above reasons are each addressed in Section 8.0 of this report under the relevant headings.

2.0 SITE DETAILS

The site is known as 42 The Serpentine and has a legal description of Lot 105 in Deposited Plan 16393. The site is irregular in shape and has a total area of 712.8m². Vehicle and pedestrian access is gained via the 13.795m wide frontage to The Serpentine. The site has a width of 13.795 metres to the street, and has a depth of 49.91 metres. The natural ground level of the site slopes substantially from RL 39.70 at the street boundary to RL 27.18 to the rear boundary, representing a fall of 12.52 metres, and a slope of approximately 30.5%.

The site currently accommodates a two storey dwelling, with a detached garage located between the dwelling and the street alignment. The existing detached garage is setback 5.5 metres from the front boundary. The existing dwelling is setback 14.9 - 19 metres from the front boundary, due to the irregular alignment of the sites property boundaries. The front of the site is orientated to the north, and is adjoined by public open space to the south above Bilgola Beach. The property is surrounded by residential properties to the north, east and west.

3.0 PROPOSAL IN DETAIL

The applicant sought consent for the following modifications to the approved development under S96 application N0593/06/S96/1;

- Installation of a passenger lift through all four (4) levels of the dwelling;
- Associated alterations and additions to accommodate the lift including;
 - 1.01m increase in building width to the west at Level 3 and Level 4;
 - Extension to the north on Level 2 comprising of new cellar and lift room, and associated excavation;
 - Extension to the north on Level 1 comprising of new lift room/corridor and storage area, and associated excavation;
 - Excavation up to a maximum depth of 6.2m below natural ground level;
- Alterations to windows and doors involving;
 - Door D4/1 on Level 4 northern elevation changed from single door to single door with glass side panels;
 - Windows W4/4 and W4/5 on Level 4 western elevation deleted and replaced with one (1) narrow window (noted as W4/4);
 - Windows W4/7 and W4/8 on Level 4 eastern elevation deleted and replaced with one narrow window (W4/6) and three (3) small square windows (noted as W4/7, W4/8 and W4/12) consistent with windows W4/9-W4/11;
 - New window W1/2 on Level 1 eastern elevation;
- Installation of two (2) new skylights to the roof of Level 3, one (1) over the kitchen area and one (1) over the lounge area;
- Installation of a new gas fire in the Home Theatre/Rumpus room on Level 3;
- Alterations to external materials involving changing the Level 4 roof and external cladding to copper sheeting, and changing the Level 3 northern addition external walls to timber and sandstone cladding.

No amendments have been made to the proposed development in response to this review, therefore the applicant still seeks consent for all the above modifications.

4.0 STATUTORY & POLICY CONSIDERATIONS

The site is zoned 2(a) Residential under the provisions of the Pittwater LEP 1993. The proposed development being alterations and additions to a dwelling is permissible with consent pursuant to the Pittwater Local Environmental Plan 1993. The site is zoned E4 – Environmental Living under the provisions of the Pittwater LEP 2014 and the proposed development being alterations and additions to a dwelling would be permissible with consent pursuant to the Pittwater Local Environmental Plan 2014.

The modifications proposed remain consistent with the land use proposed and approved by N0593/06 and are permissible with consent, as identified by Clause 9 of PLEP 1993 and by the Land Use Table of PLEP 2014.

The following relevant local and state policies apply:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- State Environmental Planning Policy No 71 – Coastal Protection;
- Pittwater Local Environmental Plan (PLEP) 1993;
- Pittwater Local Environmental Plan (PLEP) 2014;
 - Acid Sulphate Soils Map – Class 5;
 - Biodiversity Map;
 - Geotechnical Hazard Map;
 - Height of Buildings Map – 8m;
 - Lot Size Map – 700m²;
- Pittwater 21 Development Control Plan;
 - Bilgola Plateau Locality;
 - Geotechnical Risk Management Policy for Pittwater;
 - Coastline Risk Management Policy for Development in Pittwater.

Pittwater 21 DCP identifies the land as being the following:

- Bluff/Cliff Instability;
- Landslip Prone;
- Flora and Fauna Conservation Area - Category 2.

The subject site is also identified on Council's Most Scenic Street Register.

5.0 SECTION 96AB PROVISIONS

The application has been lodged under the provisions of Section 96AB of the EP&A Act. Section 96AB permits an applicant to request a review of a determination by the Council for a modification to a development consent under section 96. In considering the application, the following requirements under Section 96AB are noted:

- Modification application N0593/06/S96/1 was lodged and determined under the provisions of Section 96 of the EP&A Act. The original development application and modification application was not a complying development certificate, nor designated development, integrated development or a Crown application, and therefore the decision can be reviewed in accordance with Section 96AB(1) and (7).
- The development application was refused on 26 May 2015 and the application for Review of Determination was lodged on 17 June 2015. This is within the 6 month time period for lodging

an appeal under section 97AA of the EP&A Act. Furthermore, pursuant to Section 123I(1) of EP&A Regulations 2000, the application was made within 28 days after the application for the modification was determined. As such, under Section 96AB(2) Council must conduct a review.

- S96AB requires that the Council or delegated authority determining the application not be subordinate to the delegate who determined the original modification application. In this case, the Development Unit determined the modification application, thus, the Council would have a higher level of delegation to determine the application, and as such the application must be determined by the Council.
- In accordance with Section 82C(5) of the EP&A Act the review application has been notified and submissions taken into consideration as part of this assessment.

6.0 BACKGROUND

20 May 2009

Council approved development application N0593/06 for demolition of the existing driveway, garage and existing roof and the construction of additions & alterations including swimming pool, a new garage and driveway at the subject site.

A detailed background of development application N0593/06 has been provided in the previous Development Unit report, attached in Appendix 1.

26 May 2015

Section 96(1a) Modification Application N0593/06/S96/1 was refused by Council under the delegation of the Development Unit.

17 June 2015

The subject review application was lodged at Council. The application was notified to eight (8) adjoining property owners and to those who had previously objected. The application was referred to Council's Senior Development Engineer, Natural Environment Officer and Reserves and Recreation Unit for comment and/or recommendations.

7.0 ISSUES

- Lapsing of Consent
- APPLICANT'S RESPONSE REASON 1 & REFUSAL REASON 3 – Excavation
- APPLICANT'S RESPONSE REASON 2 & REFUSAL REASON 2 – View Loss
- APPLICANT'S RESPONSE REASON 3 – Overshadowing
- APPLICANT'S RESPONSE REASON 4 - Landscaped Area and Site Coverage
- REFUSAL REASON 1 – Visual Impact and Bulk and Scale
- REFUSAL REASON 4 – Section 96(1a) Substantially the same development
- C1.5 Visual Privacy

8.0 NOTIFICATIONS

The review application was notified to adjoining property owners and those who had previously provided submissions to the original S96 modification application. The notification period commenced on 25 June 2015 for fourteen (14) days through to 09 July 2015 in accordance with Council's Notification Policy. During this time, seven (7) submissions in objection to the proposed development were received as follows;

- The property owners of 29 The Serpentine, in consideration of no changes being made, endorsed the reasons for refusal in the previous application and raised concerns with regard to the modifications compounding the areas of objection in the original development application. The objection also raised concerns regarding the validity of the original development consent.
- The property owner of 40 The Serpentine raised concerns with regards to bulk and scale, overshadowing, building envelope, visual impact from the public domain, view loss, impacts in relation to landslip and coastal hazard, and whether the development still constitutes alterations and additions.
- The property owner of 38 The Serpentine raised concerns with regards to the size of the development and visual impact, overshadowing and the extent of excavation proposed.
- The property owners of 44 The Serpentine raised concerns with regards to the extent of excavation, view loss, bulk and scale, visual impact of the development and privacy concerns.
- The property owners of 25 The Serpentine, in consideration of no changes being made, are in support of the refusal of the previous application and urge refusal of the review for the reasons of refusal outlined in the previous refusal documentation.
- The property owners of 27 The Serpentine raised concerns with regards to bulk and scale, visual impact and view loss.
- The property owner of 31 The Serpentine raised concerns with regards to excessive bulk and scale and the extent of excavation. The objection was in support of the previous refusal with the above issues remaining.

6.0 INTERDEPARTMENTAL COMMENTS

The application was referred to Council's Development Engineer who provided the following comments in regards to the proposed development;

No new issues arise. The previous assessment /recommendation still applies.

The original comments and previous recommendation was the following;

No engineering objections subject to an updated form 2 being provided as recommended by the geotechnical consultants JK Geotechnics.

The application was referred to Council's Natural Resources Officer who provided the following comments in regards to the proposed development;

I have reviewed the proposed reconsideration of N0593/06/S96/1 (42 The Serpentine, Bilgola Beach). There were no natural environment issues with the original Section 96 application and no changes have been made to it therefore there are no further natural environment comments.

The application was also referred to Council's Reserves and Recreation Unit who provided the following comments in regards to the proposed development;

The proposal is not supported due to the loss of views from The Serpentine, towards the public reserve and Tasman Sea to the east.

7.0 ASSESSMENT & DISCUSSION OF ISSUES

In undertaking a review of the determination, the applicant's reasons in support of the application and reasons for refusal are addressed in this section of the report. The original assessment report, including the compliance table, is provided in Appendix 1, however for reference, the original assessment comments have been included under each relevant heading below. Any additional issues or further concerns raised in the public submission are also addressed in this section of the report.

Lapsing of consent

Concern was raised in the previous modification application with regards to the expiration of the original development consent. Additionally, a submission was received following the determination of the modification application which highlighted conditions of the development consent that had not been complied with and contended that as construction had not commenced, the development consent has lapsed. A submission was received in response to the review application which reiterated these concerns regarding whether the development consent has lapsed, therefore this matter was investigated further and advice was sought from Council's Environmental Compliance unit with regards to the validity of the consent.

As discussed in the previous modification application, Development Application N0593/06 was approved on 21 May 2009 and was due to lapse on 21 May 2014. Construction Certificate C0099/14 and a notice of commencement were issued by Insight Private Certifiers on 23 April 2014. The only apparent physical works to occur on site is the excavation of one (1) hole within the front setback area. In order to substantiate physical commencement for the purpose of activating the consent, the building, engineering or construction work would have to have been conducted between 23 April 2014 and 21 May 2014, and occurred on the land to which the development consent applied being 42 The Serpentine.

The application is supported by an email/letter from JK Geotechnics, the Geotechnical Engineers for the development. The letter concludes that in regards to the proposed modifications, the original Geotechnical Report remains valid. The email provides a brief background of the subject site and works undertaken by JK Geotechnics, and states the following:

*"We note that Jeffery and Katauskas Pty Ltd (now grading as JK Geotechnics) have undertaken a geotechnical and coastal hazard assessment of the site and the results were presented in our report (ref 20589WZrpt) dated 25 September 2006. We have also signed off Form Nos 1 and 1a (dated 26 September 2006), Form No 2 - Part B (dated 21 January 2014), and endorsed the hydraulic drawings (dated 31 March 2014). More recently **we visited the site (15 May 2014) to inspect a pile hole** which had been drilled within the front, northern, yard and prepared a site report (dated 19 May 2014)."*

Based on the information provided by the Geotechnical Engineer, it is confirmed that the building works for the subject pile hole was carried out prior to the 15 May 2015 (and prior to the 21 May 2014, the date on which the development consent would have lapsed). In consideration of the information provided by the Geotechnical Engineer and in accordance with Section 95(4), despite the minor nature of the works that have occurred, it is considered that works have been commenced on site in relation to development consent N0593/06 before the lapsed date and therefore the consent is operative and has not lapsed.

Council's Environmental Compliance Officer advised that given there was a valid Principal Certifying Authority, a Notice of Commencement issued, and works have been carried out on site, the development consent would be considered to be valid and operative. With regards to compliance with the conditions of consent, Council's Environmental Compliance Officer advised that not adhering to conditions would be a breach of the development consent, however non-compliance with the conditions of consent does not invalidate the consent. Therefore the consent would remain operative. As such Council can be satisfied that the original development consent is still valid.

APPLICANT'S RESPONSE REASON 1 & REFUSAL REASON 3 – Excavation

REASON FOR REFUSAL

The extent of excavation required on Level 1 and Level 2 for the proposed passenger lift is considered to be excessive and is not warranted given that an alternative solution could be achieved with minimal excavation required. Furthermore, the excavation subsequently results in the proposed development changing from a two-three storey dwelling to a three-four storey dwelling, in complete contradiction to the desired future character of the Bilgola Beach locality which states dwelling should be a maximum of two-storey in any one place.

APPLICANT'S RESPONSE

Excavation - the suggested potential landslip and coastline hazards on the site and surrounding properties can be dealt by requiring an the appropriate Geotechnical Report confirming that the excavation works shall not adversely affect the site and surrounding properties in the normal course of these matters.

ORIGINAL ASSESSMENT

B3.2 Landslip Hazard, B3.5 Coastline (Bluff) Hazard and the extent of excavation

Submissions have been received which raise concerns regarding the extent of excavation and the potential landslip and coastline hazards on the subject site and surrounding properties.

The application was accompanied by a letter from JK Geotechnics, dated 28 July 2014. The letter references the original Geotechnical Report, dated 25 September 2006, and concludes that the proposed modifications shall not adversely affect the previously assessed risk levels and as such the original Geotechnical Report remains valid. Council's Engineer raised no objection to the proposed modifications subject to the development being signed off by a qualified Geotechnical Engineer prior to construction.

The proposed modifications to install a passenger lift through all four levels of the dwelling require retaining walls and excavation up to a maximum depth of 6.2m. The proposed extension on the lowest level (Level 1) to accommodate the lift shall require excavation a depth of 3.4m to 6m below natural ground level for a length of approximately 11m. While it is recognised that the proposed modifications

can achieve an acceptable risk level with regards to the geotechnical requirements of the site, concern remains with the extent of excavation required for the passenger lift and the subsequent impacts on the overall development. See discussion below.

Bilgola Locality, Excavation and Height – Bilgola Beach Area

The desired future character of the Bilgola Locality states that:

*“The Bilgola Locality will remain primarily a low-density residential area with dwelling houses a **maximum of two storeys in any one place** in a landscaped setting, integrated with the landform and landscape.”*

The original development application was before the Development Unit meeting who discussed the matter of whether the proposal was considered to be a four-storey development. It was deliberated and concluded that the development was not considered to be four-storey (it is thought due to the proposal being stepped down the site and therefore being predominantly two storeys in any one place with a minor overlap of the three storey component). Therefore, although the development comprises of four (4) levels, the approved development is considered to be a two-three storey dwelling which is stepped down the site in accordance with the outcomes of the built form controls and the Bilgola locality.

The proposed modifications will result in additional excavation to the two (2) lower levels of the dwelling and as such the development shall be a maximum of four storeys in any one place and shall not step down the site. The proposed modifications shall result in the development changing from a two-three storey dwelling to a three-four storey dwelling, and shall be significantly inconsistent with the desired character of the Bilgola Beach Locality.

The desired character of specifically the Bilgola Beach Area states that:

“The local topography and natural features, notably the beachfront, headlands... demand different sets of constraints on building design.”

This statement can be supported by the outcomes of the built form controls which include “*high quality buildings designed and built for the natural context and any natural hazards*”, and a built form that “*does not dominate the natural setting*”. Furthermore, this desired character is strengthened in the transition of the height requirement into PLEP 2014.

The maximum height of the proposal shall be 7.8m above natural ground level. However, pursuant to the PLEP 2014 the definition of where building height is measured from has changed. When the application was originally assessed the height requirement was in Pittwater 21 DCP and measured from natural ground level. PLEP 2014 was enforced on 27 June 2014 in which the height control was moved from P21 DCP to PLEP 2014 and subsequently became a development standard. Pursuant to the definition of building height within PLEP 2014, the maximum height of the development would be taken from the existing ground level (being the lower level of the existing dwelling) as such the maximum height of the proposal under PLEP 2014 would be 9.6m and technically non-compliant with the control.

The proposed modifications seek to extend the upper levels to the west and extend the lower levels to the north resulting in excavation and further disruption to the natural landform. While the development is consistent with the approved height it should be noted that the proposed modifications shall result in increased bulk and scale, and proposed further excavation which would be inconsistent with Clause 4.3 (Height of Buildings) which aim to encourage buildings that are designed to respond sensitively to the natural topography of the site, and minimise cut and fill on steep sites by stepping buildings down

the slope.

The extent of the excavation required for the passenger lift is considered to be excessive and inconsistent with the desired character of the Bilgola Locality. Control C1.9 Adaptable Housing and Accessibility does not require single dwellings to be adaptable and it is considered that installation of a passenger lift is not necessarily required and as such does not warrant the extent of excavation proposed. It is considered that a more skilful design could be achieved to provide accessibility to all levels and/or the passenger lift could be located elsewhere within the dwelling (or not required to the Games room level) with minimal excavation required.

ASSESSING OFFICERS COMMENTS

Four (4) submissions were received which raised concerns regarding the extent of excavation proposed on the lower two (2) levels of the dwelling.

As discussed in the previous assessment, it is noted that the proposed development can achieve an acceptable risk with regards to the geotechnical requirements of the site and impacts of the excavation, and conditions of consent can ensure that the proposed development is carried out in accordance with the recommendations of the geotechnical report. However, the concerns in relation to the additional excavation proposed were in response to the Bilgola Locality planning controls and maximum height requirement. No changes have been proposed and the development shall continue to result in a three-four storey development contradictory to the desired character of the Bilgola Beach locality which requires dwellings to be a maximum of two-storeys and have the appearance of a two-storey development. The subject site and proposed development shall be visually prominent as viewed from the public domain, in particular from Bilgola Beach, and the proposal shall represent as a four storey development as viewed from the public areas to the south-west of the site.

The proposed modifications require excavation up to a maximum depth of 6.2m below the natural ground level for a length of approximately 11m. The resultant development would have an overall maximum height of 9.6m, which in consideration of the requirement for a maximum height of 8m would be excessive. Clause D3.5 of P21 DCP did not permit any variations to the maximum height of 8m, even when considering the slope of the site. While the proposal technically complies as the height measurement is taken from the natural ground level, the additional excavation and increase to the lower floor levels will result in a building which dominates the natural setting in contradiction to the outcomes of clause D3.5. Furthermore, the proposed development would be entirely inconsistent with outcomes of clause 4.3 – Height of buildings of PLEP 2014, which aims to minimise excavation and promote development that steps down the site in response to the slope, and in order to maintain the natural landform and site characteristics.

While it is acknowledged the excavation is acceptable from a Geotechnical hazard impact, the applicant fails to address the concerns associated with the locality planning controls and maintenance of the existing landform and natural topography of the site. The proposed excavation is inconsistent with the desired character of the Bilgola locality and the outcomes of both clause D3.5 of P21 DCP and clause 4.3 of PLEP 2014 in relation to the height of development. Given that the proposed excavation is primarily for a lift, and that an alternative solution for accessibility to all four levels could be achieved without further excavation, the proposed modifications in relation to the excavation of the lower two levels is not supported, and the above reason for refusal remains valid.

APPLICANT'S RESPONSE REASON 2 & REFUSAL REASON 2 – View Loss

REASON FOR REFUSAL

The proposed modifications will result in an unacceptable view loss from the public domain. The views to the headland, beach and water obtained through the western side setback will be significantly compromised as a result of the proposed development, in particular the extension of Level 3 and Level 4. It is considered that a more skilful design could be achieved to provide accessibility but maintain the existing public view as approved.

APPLICANT'S RESPONSE

Obstruction of View from public spaces- the loss of view of the beach, ocean and headland is hardly discernible.

ORIGINAL ASSESSMENT

C1.3 View Sharing

Submissions have been received which raise concerns regarding view loss from the public domain and the street.

The applicant seeks consent to increase the width of the upper levels (Levels 3 and 4) and reduce the western side setback by 1.01m to 1.91m. As such the proposed modifications would result in the loss of water, beach and headland views as viewed from the public domain. The Serpentine currently experiences a water view of the Tasman Sea to the south and views of Bilgola Beach, South Bilgola Headland, Newport Headland and the wave interface of the beach and the headlands, also to the south. Consideration has been given to the Tenacity principals together with the planning principle for public domain views *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor [2013] NSWLEC 1046* in establishing the acceptability of the impact on views and reasonableness of the view loss.

The subject view is a water view of the Tasman Sea, views to the southern end of Bilgola Beach with South Bilgola Headland above, a distant view to Newport Headland and the land/water interface at these points. The view is obtained over the existing roofs of 42 and 40 The Serpentine, it is noted that the dwelling at No. 40 is located further downslope than the subject development and as such is sited much lower with a view corridor obtained to the western side of 42 and over the top of 40. The view is enjoyed from the street, being The Serpentine, as travelling from the slight bend in the road to the east down towards the west. The Serpentine is identified on Pittwater's Most Scenic Streets Register due to its expansive coastal views from the street and also forms part of the Bicentennial Coastal Walkway, as such the view is not only experienced by local residents but by day-trippers and holiday makers who engage in walks along The Serpentine to experience the view.

One of the primary issues of the original application was view loss from the public domain and in particular the beach, ocean and headland views from the street (The Serpentine). The Development Unit panel raised the issue of view loss from the public domain at the DU meeting of October 2007 and requested the applicant address the view loss impact. In response to the request the applicant amended the design to increase the side setbacks on Level 3 and Level 4 to a minimum setback of 2.92m to the western side (from 2.5m) and 2.77m to the eastern side.

In consideration of the amendments to the proposal with regards to view loss, the final assessment reported to Council in May 2009 provided the following comments:

"In regards therefore to the views from the roadway, the proposal will result in the loss of some water vistas. The loss of view is a result of the proposed fourth level addition that accommodates the garage and bedroom. As noted the additions comply with the DCP height controls and the proposed upper level is well setback from the side boundaries. These setbacks will retain glimpses of the views to the beach and ocean. This retains the character of the area which is the strong presence of the ocean as the visual backdrop to the built form on this lower side of The Serpentine....Glimpses of the headland from the roadway will also be retained between the addition and side boundary."

Given the side setback and retention of glimpses of the ocean and headland views, the proposed development was considered acceptable on merit and it was considered the impact upon the view from the street was reasonable.

It is considered that the proposed modifications shall result in further loss of the headland views and the land/water interface. As such the proposed modifications will result in a significant view loss from the street and it cannot be said that the impact on views is minimised. It was shown in the original application that a more skilful design (in the increased setbacks) could be achieved to provide a balance between the development of the existing dwelling and retention of the public view. The proposed modifications seek to enlarge the upper levels on the western side further than the initial development that was considered unacceptable and in doing so will substantially compromise the existing view from the street and the glimpses of view that will be retained with the approved setback. In light of the above, it is considered that the resultant development will result in an unacceptable view loss from the public domain and the application cannot be supported.

ASSESSING OFFICERS COMMENTS

Three (3) submissions were received which raised concerns regarding view loss from the public domain, being from The Serpentine. One (1) submission from the adjacent property at 27 The Serpentine also raised concerns regarding view loss from their property.

The applicant argues that the view loss impact as a result of the proposed modifications is "*hardly discernible*". However, as discussed in depth in the previous application, the proposed development was only permitted and approved subject to the upper levels being set-in from the side boundaries in order to retain glimpses of the views to the beach and ocean as viewed from The Serpentine. The original view loss was considered to be unacceptable and amendments made to the upper levels to reduce the view loss impact from the public domain. The proposed modifications seek to not only reinstate this unacceptable view loss but further impact upon the public views to the beach and ocean. As such, the proposed modifications shall result in further loss of views which are already compromised by the approved development. The applicant has failed to acknowledge the view loss considerations and subsequent amendments of the original application or provide any justification on why the view loss is now acceptable. The approved development retains glimpses of the water views at the western side which shall be diminished by the proposed extension to the upper levels. Clause C1.3 of P21 DCP requires that "*Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*" The proposed development fails to do this and does not meet the requirements of clause C1.3. As such, the proposed development continues to result in an unacceptable view loss impact from the public domain and the application is not supported.

The neighbouring property at 27 The Serpentine is located to the north-west of the subject site. A view loss assessment from the properties at 29 and 31 The Serpentine was conducted in the original development application. It is considered that the view loss impact from 27 would be similar to that of No.'s 29 and 31. The original development would have resulted in some view loss of the ocean from

the property, however given that these properties are sited higher than the subject site and experience expansive water views, the impact as a result of the proposed development is considered to be minor. The proposed modifications will exacerbate the view loss impact, however given the location of the dwelling and views experienced it is considered that there shall be no unreasonable view loss impact from 27 The Serpentine.

APPLICANT'S RESPONSE REASON 3 – Overshadowing

APPLICANT'S RESPONSE

Shadow - there is no relevant shadowing impacts on adjoining neighbours.

ASSESSING OFFICERS COMMENTS

Submissions were received from the neighbouring two (2) properties to the west (38 and 40 the Serpentine) which reiterated concerns regarding overshadowing from the proposed development.

The original assessment concluded that *"While it is acknowledged that the proposed modifications shall result in overshadowing to the living area and outdoor space, it is considered that any overshadowing shall be limited to the morning and the adjoining property shall receive in excess of 3 hours of sunlight between 9am and 3pm in midwinter. As such the proposed development is technically compliant with the control. Given the northerly orientation of the adjoining sites, the proposed development is not considered to result in any unreasonable impacts upon the adjoining properties with regards to solar access."*

As no changes have been proposed under the review, it is considered that while the proposed modifications shall result in additional overshadowing to the adjoining property to the west, the proposal shall not result in any unreasonable impacts upon the property as the northerly orientation of the sites will allow for a minimum of 3 hours of sunlight to be received in midwinter.

APPLICANT'S RESPONSE REASON 4 - Landscaped Area and Site Coverage

APPLICANT'S RESPONSE

The section 96, as regards landscaping ratios, complies with relevant DCP controls or is otherwise of immaterial variance and is capable of a SEPP 1 application.

ORIGINAL ASSESSMENT

D3.11 Site coverage - Environmentally Sensitive Land

The proposed site coverage shall be 368.37m² or 51.68% (with permitted variations for pathways and 6% for outdoor recreation areas), with the proposed landscaped area being 48.32% including the planter boxes as landscaped areas. It is acknowledged that the proposed modifications shall increase the overall site coverage by approximately 4.5m² as the proposed extension of the upper levels is located partially over the Level 3 balcony. However, the minor increase in site coverage is considered significant given that the additions shall attribute to the overall built form. The minor 4.5m² increase to the overall hard surface areas is due to the addition being partially located over a balcony area. The approved balcony area is located at the floor level of Level 3 and as such will not visibly attribute to the bulk and scale, whereas the proposed additions are to a height of 6.2m above the floor level of Level 3 and in total will contribute to approximately an additional 65.6m³ of built form to the development. As such, while the increase appears minor, it shall add to the overall bulk and scale of the built form which already maximises the variations under P21 DCP. As such the proposed modifications result in

a non-compliant site coverage calculation and are inconsistent with the outcomes of the control, which aim to minimise bulk and scale. Therefore, the non-compliance cannot be supported.

ASSESSING OFFICERS COMMENTS

The applicant states that with regards to the proposed landscaped area and site coverage, the development complies or “*is otherwise of immaterial variance and is capable of a SEPP 1 application*”. The proposed development results in a further breach of an already non-compliant site coverage calculation. Combined with non-compliances relating to side setbacks, building envelope and the locality character, the proposal results in an overdevelopment of the site. As stated in the previous assessment, the increase to the site coverage, while being minor, is considered to be significant and shall negatively attribute to the overall built form of the development which results in excessive bulk and scale. The development fails to meet the outcomes of clause D3.11 of P21 DCP and therefore the non-compliance and increase in site coverage is not supported. See Refusal Reason 1 for further discussion.

REFUSAL REASON 1 – Visual Impact and Bulk and Scale

REASON FOR REFUSAL

The proposed modifications result in an increase to the apparent size of the development and directly attribute to the overall bulk and scale of the development as viewed from Bilgola Beach, the waterway and The Serpentine. The resultant development shall result in non-compliance with Clause D3.1 Character as viewed from a public place, D3.2 Scenic Protection, D3.11 Site Coverage and D3.9 Building Envelope of P21 DCP. The modifications intensify the existing building envelope non-compliance and are considered to attribute to further bulk and scale to a development that is at its maximum allowable built form. As such the outcomes of these development controls are no longer able to be achieved.

ORIGINAL ASSESSMENT

D3.1 Character as viewed from a public place and D3.2 Scenic protection

Three (3) submissions have been received regarding the bulk and scale of the development and the visual impact of the proposal as viewed from the public domain.

The proposed modifications shall significantly increase the apparent size of the development as viewed from the street (The Serpentine) and as viewed from Bilgola Beach and the water. The proposal includes removal of windows on Level 4 and replacement with solid form, directly attributing to the built form. The proposed western setback shall be consistent with the lower levels, and as such the lack of differentiation at the upper levels (resulting from the increased width and removal of glazing) shall result in the development appearing as a four-storey development as viewed from the south-west, from the public domain (specifically Bilgola Beach) and adjoining properties to the south-west of the site. The proposed extension does not minimise the built form and shall attribute to excessive bulk and scale. Furthermore, there is no opportunity for landscaping within the western side setback area to screen the upper levels as viewed from the surrounding areas and the development shall be visually prominent in the visual catchment.

The original application underwent extensive negotiation with regards to the built form in order to achieve a development that was consistent with Council controls and approvable. The reduction in the side setbacks at the upper levels was a minor amendment but a significant change that was volunteered by the applicant. The final assessment reported to Council on 18 May 2009 and which

recommended approval of the development provided the following justification with regards to the bulk and scale and control D3.1:

"The new building bulk is therefore narrowed to respond to the side boundary setback requirements, but set in behind the existing building bulk. This receding of the additional mass minimises the impact of the building when viewed from the south....While the building presents as four levels in elevation, this impact is tempered by the stepping of the building to comply with the 8.0m height limit and the treatment of the upper levels to include shaded recessed areas."

The treatment of the upper levels, and in particular the increased setbacks, were key in breaking up the overall bulk and scale of the development. As discussed above the proposed modification seeks to extend the upper levels, which results in a negative visual impact as view from the public domain and the surrounding properties. The proposal does not minimise the built form but exaggerates it and therefore the proposed modifications cannot be supported.

D3.7 Side and rear building line

The proposal is technically non-compliant with the control due to the existing side setbacks, being 0.969m to the west and 0.907m to the east. The control offers a variation for the maintenance of existing setbacks where the outcomes of the control can be achieved and the variation was applied to the original development. The proposed modifications are technically compliant with the control, proposing a 1.9m setback to the west and 2.77m setback to the east, however it is recognised that the proposed amendments negatively attribute to the overall bulk and scale of the development, compromise views from the public domain and result in development that is inconsistent with the desired character of the locality, being a four-storey dwelling not mindful of the natural topography. As such it is considered that the proposed resultant development would be inconsistent with the outcomes of the control and it is noted that the variation for the maintenance of existing setbacks would not be supported.

D3.9 Building envelope

The proposed modifications are not sited within the prescribed building envelope and are technically non-compliant with the control.

In the original assessment of application N0593/06 there were numerous concerns regarding the bulk and scale of the development and non-compliance with several P21 DCP built form controls, including the building envelope. At the Development Meeting on 11 October 2007, the DU panel members requested further information regarding the extent of non-compliance with the control, and with particular regard to the existing structures to be retained. As a result of the issues raised at the meeting, the applicant provided amended plans which included the reduction of the upper levels at the side setbacks to reduce the bulk and scale and maintain views. This amendment also demonstrated compliance with the building envelope at the upper levels, and therefore although the proposal did not fully comply at the lower levels, it was considered that this non-compliance could be supported.

The modification seeks to widen the upper levels (Level 3 and 4) on the western side setback, resulting in a setback that further exceeds the non-compliant design initially proposed (the original unsupported design proposed a setback of 2.5m, the approved design a setback of 2.92m and the modification proposes a setback of 1.91m). The proposed modification results in portions of Level 4 being non-compliant with the prescribed building envelope and as such reinstates concerns regarding bulk and scale and the dominance of the built form on the upper levels, as well as view loss concerns from the public domain (see control C1.3). Concern has been raised by the neighbouring property to the west regarding the overall bulk and scale of the proposal and visual impact from their property.

The amendment intensifies the existing building envelope non-compliance and is considered to attribute to further bulk and scale to a development that is at its maximum allowable built form. As such the proposal is also considered to be overbearing and result in a detrimental visual impact from 40 The Serpentine. The proposed modification exaggerates the built form of the initial design which was unable to be supported, and as such the proposed modifications are inconsistent with the outcomes of the control and the non-compliance with the building envelope on Level 4 cannot be supported.

ASSESSING OFFICERS COMMENTS

Five (5) submissions were received which raised concerns regarding the bulk and scale of the proposed development.

The proposed modifications resulted in a development that was non-compliant with several of Council's built form controls and those relating to the visual impact of the development. As discussed in depth in the previous assessment, the approved development had undergone several amendments to achieve a development that was consistent with Council's planning controls and an acceptable level of built form, and as such approved a development that was considered to be at its maximum allowable built form. The proposed modifications seek to extend the upper levels further than what was originally proposed and what was considered to be unacceptable by the Assessing Officer and the Development Unit. As such the proposed modifications shall increase the overall built form, exaggerate the apparent size of the development and result in excessive bulk and scale. The review application fails to address the concerns with regards to the bulk and scale and the proposal remains to result in non-compliance with Clause D3.1 Character as viewed from a public place, D3.2 Scenic Protection, D3.11 Site Coverage and D3.9 Building Envelope of P21 DCP, resulting in an unacceptable visual impact as viewed from the public domain and surrounding properties. As such the proposed modifications are not supported.

REFUSAL REASON 4 – Section 96(1a) Substantially the same development

REASON FOR REFUSAL

The application is not considered to be in accordance with Section 96(1A) of the Environmental Planning and Assessment Act 1979. The modified development is not considered to be of minimal environmental impact or substantially the same development as that which was originally approved. The original development consent relied on upper levels being substantially setback from the side boundaries in order to reduce bulk and scale, and minimise view loss. The additions to the structure change the nature of the development and as such the justification for non-compliances with P21 DCP would no longer be applicable. This section of the act is not considered to be achieved as the modified development would not be substantially the same development as the original approved development.

ORIGINAL ASSESSMENT

The proposed modification involves the extension of the two (2) upper levels (Level 3 and Level 4) to the west and the extension and excavation of Level 1 and Level 2 to the north, to accommodate the installation of a passenger lift through all four (4) levels of the dwelling. The proposed modification also involves alterations to windows and doors, and changes to the external materials. The modified development has been assessed in accordance with the relevant controls and policies.

As the proposal is for the modification of a previously approved Development Application, the provisions of Section 96 of the EP&A Act are applicable. The applicant has identified that the

modification is to be assessed pursuant to Section 96 (1a) of the EP&A Act. Section 96(1a) deals with modifications involving minimal environmental effect, and a consent authority may modify the consent if the development satisfies the following:

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

The proposed modification seeks consent to extend the upper levels of the dwelling to the west and the lower levels of the dwelling to the north. As discussed above, the extension of the upper levels and removal of glazing is considered to result in additional bulk and scale, and the proposed modifications will result in an unacceptable view loss impact of the water, headland and beach views from the public domain. The proposed extension of the lower levels requires extensive excavation up to a maximum depth of 6.2m below natural ground level, increasing site disturbance and further impacting on the natural topography of the site, and as such the proposed development is not considered to be of minimal environmental impact.

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

To establish if development is substantially the same as what was granted consent, reference is made to the case of *Moto Projects (No.2) v North Sydney Council* [1999] NSW LEC 280, which provides the following judgement:

"The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified.....

....The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development is granted).

Development Consent N0593/06 granted consent for demolition works and construction of alterations and additions including a new swimming pool, new garage and driveway. The proposed modifications seek consent to extend the upper levels of the dwelling to the west and the lower levels of the dwelling to the north to accommodate the installation of a lift through all four levels of the dwelling, as well as changes to external materials, windows and doors and internal alterations. It is accepted that materially the proposed modifications result in a minor change to the physical features and a minimal amount of physical works. However, as in the case of *Moto Projects (No.2) v North Sydney Council*, in this instance it is appropriate to consider the development qualitatively as well as quantitatively, given the impact of the proposed changes and the circumstances in which development consent was granted.

The original development resulted in numerous non-compliances with Pittwater 21 DCP, specifically being View Loss, Character as Viewed from a Public Place, Scenic Protection, Side Building Line, Building Envelope and Site Coverage. The application underwent extensive negotiations and amendments to the original design to achieve a development that was consistent with Council policy. In these negotiation stages, consideration was also given to the four (4) storey element of the development and it was deliberated that the development was not considered to be four (4) storey due to it being stepped down the site and predominantly two-storeys in any one place. The final amended design maintained some minor non-compliances however the non-compliances were assessed on merit and considered acceptable based on the amendments. As discussed above under "Discussion of Issues", in the final assessment report the justification provided for the variations clearly related to

the amendments to the upper levels of the development proposing generous side setbacks, and the development being consistent with the Bilgola Beach locality. As such the consent relied on the upper levels having significant side setbacks in order to preserve the public views and reduce the bulk and scale, as well as the dwelling being two-three storeys consistent with the locality.

Whilst the proposed modifications are largely consistent with the approved built form, the changes proposed as part of the subject application actively increase the apparent size of the development, increasing the built form and visual appearance of the development, as viewed from The Serpentine, and specifically as viewed from Bilgola Beach and the water to the south of the site. The proposed modifications also intensify the areas of non-compliance with regards to P21 DCP built form, amenity and character controls. The proposed modifications are considered to compromise the views that were fought to be retained in the original approval and as such results in an unacceptable view loss from the public domain. Furthermore, the extension of the lower levels results in excessive excavation and ultimately changes the two-three storey dwelling to a three-four storey dwelling. As such the justification for a variation to the areas of non-compliance with P21 DCP cannot be applied to the modification as the nature of the development has changed and the circumstances of the development consent are no longer the same. The resultant development is considered to be inconsistent with the future desired character identified in P21 DCP and the outcomes of the built form, amenity and character controls. In consideration of the *Moto Projects (No.2) v North Sydney Council* judgement and in view of the above, the proposed modification is not considered to be substantially the same as that approved pursuant to N0593/06.

Given the application fails at the threshold, as Council could not be satisfied that the development to which the consent as modified relates is substantially the same development to which the development consent relates, the powers of S96(1a) to modify the approved development are not applicable in this instance.

ASSESSING OFFICERS COMMENTS

The applicant fails to address Section 96(1a)(b) of the EP&A Act or acknowledge the circumstances in which the original development consent was granted. As discussed in detail in the previous assessment, the proposed modifications result in a development contradictory to what was originally approved, seeking to reinstate the amendments that the original consent relies upon. As no changes have been proposed, the development remains to be not substantially the same as that which was originally approved under N0593/06, and the provisions of S96(1a) to modify the approved development are considered to be non-applicable.

C1.5 Visual Privacy

ORIGINAL ASSESSMENT

C1.5 Visual Privacy

A submission has been received from the neighbouring property to the west which raises concerns regarding loss of privacy from the proposed development. The proposed modifications include amendments to windows and doors. The amendments to the western elevation involve the removal of two (2) windows on Level 4, with all other windows to remain as approved. Given the western elevation shall result in the removal of two (2) windows and there shall be no change to the size, shape or orientation of the approved windows, it is considered that the proposed modifications shall not result in any unreasonable impacts upon the adjoining properties with regards to visual privacy.

ASSESSING OFFICERS COMMENTS

A submission was received from the neighbouring property to the east which raised concerns regarding window W1/2 on the eastern elevation. This window is to the Games Room and adjacent to a bar area. As such it is considered that this window could be utilised for extended periods of time and would result in overlooking of the neighbouring property. Should the application be approved, a condition of consent would be recommended for the window to be translucent glazing.

10.0 CONCLUSION

This proposed modifications application has been assessed under Section 96AB of the Environmental Planning and Assessment Act 1979, and in accordance with the provisions of Pittwater Local Environmental Plan 1993, Pittwater Environmental Plan 2014, Pittwater 21 DCP and other relevant policies.

The applicant provided statements for consideration in support of the proposed modifications and in response to the previous assessment with regards to excavation, views, overshadowing and landscaping requirements. However, the applicant failed to address concerns with regards to bulk and scale, the visual impact of the proposed development and inconsistency with the Bilgola locality planning controls. Furthermore, the applicant failed to demonstrate that the development is substantially the same as that which was approved in accordance with Section 96(1a)(b) and that the provisions of Section 96 are applicable. No amendments were made in the review application and as such the proposal fails to adequately address the reasons for refusal. The proposal still re-establishes the issues associated with the original development which were considered unacceptable and shall continue to result in a detrimental visual impact and unacceptable view loss from the public domain. The proposed modifications shall result in excessive bulk and scale and additional built form to a development that is considered to be at its maximum allowable built form.

The proposed modifications are not considered to be of minimal environmental impact and do not result in development that is substantially the same as that which was approved pursuant to N0593/06. The review assessment has found that the proposal remains inconsistent with the requirements of Section 96(1a) and the application cannot be approved.

RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER

That Council, as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979, uphold the refusal to modify development consent N0593/06 for demolition of the existing driveway, garage, and existing roof and the construction of alterations and additions including a new swimming pool new garage and driveway at 42 The Serpentine, Bilgola Beach for the reasons in the draft notice of refusal attached.

In accordance with Section 96AB(3) of the EP&A Act the application will be required to be determined by Council.

Report prepared by

Angela Manahan
PLANNER

REFUSAL OF S96AB REVIEW OF MODIFICATION APPLICATION

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION

Applicant's Name and Address:

**WALLY MCDONALD
39 THE BOULEVARDE
LEWISHAM NSW 2049**

Being the applicant in respect of Development Application No. N0593/06/S96/1.

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Pittwater Council, as the consent authority, of the S96AB Review Application for:

Modification of Development Consent N0593/06 for demolition of the existing driveway, garage and existing roof and the construction of additions & alterations including swimming pool, a new garage and driveway.

At:

**Lot 105 DP 16393
42 THE SERPENTINE, BILGOLA BEACH**

Decision:

The Section 96AB Review of a Modification Application has been refused for the following reasons:

- 1. The proposal still results in an unacceptable visual impact and excessive bulk and scale due to the increase to the apparent size of the development which directly attributes to the overall bulk and scale of the development as viewed from Bilgola Beach, the waterway and The Serpentine. The resultant development shall continue to result in non-compliance with Clause D3.1 Character as viewed from a public place, D3.2 Scenic Protection, D3.11 Site Coverage and D3.9 Building Envelope of P21 DCP. The modifications intensify the existing building envelope non-compliance and are considered to attribute to further bulk and scale to a development that is at its maximum allowable built form. As such the outcomes of these development controls are no longer able to be achieved.*
- 2. The proposed modifications will still result in an unacceptable view loss from the public domain and non-compliance with clause C1.3 of P21 DCP. It is considered that a more skilful design could be achieved to provide accessibility but maintain the existing public view as approved.*
- 3. The extent of excavation required on Level 1 and Level 2 for the proposed passenger lift is still considered to be excessive and is not warranted given that an alternative solution could be achieved with minimal excavation required. The proposed development shall be a three-four storey dwelling in complete contradiction to the desired future character of the Bilgola Beach locality which states dwelling should be a maximum of two-storey in any one place.*
- 4. The application is not considered to be in accordance with Section 96(1A) of the Environmental Planning and Assessment Act 1979. The modified development is not considered to be of minimal environmental impact or substantially the same development as that which was originally approved. The original development consent relied on upper levels being substantially setback from the side boundaries in order to reduce bulk and scale, and minimise view loss. The additions to the structure change the nature of the development and as such the*

justification for non-compliances with P21 DCP would no longer be applicable. This section of the act is not considered to be achieved as the modified development would not be substantially the same development as the original approved development.

NOTES:

- (1) This determination was taken under delegated authority on behalf of the elected Council pursuant to Section 377 of the Local Government Act 1993.
- (2) Section 97 of the Act confers on the applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land & Environment Court exercisable within 6 months after receipt of this notice.
- (3) Any person who contravenes this notice of determination of the abovementioned development application shall be guilty of a breach of the Environmental Planning & Assessment Act, 1979, and shall be liable to a monetary penalty and for a restraining order which may be imposed by the Land and Environment Court.

Mark Ferguson
GENERAL MANAGER

per:

Date: 22 September 2015

N0593/06/S96/1 – 42 THE SERPENTINE, BILGOLA PLATEAU (Lot 105 DP 16393)

Modification to Development Consent N0593/06 which approved demolition of the existing driveway, garage, and existing roof and the construction of alterations and additions including a new swimming pool new garage and driveway.

Determination Level: Development Unit

Date: 02 April 2015

SUMMARY OF RECOMMENDATION**REFUSAL**

REPORT PREPARED BY:	Angela Manahan
APPLICATION SUBMITTED ON:	02 December 2014
APPLICATION SUBMITTED BY:	WALTER McDONALD C/- PO BOX 71 AVALON BEACH NSW 2107
OWNERS:	McDONALD, WALTER LEONARD

5.0 SITE DETAILS AND ZONING

The site is known as 42 The Serpentine and has a legal description of Lot 105 in Deposited Plan 16393. The site is irregular in shape and has a total area of 712.8m². Vehicle and pedestrian access is gained via the 13.795m wide frontage to The Serpentine. The site has a width of 13.795 metres to the street, and has a depth of 49.91 metres. The natural ground level of the site slopes substantially from RL 39.70 at the street boundary to RL 27.18 to the rear boundary, representing a fall of 12.52 metres, and a slope of approximately 30.5%.

The site currently accommodates a two storey dwelling, with a detached garage located between the dwelling and the street alignment. The existing detached garage is setback 5.5 metres from the front boundary. The existing dwelling is setback 14.9 - 19 metres from the front boundary, due to the irregular alignment of the sites property boundaries. The front of the site is orientated to the north, and is adjoined by public open space to the south above Bilgola Beach. The property is surrounded by residential properties to the north, east and west.

The site is zoned 2(a) Residential under the provisions of the Pittwater LEP 1993. The proposed development being alterations and additions to a dwelling is permissible with consent pursuant to the Pittwater Local Environmental Plan 1993. The site is zoned E4 – Environmental Living under the provisions of the Pittwater LEP 2014 and the proposed development being alterations and additions to a dwelling would be permissible with consent pursuant to the Pittwater Local Environmental Plan 2014.

The modifications proposed remain consistent with the land use proposed and approved by N0593/06 and are permissible with consent, as identified by Clause 9 of PLEP 1993 and by the Land Use Table of PLEP 2014.

6.0 PROPOSAL

The applicant seeks consent for the following modifications to the approved development;

- Installation of a passenger lift through all four (4) levels of the dwelling;
- Associated alterations and additions to accommodate the lift including;
 - 1.01m increase in building width to the west at Level 3 and Level 4;
 - Extension to the north on Level 2 comprising of new cellar and lift room, and associated excavation;
 - Extension to the north on Level 1 comprising of new lift room/corridor and storage area, and associated excavation;
 - Excavation up to a maximum depth of 6.2m below natural ground level;
- Alterations to windows and doors involving;
 - Door D4/1 on Level 4 northern elevation changed from single door to single door with glass side panels;
 - Windows W4/4 and W4/5 on Level 4 western elevation deleted and replaced with one (1) narrow window (noted as W4/4);
 - Windows W4/7 and W4/8 on Level 4 eastern elevation deleted and replaced with one narrow window (W4/6) and three (3) small square windows (noted as W4/7, W4/8 and W4/12) consistent with windows W4/9-W4/11;
 - New window W1/2 on Level 1 eastern elevation;
- Installation of two (2) new skylights to the roof of Level 3, one (1) over the kitchen area and one (1) over the lounge area;
- Installation of a new gas fire in the Home Theatre/Rumpus room on Level 3;
- Alterations to external materials involving changing the Level 4 roof and external cladding to copper sheeting, and changing the Level 3 northern addition external walls to timber and sandstone cladding.

7.0 LEGISLATION, PLANS & POLICIES

The following relevant local and state policies apply:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- State Environmental Planning Policy No 71 – Coastal Protection;
- Pittwater Local Environmental Plan (PLEP) 1993;
- Pittwater Local Environmental Plan (PLEP) 2014;
 - Acid Sulphate Soils Map – Class 5;
 - Biodiversity Map;
 - Geotechnical Hazard Map;
 - Height of Buildings Map – 8m;
 - Lot Size Map – 700m²;
- Pittwater 21 Development Control Plan;
 - Bilgola Plateau Locality;
 - Geotechnical Risk Management Policy for Pittwater;
 - Coastline Risk Management Policy for Development in Pittwater.

Pittwater 21 DCP identifies the land as being the following:

- Bluff/Cliff Instability;
- Landslip Prone;
- Flora and Fauna Conservation Area - Category 2.

8.0 BACKGROUND

Background of Development Application N0593/06

27 September 2006

Development Application N0593/06 for demolition of the existing driveway, garage and existing roof and the construction of additions & alterations including swimming pool, a new garage and driveway at 42 The Serpentine, Bilgola was lodged at Council.

On 29 December 2006, a letter was issued to the applicant to identify numerous issues relating to the application, including concerns regarding the extent of demolition, view sharing, bulk and scale, character as viewed from a public place, scenic protection, height, building envelope, site coverage and SEPP 71 – Coastal Protection.

In response to the letter, the applicant provided details of the retention of structures and justification to demonstrate the application was classified as alterations and additions, and provided certification of height poles that had been erected.

Following consideration of the applicant's response, an additional letter was issued to the applicant on 27 April 2007 requesting that the proposal be modified to address the outstanding issues raised in the letter from December 2006. This letter reiterated concerns regarding view loss and bulk and scale resulting in several non-compliances with P21 DCP controls.

Additional information was received on 15 May 2007 in response to the issues and concerns raised by the Assessing Officer. The additional information included a revised Landscape Plan, amendments to the Level 4 deck and windows W4/4 and W4/8 raised to 1500mm above the Finished Floor Level to address privacy issues.

11 October 2007

The application was reported at the Development Unit meeting and recommended for refusal. However the item was deferred to allow the applicant to address issues relating to view loss from the public domain, privacy and compliance with the building envelope.

Amended plans were submitted by the applicant in November 2007. The new plans included amendments to Levels 3 and 4 of the proposal. These levels were reduced in width to improve view sharing and allow a view corridor from the street, to reduce the bulk and scale and ensure compliance with the building envelope for the new upper levels.

13 March 2008

The application was reported at the Development Unit meeting and recommended for refusal. The item was deferred to allow the applicant to provide further information regarding privacy and for the Development Unit to consider policy requirements as they relate to Level 4 and view sharing requirements. The application was reported back to the Development Unit meeting on 17 April 2008. The Assessing Officer's report recommended the application for refusal. The Development Unit recommended that the Officer's report not be endorsed and the development be granted consent. The Development Unit accepted that the proposal was for alterations and additions, and that the development was not considered a four-level structure (due to the stepping of the development down the slope of the site) and the built form was acceptable.

05 May 2008

The application was reported to Council, however the item was deferred for Councillors to seek an independent opinion as to whether the application satisfied SEPP 71 – Coastal Protection. The application was reported back to Council on 04 August 2008. The item was deferred to allow for an accurate assessment of the building calculation for demolition. The application was reported to Council on 18 May 2009.

20 May 2009

Council approved development application N0593/06 for demolition of the existing driveway, garage and existing roof and the construction of additions & alterations including swimming pool, a new garage and driveway at the subject site.

Background of Modification Application N0593/06/S96/1

02 December 2014

Section 96(1a) Modification Application N0593/06/S96/1 was lodged at Council. The application was subsequently referred to Council's Development Engineer and Natural Resources Officer for comments and/or recommendations. The site was inspected on 12 January 2015 and 02 March 2015.

9.0 NOTIFICATIONS

Modification Application N0593/06/S96/1 was notified to adjoining property owners from 10 December through to 24 December 2014 in accordance with Council's Notification Policy. During this time, three (3) submissions were received from 38 The Serpentine, 40 The Serpentine and Bilgola Preservation Society. The submissions raised concern with the following:

- Extent of Excavation and Stormwater Run-Off;
- Bulk and Scale;
- Visual Privacy;
- Solar Access;
- Building Envelope;
- Landslip and Coastline Hazards;
- Character as viewed from a Public Place;
- Scenic and Coastal Protection;
- View Loss;
- Side and Rear Building Line.

Two (2) of the submissions also raised concerns with the proposal being defined as alteration and additions as opposed to a new dwelling, and one (1) submission raised concern regarding whether the original Development Consent had lapsed.

6.0 CONSIDERATION OF P21 DCP - 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
REF – Development Engineer					
B3.2 Landslip Hazard			✓	✓	✓
		Concerns have been raised regarding the extent of excavation and potential impacts upon adjoining properties and natural watercourses.	✓	✓	✗

Control	Standard	Proposal	T	O	N
		See discussion further in report.			
B3.5 Coastline (bluff) hazard			✓	✓	✓
		See Control B3.2 for further comment.	✓	✓	✗
B5.2 Stormwater management – rainwater tanks			✓	✓	✓
B5.5 Stormwater discharge into waterways and coastal areas			✓	✓	✓
		A submission was received regarding the stormwater impacts due to the additional excavation. Council's Senior Development Engineer raised no issue with the stormwater management of the site in response to the proposed modifications.	✓	✓	✗
B6.1 Access driveways – residential development up to 2 dwellings(single and dual occupancy)			✓	✓	✓
B6.4 Off-street vehicle requirements – residential development up to 2 dwellings (single dwelling and dual occupancy)			✓	✓	✓
B8.1 Construction and demolition – excavation and landfill			✓	✓	✗
B8.2 Construction and demolition – erosion and sediment management			✓	✓	✓
B8.5 Construction and demolition – works in the public domain			✓	✓	✓
B8.6 Construction and demolition – traffic management			✓	✓	✓
REF – Development Officer					
A1.7 Considerations before consent is granted			✓	✓	✓
B1.1 Submission of a completed Development Application form and payment of appropriate fee			✓	✓	✓
B1.2 Submission of a Statement of Environmental effects			✓	✓	✓
B1.3 Submission of supporting documentation – site plan/survey plan/development drawings			✓	✓	✓
B1.4 Notification			✓	✓	✓
		The application was notified to adjoining property owners for a period of fourteen (14) days from 10 December through to 24	✓	✓	✓

Control	Standard	Proposal	T	O	N
		December 2014 in accordance with Council's Notification Policy.			
B1.5 Building Code of Australia			✓	✓	✓
B3.8 Contaminated Land and Potentially Contaminated Land			✓	✓	✓
C1.1 Landscaping			✓	✓	✓
C1.2 Safety and Security			✓	✓	✓
C1.3 View Sharing			✓	✓	✗
		The proposed modifications will result in an unacceptable view loss from the public domain.	✗	✗	✗
		See discussion further in report.			
C1.4 Solar Access			✓	✓	✗
		A submission has been received from 40 The Serpentine which raises concerns regarding overshadowing and solar access.	✓	✓	✗
		See discussion further in report.			
C1.5 Visual Privacy			✓	✓	✗
		Concerns have been raised regarding privacy and potential overlooking into No. 38 and 40 The Serpentine.	✓	✓	✗
		See discussion further in report.			
C1.6 Acoustic Privacy			✓	✓	✗
C1.7 Private Open Space			✓	✓	✓
C1.11 Energy and water conservation			✓	✓	✓
C1.14 Separately Accessible Structures			-	-	-
C1.17 Swimming Pool Safety			✓	✓	✓
C1.22 Pollution Control			✓	✓	✓
D3.1 Character as viewed from a public place			✓	✓	✗
		See discussion further in report.	✗	✗	✗
D3.2 Scenic protection			✓	✓	✗
		See discussion further in report.	✗	✗	✗
D3.3 Building colours, materials and construction			✓	✓	✓
		See discussion further in report.	✓	✓	✓
D3.5 Height – Bilgola Beach Area			✓	✓	✗
		See discussion further in report.	✓	✓	✗
D3.6 Front building line			✓	✓	✓
D3.7 Side and rear building line			✗	✓	✗
		See discussion further in report.	✗	✗	✗
D3.8 Foreshore building line			✓	✓	✓
D3.9 Building envelope			✗	✓	✗
		See discussion further in report.	✗	✗	✗
D3.11 Site coverage - Environmentally Sensitive Land			✓	✓	✗
		See discussion further in report.	✗	✗	✓
D3.14 Retaining walls,			✓	✓	✓

Control	Standard	Proposal	T	O	N
terracing and undercroft areas					
C1.23 Eaves			✓	✓	✓
C1.24 Public Road Reserve - Landscaping and Infrastructure			✓	✓	✓
SEPP (Building Sustainability Index: BASIX) 2004		BASIX does not apply to the proposed development.	-	-	-
SEPP No 71 Coastal Protection			✓	✓	✗
		The proposal is generally consistent with the aims and objectives of SEPP 71 – Coastal Protection, however there are concerns with regards to the bulk and scale of the development and visual impact as viewed from the public domain. As discussed in depth within the assessment report, the proposal modifications are considered to increase the bulk and scale of the development and not provide the articulation, setbacks and screening required to break up the building mass. The development is not considered to be secondary to the landscaping or integrated into the natural environment and as such the development is considered to be contrary to subclause (k) which aims to ensure the type, bulk, scale and size is appropriate for the location and improves the natural scenic quality of the surrounding area.	✗	✗	✓
Other State Environmental Planning Policies (SEPPs)			✓	✓	✓
REF – Natural Resources					
B4.2 Flora and fauna habitat enhancement Category 2 Land			✓	✓	✓
		Council's Natural Environment Officer provided the following comments: <i>I have reviewed the proposed Section 96 modification for N0593/06 (42 The Serpentine, Bilgola Beach). The proposed amendments include construction of a passenger lift. The works are internal and will not impact on existing trees and vegetation to be retained. There are no further natural resource comments.</i>	✓	✓	✓
B4.5 Protection of native wildlife			✓	✓	✓
B4.10 Land adjoining bushland			✓	✓	✓
D3.13 Fences - Flora and Fauna Conservation Areas			-	-	-

The table above was produced during the assessment of N0593/06 and subsequent modifications. Comments in **BOLD** are made in respect to the modification proposed.

7.0 INTERDEPARTMENTAL COMMENTS

The application was referred to Council's Development Engineer who provided the following comments in regards to the proposed development;

No engineering objections subject to an updated form 2 being provided as recommended by the geotechnical consultants JK Geotechnics.

The application was also referred to Council's Natural Resources Officer who provided the following comments in regards to the proposed development;

I have reviewed the proposed Section 96 modification for N0593/06 (42 The Serpentine, Bilgola Beach). The proposed amendments include construction of a passenger lift. The works are internal and will not impact on existing trees and vegetation to be retained. There are no further natural resource comments.

8.0 DISCUSSION OF ISSUES

B3.2 Landslip Hazard, B3.5 Coastline (Bluff) Hazard and the extent of excavation

Submissions have been received which raise concerns regarding the extent of excavation and the potential landslip and coastline hazards on the subject site and surrounding properties.

The application was accompanied by a letter from JK Geotechnics, dated 28 July 2014. The letter references the original Geotechnical Report, dated 25 September 2006, and concludes that the proposed modifications shall not adversely affect the previously assessed risk levels and as such the original Geotechnical Report remains valid. Council's Engineer raised no objection to the proposed modifications subject to the development being signed off by a qualified Geotechnical Engineer prior to construction.

The proposed modifications to install a passenger lift through all four levels of the dwelling require retaining walls and excavation up to a maximum depth of 6.2m. The proposed extension on the lowest level (Level 1) to accommodate the lift shall require excavation a depth of 3.4m to 6m below natural ground level for a length of approximately 11m. While it is recognised that the proposed modifications can achieve an acceptable risk level with regards to the geotechnical requirements of the site, concern remains with the extent of excavation required for the passenger lift and the subsequent impacts on the overall development. See discussion below.

Bilgola Locality, Excavation and Height – Bilgola Beach Area

The desired future character of the Bilgola Locality states that:

"The Bilgola Locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape."

The original development application was before the Development Unit meeting who discussed the matter of whether the proposal was considered to be a four-storey development. It was deliberated and concluded that the development was not considered to be four-storey (it is thought due to the proposal being stepped down the site and therefore being predominantly two storeys in any one place with a minor overlap of the three storey component). Therefore, although the development comprises of four (4) levels, the approved development is considered to be a two-three storey dwelling which is stepped down the site in accordance with the outcomes of the built form controls and the Bilgola locality.

The proposed modifications will result in additional excavation to the two (2) lower levels of the dwelling and as such the development shall be a maximum of four storeys in any one place and shall not step down the site. The proposed modifications shall result in the development changing from a two-three storey dwelling to a three-four storey dwelling, and shall be significantly inconsistent with the desired character of the Bilgola Beach Locality.

The desired character of specifically the Bilgola Beach Area states that:

“The local topography and natural features, notably the beachfront, headlands... demand different sets of constraints on building design.”

This statement can be supported by the outcomes of the built form controls which include “*high quality buildings designed and built for the natural context and any natural hazards*”, and a built form that “*does not dominate the natural setting*”. Furthermore, this desired character is strengthened in the transition of the height requirement into PLEP 2014.

The maximum height of the proposal shall be 7.8m above natural ground level. However, pursuant to the PLEP 2014 the definition of where building height is measured from has changed. When the application was originally assessed the height requirement was in Pittwater 21 DCP and measured from natural ground level. PLEP 2014 was enforced on 27 June 2014 in which the height control was moved from P21 DCP to PLEP 2014 and subsequently became a development standard. Pursuant to the definition of building height within PLEP 2014, the maximum height of the development would be taken from the existing ground level (being the lower level of the existing dwelling) as such the maximum height of the proposal under PLEP 2014 would be 9.6m and technically non-compliant with the control.

The proposed modifications seek to extend the upper levels to the west and extend the lower levels to the north resulting in excavation and further disruption to the natural landform. While the development is consistent with the approved height it should be noted that the proposed modifications shall result in increased bulk and scale, and proposed further excavation which would be inconsistent with Clause 4.3 (Height of Buildings) which aim to encourage buildings that are designed to respond sensitively to the natural topography of the site, and minimise cut and fill on steep sites by stepping buildings down the slope.

The extent of the excavation required for the passenger lift is considered to be excessive and inconsistent with the desired character of the Bilgola Locality. Control C1.9 Adaptable Housing and Accessibility does not require single dwellings to be adaptable and it is considered that installation of a passenger lift is not necessarily required and as such does not warrant the extent of excavation proposed. It is considered that a more skilful design could be achieved to provide accessibility to all levels and/or the passenger lift could be located elsewhere within the dwelling (or not required to the Games room level) with minimal excavation required.

C1.3 View Sharing

Submissions have been received which raise concerns regarding view loss from the public domain and the street.

The applicant seeks consent to increase the width of the upper levels (Levels 3 and 4) and reduce the western side setback by 1.01m to 1.91m. As such the proposed modifications would result in the loss of water, beach and headland views as viewed from the public domain. The Serpentine currently experiences a water view of the Tasman Sea to the south and views of Bilgola Beach, South Bilgola Headland, Newport Headland and the wave interface of the beach and the headlands, also to the south. Consideration has been given to the Tenacity principals together with the planning principle for public domain views *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor [2013] NSWLEC 1046* in establishing the acceptability of the impact on views and reasonableness of the view loss.

The subject view is a water view of the Tasman Sea, views to the southern end of Bilgola Beach with South Bilgola Headland above, a distant view to Newport Headland and the land/water interface at these points. The view is obtained over the existing roofs of 42 and 40 The Serpentine, it is noted that

the dwelling at No. 40 is located further downslope than the subject development and as such is sited much lower with a view corridor obtained to the western side of 42 and over the top of 40. The view is enjoyed from the street, being The Serpentine, as travelling from the slight bend in the road to the east down towards the west. The Serpentine is identified on Pittwater's Most Scenic Streets Register due to its expansive coastal views from the street and also forms part of the Bicentennial Coastal Walkway, as such the view is not only experienced by local residents but by day-trippers and holiday makers who engage in walks along The Serpentine to experience the view.

One of the primary issues of the original application was view loss from the public domain and in particular the beach, ocean and headland views from the street (The Serpentine). The Development Unit panel raised the issue of view loss from the public domain at the DU meeting of October 2007 and requested the applicant address the view loss impact. In response to the request the applicant amended the design to increase the side setbacks on Level 3 and Level 4 to a minimum setback of 2.92m to the western side (from 2.5m) and 2.77m to the eastern side.

In consideration of the amendments to the proposal with regards to view loss, the final assessment reported to Council in May 2009 provided the following comments:

*"In regards therefore to the views from the roadway, the proposal will result in the loss of some water vistas. The loss of view is a result of the proposed fourth level addition that accommodates the garage and bedroom. As noted the additions comply with the DCP height controls and **the proposed upper level is well setback from the side boundaries. These setbacks will retain glimpses of the views to the beach and ocean. This retains the character of the area which is the strong presence of the ocean as the visual backdrop to the built form on this lower side of The Serpentine....Glimpses of the headland from the roadway will also be retained between the addition and side boundary.**"*

Given the side setback and retention of glimpses of the ocean and headland views, the proposed development was considered acceptable on merit and it was considered the impact upon the view from the street was reasonable.

It is considered that the proposed modifications shall result in further loss of the headland views and the land/water interface. As such the proposed modifications will result in a significant view loss from the street and it cannot be said that the impact on views is minimised. It was shown in the original application that a more skilful design (in the increased setbacks) could be achieved to provide a balance between the development of the existing dwelling and retention of the public view. The proposed modifications seek to enlarge the upper levels on the western side further than the initial development that was considered unacceptable and in doing so will substantially compromise the existing view from the street and the glimpses of view that will be retained with the approved setback. In light of the above, it is considered that the resultant development will result in an unacceptable view loss from the public domain and the application cannot be supported.

C1.4 Solar Access

A submission has been received from the neighbouring property to the west which raises concerns regarding overshadowing and loss of morning sun.

The applicant seeks consent to extend the upper levels to the west by approximately 1.01m. The increase in bulk will result in some additional overshadowing to the adjoining properties. The control requires that the main private open space and the windows to the principal living area of both proposed dwellings and adjoining dwellings are to receive a minimum of 3 hours of direct sunlight between 9am and 3pm on June 21st. The subject site and adjoining properties are orientated north to south. The principal living area of the adjoining property to the west (40 The Serpentine) is located to the north of the dwelling and the property has an outdoor space located to the north of the dwelling.

While it is acknowledged that the proposed modifications shall result in overshadowing to the living area and outdoor space, it is considered that any overshadowing shall be limited to the morning and the adjoining property shall receive in excess of 3 hours of sunlight between 9am and 3pm in midwinter. As such the proposed development is technically compliant with the control. Given the northerly orientation of the adjoining sites, the proposed development is not considered to result in any unreasonable impacts upon the adjoining properties with regards to solar access.

C1.5 Visual Privacy

A submission has been received from the neighbouring property to the west which raises concerns regarding loss of privacy from the proposed development. The proposed modifications include amendments to windows and doors. The amendments to the western elevation involve the removal of two (2) windows on Level 4, with all other windows to remain as approved. Given the western elevation shall result in the removal of two (2) windows and there shall be no change to the size, shape or orientation of the approved windows, it is considered that the proposed modifications shall not result in any unreasonable impacts upon the adjoining properties with regards to visual privacy.

D3.1 Character as viewed from a public place and D3.2 Scenic protection

Three (3) submissions have been received regarding the bulk and scale of the development and the visual impact of the proposal as viewed from the public domain.

The proposed modifications shall significantly increase the apparent size of the development as viewed from the street (The Serpentine) and as viewed from Bilgola Beach and the water. The proposal includes removal of windows on Level 4 and replacement with solid form, directly attributing to the built form. The proposed western setback shall be consistent with the lower levels, and as such the lack of differentiation at the upper levels (resulting from the increased width and removal of glazing) shall result in the development appearing as a four-storey development as viewed from the south-west, from the public domain (specifically Bilgola Beach) and adjoining properties to the south-west of the site. The proposed extension does not minimise the built form and shall attribute to excessive bulk and scale. Furthermore, there is no opportunity for landscaping within the western side setback area to screen the upper levels as viewed from the surrounding areas and the development shall be visually prominent in the visual catchment.

The original application underwent extensive negotiation with regards to the built form in order to achieve a development that was consistent with Council controls and approvable. The reduction in the side setbacks at the upper levels was a minor amendment but a significant change that was volunteered by the applicant. The final assessment reported to Council on 18 May 2009 and which recommended approval of the development provided the following justification with regards to the bulk and scale and control D3.1:

"The new building bulk is therefore narrowed to respond to the side boundary setback requirements, but set in behind the existing building bulk. This receding of the additional mass minimises the impact of the building when viewed from the south....While the building presents as four levels in elevation, this impact is tempered by the stepping of the building to comply with the 8.0m height limit and the treatment of the upper levels to include shaded recessed areas."

The treatment of the upper levels, and in particular the increased setbacks, were key in breaking up the overall bulk and scale of the development. As discussed above the proposed modification seeks to extend the upper levels, which results in a negative visual impact as view from the public domain and the surrounding properties. The proposal does not minimise the built form but exaggerates it and therefore the proposed modifications cannot be supported.

D3.3 Building colours, materials and construction

The modification application proposes changes to the external materials. The changes involve changing the Level 4 zinc roof to a copper roof, the Level 4 north-western external wall and north-eastern external wall from painted render to copper sheeting, the Level 3 north-western external wall from render to timber cladding and the Level 3 north-eastern external wall from render to sandstone cladding. The proposed materials are not considered to be dark and earthy tones, however the sandstone and timber cladding are natural materials and therefore considered acceptable. The copper roof and wall appearance shall alter over time due to the material's exposure to the natural elements. It is considered that while the zinc roof would be a dark to mid grey and compliant with the control, the copper would not be inconsistent with the surrounding development which includes a variety of roof materials and colours, and therefore is acceptable.

D3.7 Side and rear building line

The proposal is technically non-compliant with the control due to the existing side setbacks, being 0.969m to the west and 0.907m to the east. The control offers a variation for the maintenance of existing setbacks where the outcomes of the control can be achieved and the variation was applied to the original development. The proposed modifications are technically compliant with the control, proposing a 1.9m setback to the west and 2.77m setback to the east, however it is recognised that the proposed amendments negatively attribute to the overall bulk and scale of the development, compromise views from the public domain and result in development that is inconsistent with the desired character of the locality, being a four-storey dwelling not mindful of the natural topography. As such it is considered that the proposed resultant development would be inconsistent with the outcomes of the control and it is noted that the variation for the maintenance of existing setbacks would not be supported.

D3.9 Building envelope

The proposed modifications are not sited within the prescribed building envelope and are technically non-compliant with the control.

In the original assessment of application N0593/06 there were numerous concerns regarding the bulk and scale of the development and non-compliance with several P21 DCP built form controls, including the building envelope. At the Development Meeting on 11 October 2007, the DU panel members requested further information regarding the extent of non-compliance with the control, and with particular regard to the existing structures to be retained. As a result of the issues raised at the meeting, the applicant provided amended plans which included the reduction of the upper levels at the side setbacks to reduce the bulk and scale and maintain views. This amendment also demonstrated compliance with the building envelope at the upper levels, and therefore although the proposal did not fully comply at the lower levels, it was considered that this non-compliance could be supported.

The modification seeks to widen the upper levels (Level 3 and 4) on the western side setback, resulting in a setback that further exceeds the non-compliant design initially proposed (the original unsupported design proposed a setback of 2.5m, the approved design a setback of 2.92m and the modification proposes a setback of 1.91m). The proposed modification results in portions of Level 4 being non-compliant with the prescribed building envelope and as such reinstates concerns regarding bulk and scale and the dominance of the built form on the upper levels, as well as view loss concerns from the public domain (see control C1.3). Concern has been raised by the neighbouring property to the west regarding the overall bulk and scale of the proposal and visual impact from their property. The amendment intensifies the existing building envelope non-compliance and is considered to attribute to further bulk and scale to a development that is at its maximum allowable built form. As such the proposal is also considered to be overbearing and result in a detrimental visual impact from 40 The Serpentine. The proposed modification exaggerates the built form of the initial design which

was unable to be supported, and as such the proposed modifications are inconsistent with the outcomes of the control and the non-compliance with the building envelope on Level 4 cannot be supported.

D3.11 Site coverage - Environmentally Sensitive Land

The proposed site coverage shall be 368.37m² or 51.68% (with permitted variations for pathways and 6% for outdoor recreation areas), with the proposed landscaped area being 48.32% including the planter boxes as landscaped areas. It is acknowledged that the proposed modifications shall increase the overall site coverage by approximately 4.5m² as the proposed extension of the upper levels is located partially over the Level 3 balcony. However, the minor increase in site coverage is considered significant given that the additions shall attribute to the overall built form. The minor 4.5m² increase to the overall hard surface areas is due to the addition being partially located over a balcony area. The approved balcony area is located at the floor level of Level 3 and as such will not visibly attribute to the bulk and scale, whereas the proposed additions are to a height of 6.2m above the floor level of Level 3 and in total will contribute to approximately an additional 65.6m³ of built form to the development. As such, while the increase appears minor, it shall add to the overall bulk and scale of the built form which already maximises the variations under P21 DCP. As such the proposed modifications result in a non-compliant site coverage calculation and are inconsistent with the outcomes of the control, which aim to minimise bulk and scale. Therefore, the non-compliance cannot be supported.

Lapsing of consent

A submission has been received which raises concerns regarding the lack of physical works on site and the expiration of the original development consent.

Development Application N0593/06 was approved on 21 May 2009 (endorsement date of consent) and pursuant to Section 95(1) of the EP&A Act the consent was due to lapse on 21 May 2014. Construction Certificate C0099/14 and a notice of commencement were issued by Insight Private Certifiers on 23 April 2014. There is an apparent lack of physical works on the site and as such concern has been raised by Bilgola Preservation Society that the consent has now lapsed.

Section 95(4) of the EP&A Act states that:

Development consent for:

- a) *the erection of a building, or*
- b) *the subdivision of land, or*
- c) *the carrying out of a work,*

does not lapse if building, engineering or construction work relating to the building, subdivision or work is physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse under this section.

In order to substantiate physical commencement, the building, engineering or construction work would have to have been conducted between 23 April 2014 and 21 May 2014, and occurred on the land to which the development consent applied being 42 The Serpentine.

Construction Certificate CC0099/14 was for Stage 1 of the approved development which was for "footings and piers to new driveway only". The only apparent physical works to occur on site is the excavation of one (1) hole within the front setback area. Reference to the Construction Certificate structural plans show that this could possibly be in relation to one of the driveway piers, however this has not been confirmed and no information has been supplied by the applicant to determine whether these works are in conjunction with the subject development application and/or when these works

were carried out. Given the lack of information regarding the commencement of work, Council at this point cannot be satisfied that the original development consent is still valid. However, given the modification application is not considered to satisfy the requirements of Section 96 of the EP&A Act and is recommended for refusal, it is considered that further investigation of whether the development consent has commenced is not considered necessary at this stage. The outstanding issue of the validity of the consent will not be listed as a reason for refusal, however shall be highlighted in the refusal letter.

9.0 S96 CONSIDERATION

The proposed modification involves the extension of the two (2) upper levels (Level 3 and Level 4) to the west and the extension and excavation of Level 1 and Level 2 to the north, to accommodate the installation of a passenger lift through all four (4) levels of the dwelling. The proposed modification also involves alterations to windows and doors, and changes to the external materials. The modified development has been assessed in accordance with the relevant controls and policies.

As the proposal is for the modification of a previously approved Development Application, the provisions of Section 96 of the EP&A Act are applicable. The applicant has identified that the modification is to be assessed pursuant to Section 96 (1a) of the EP&A Act. Section 96(1a) deals with modifications involving minimal environmental effect, and a consent authority may modify the consent if the development satisfies the following:

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

The proposed modification seeks consent to extend the upper levels of the dwelling to the west and the lower levels of the dwelling to the north. As discussed above, the extension of the upper levels and removal of glazing is considered to result in additional bulk and scale, and the proposed modifications will result in an unacceptable view loss impact of the water, headland and beach views from the public domain. The proposed extension of the lower levels requires extensive excavation up to a maximum depth of 6.2m below natural ground level, increasing site disturbance and further impacting on the natural topography of the site, and as such the proposed development is not considered to be of minimal environmental impact.

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

To establish if development is substantially the same as what was granted consent, reference is made to the case of *Moto Projects (No.2) v North Sydney Council [1999] NSW LEC 280*, which provides the following judgement:

“The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified.....

....The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development is granted).

Development Consent N0593/06 granted consent for demolition works and construction of alterations and additions including a new swimming pool, new garage and driveway. The proposed modifications

seek consent to extend the upper levels of the dwelling to the west and the lower levels of the dwelling to the north to accommodate the installation of a lift through all four levels of the dwelling, as well as changes to external materials, windows and doors and internal alterations. It is accepted that materially the proposed modifications result in a minor change to the physical features and a minimal amount of physical works. However, as in the case of *Moto Projects (No.2) v North Sydney Council*, in this instance it is appropriate to consider the development qualitatively as well as quantitatively, given the impact of the proposed changes and the circumstances in which development consent was granted.

The original development resulted in numerous non-compliances with Pittwater 21 DCP, specifically being View Loss, Character as Viewed from a Public Place, Scenic Protection, Side Building Line, Building Envelope and Site Coverage. The application underwent extensive negotiations and amendments to the original design to achieve a development that was consistent with Council policy. In these negotiation stages, consideration was also given to the four (4) storey element of the development and it was deliberated that the development was not considered to be four (4) storey due to it being stepped down the site and predominantly two-storeys in any one place. The final amended design maintained some minor non-compliances however the non-compliances were assessed on merit and considered acceptable based on the amendments. As discussed above under "Discussion of Issues", in the final assessment report the justification provided for the variations clearly related to the amendments to the upper levels of the development proposing generous side setbacks, and the development being consistent with the Bilgola Beach locality. As such the consent relied on the upper levels having significant side setbacks in order to preserve the public views and reduce the bulk and scale, as well as the dwelling being two-three storeys consistent with the locality.

Whilst the proposed modifications are largely consistent with the approved built form, the changes proposed as part of the subject application actively increase the apparent size of the development, increasing the built form and visual appearance of the development, as viewed from The Serpentine, and specifically as viewed from Bilgola Beach and the water to the south of the site. The proposed modifications also intensify the areas of non-compliance with regards to P21 DCP built form, amenity and character controls. The proposed modifications are considered to compromise the views that were fought to be retained in the original approval and as such results in an unacceptable view loss from the public domain. Furthermore, the extension of the lower levels results in excessive excavation and ultimately changes the two-three storey dwelling to a three-four storey dwelling. As such the justification for a variation to the areas of non-compliance with P21 DCP cannot be applied to the modification as the nature of the development has changed and the circumstances of the development consent are no longer the same. The resultant development is considered to be inconsistent with the future desired character identified in P21 DCP and the outcomes of the built form, amenity and character controls. In consideration of the *Moto Projects (No.2) v North Sydney Council* judgement and in view of the above, the proposed modification is not considered to be substantially the same as that approved pursuant to N0593/06.

(c) *it has notified the application in accordance with:*

- (i) *the regulations, if the regulations so require, or*
- (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

Adjoining property owners were notified from 10 December through to 24 December 2014 in accordance with Council's Notification Policy. A notification sign was also placed out the front of the subject property to advise any passersby of the application. The receipt of the modification application was also advertised on a listing within the Manly Daily.

It is considered that the modification application has been adequately notified in accordance with the relevant legislation and Council's Notification Policy.

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Over the course of the notification period, three (3) submissions were received in response to the proposed development. The submissions received were considered throughout the assessment of this application.

Given the application fails at the threshold, as Council could not be satisfied that the development to which the consent as modified relates is substantially the same development to which the development consent relates, the powers of S96(1a) to modify the approved development are not applicable in this instance.

10.0 CONCLUSION

This proposed modifications application has been assessed under Section 96(1a) of the Environmental Planning and Assessment Act 1979, and in accordance with the provisions of Pittwater Local Environmental Plan 1993, Pittwater Environmental Plan 2014, Pittwater 21 DCP and other relevant policies.

The application was supported by a statement identifying the proposed modifications are to accommodate the installation of a passenger lift to all levels of the dwelling. However, the proposal requires extensive excavation and the extension of all four levels of the dwelling. The proposed modifications reinstate the issues raised with the original development and propose additional built form to a development that is already at the maximum form permitted by P21 DCP. The works required to accommodate the lift increase the bulk and scale, result in an unacceptable view loss impact from the public domain and will cause significant disturbance to the site, and it is considered that the installation of a lift does not warrant the above impacts given that an alternative solution could be achieved without compromising the approved built form and view retention.

As such the proposed modifications are not considered to be of minimal environmental impact and do not result in development that is substantially the same as that which was approved pursuant to N0593/06. As such the proposal is inconsistent with the requirements of Section 96(1a) and the application cannot be approved.

RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER

That Council refuse consent to Modification Application N0593/06/S96/1 for the modifications to N0593/06 which granted consent for demolition of the existing driveway, garage and existing roof and the construction of additions & alterations including swimming pool, a new garage and driveway at 42 The Serpentine, Bilgola for the reasons outlined in the draft notice of refusal attached.

Report prepared by

Angela Manahan
PLANNER

**REFUSAL
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979
NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION**

Applicant's Name and Address:

**WALTER MCDONALD
C/- PO BOX 71
AVALON BEACH NSW 2107**

Being the applicant in respect of Development Application No. N0593/06/S96/1.

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Pittwater Council, as the consent authority, of the Development Application for:

Modification of Development Consent N0593/06 for demolition of the existing driveway, garage and existing roof and the construction of additions & alterations including swimming pool, a new garage and driveway.

At:

**Lot 105 DP 16393
42 THE SERPENTINE, BILGOLA BEACH**

Decision:

The Section 96 Modification Application has been refused for the following reasons:

5. The proposed modifications result in an increase to the apparent size of the development and directly attribute to the overall bulk and scale of the development as viewed from Bilgola Beach, the waterway and The Serpentine. The resultant development shall result in non-compliance with Clause D3.1 Character as viewed from a public place, D3.2 Scenic Protection, D3.11 Site Coverage and D3.9 Building Envelope of P21 DCP. The modifications intensify the existing building envelope non-compliance and are considered to attribute to further bulk and scale to a development that is at its maximum allowable built form. As such the outcomes of these development controls are no longer able to be achieved.
6. The proposed modifications will result in an unacceptable view loss from the public domain. The views to the headland, beach and water obtained through the western side setback will be significantly compromised as a result of the proposed development, in particular the extension of Level 3 and Level 4. It is considered that a more skilful design could be achieved to provide accessibility but maintain the existing public view as approved.
7. The extent of excavation required on Level 1 and Level 2 for the proposed passenger lift is considered to be excessive and is not warranted given that an alternative solution could be achieved with minimal excavation required. Furthermore, the excavation subsequently results in the proposed development changing from a two-three storey dwelling to a three-four storey dwelling, in complete contradiction to the desired future character of the Bilgola Beach locality which states dwelling should be a maximum of two-storey in any one place.
8. The application is not considered to be in accordance with Section 96(1A) of the Environmental Planning and Assessment Act 1979. The modified development is not considered to be of minimal environmental impact or substantially the same development as that which was originally approved. The original development consent relied on upper levels being substantially setback from the side boundaries in order to reduce bulk and scale, and minimise

view loss. The additions to the structure change the nature of the development and as such the justification for non-compliances with P21 DCP would no longer be applicable. This section of the act is not considered to be achieved as the modified development would not be substantially the same development as the original approved development.

It is also noted that there is a lack of physical works on site in relation to Development Consent N0593/06 and it is unclear whether the development consent is still valid. In order to determine whether work has been physically commenced within the appropriate timeframe, further information would be required by Council regarding any works on site, their relevance to N0593/06 and the date these works occurred.

NOTES:

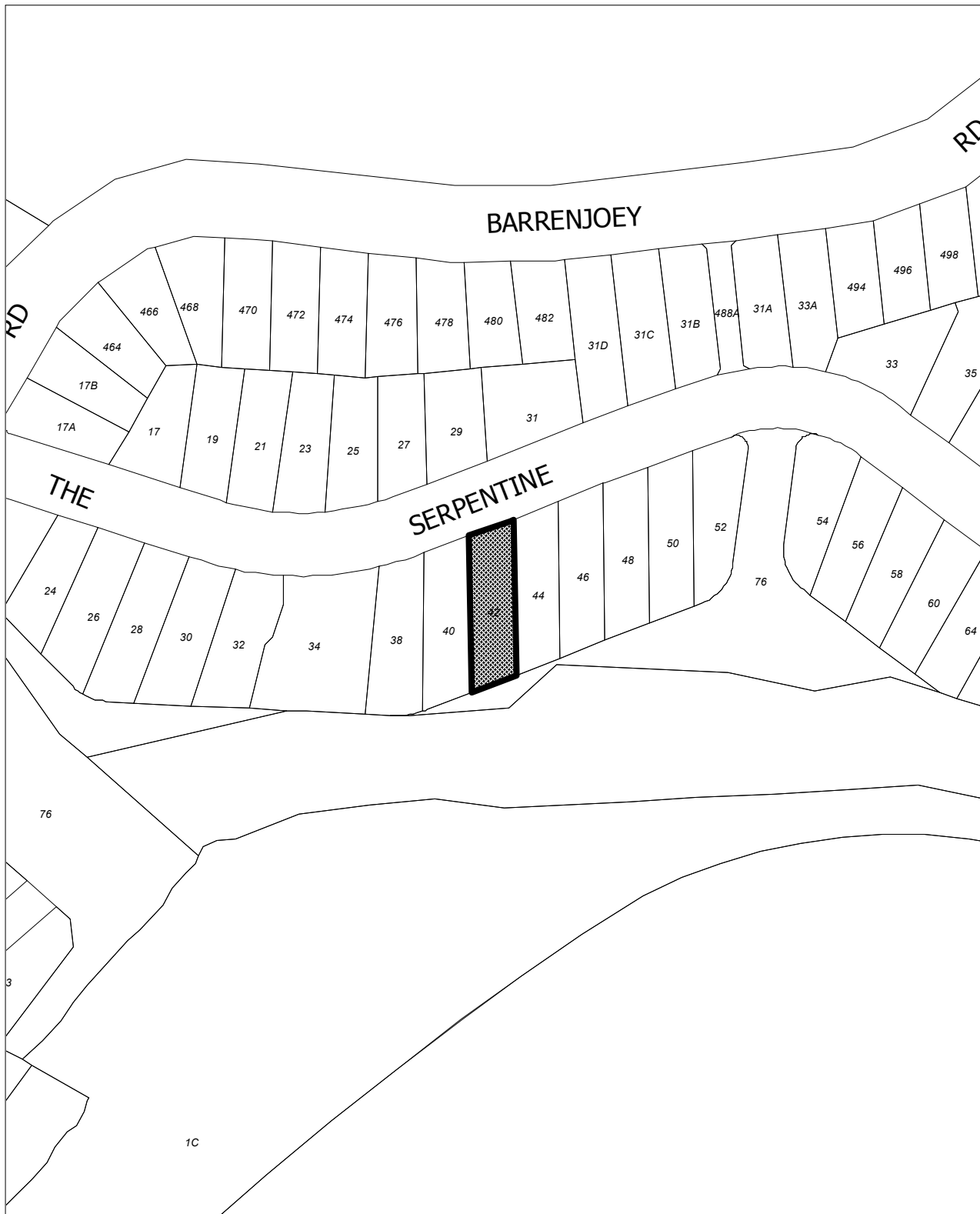
- (1) This determination was taken under delegated authority on behalf of the elected Council pursuant to Section 377 of the Local Government Act 1993.
- (2) An applicant may under Section 82A of the Act, apply to council to review this determination.
- (3) Section 97 of the Act confers on the applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land & Environment Court exercisable within 6 months after receipt of this notice.
- (4) Any person who contravenes this notice of determination of the abovementioned development application shall be guilty of a breach of the Environmental Planning & Assessment Act, 1979, and shall be liable to a monetary penalty and for a restraining order which may be imposed by the Land and Environment Court.

Mark Ferguson
GENERAL MANAGER

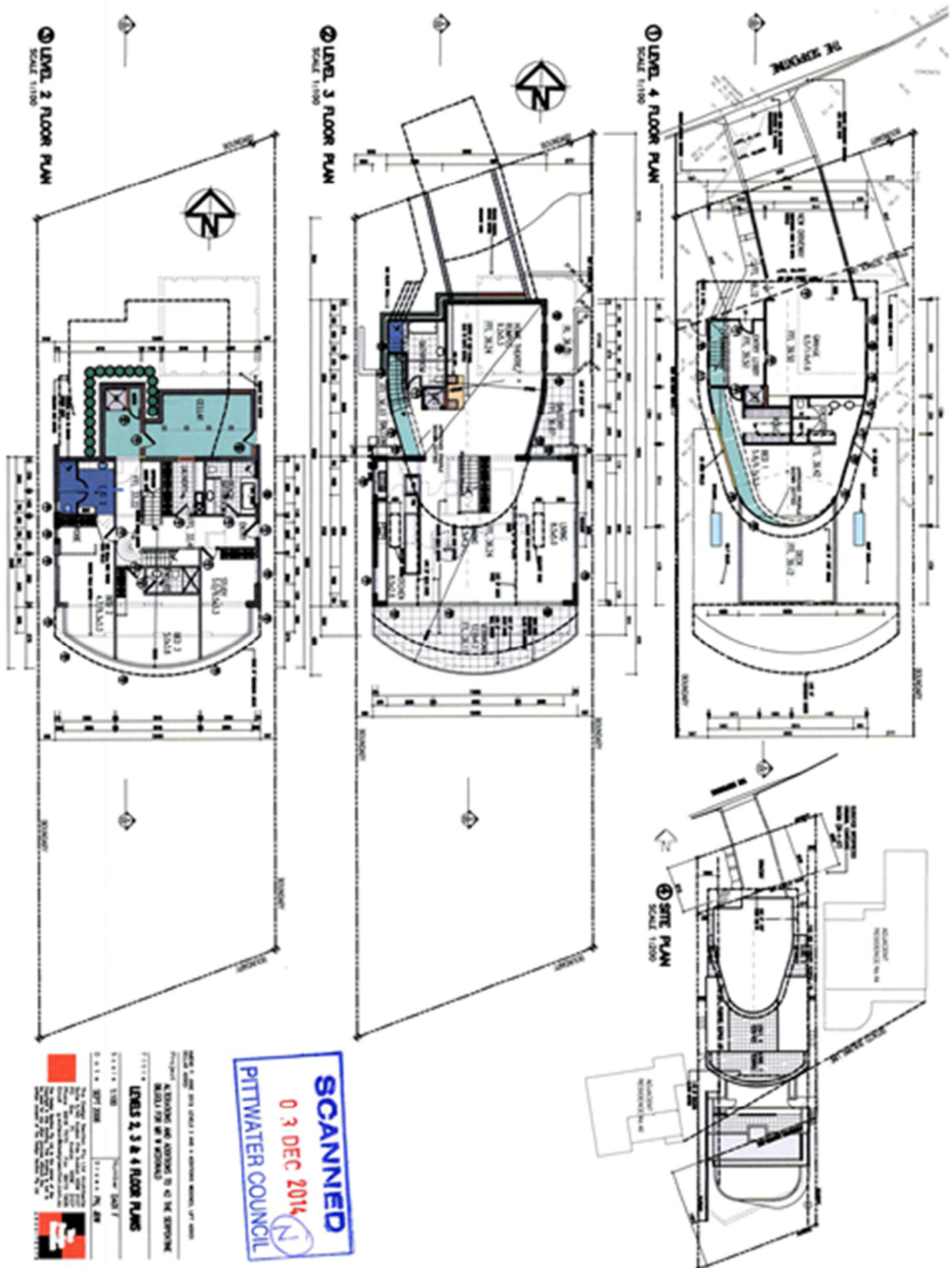
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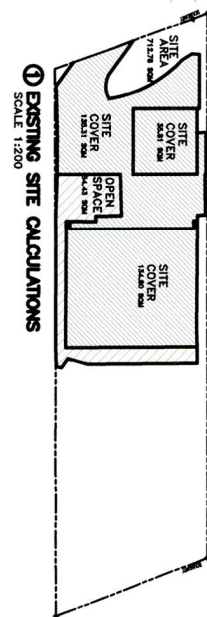
Date: 26 March 2015

LOCALITY MAP

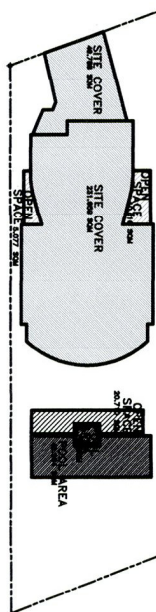


NOTIFICATION PLANS

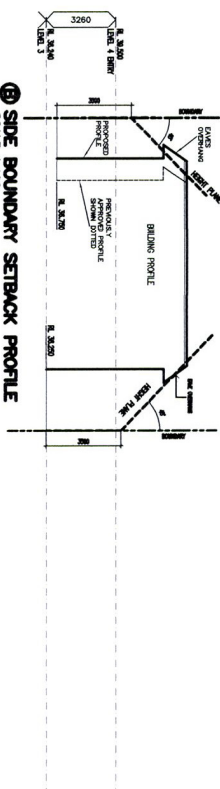




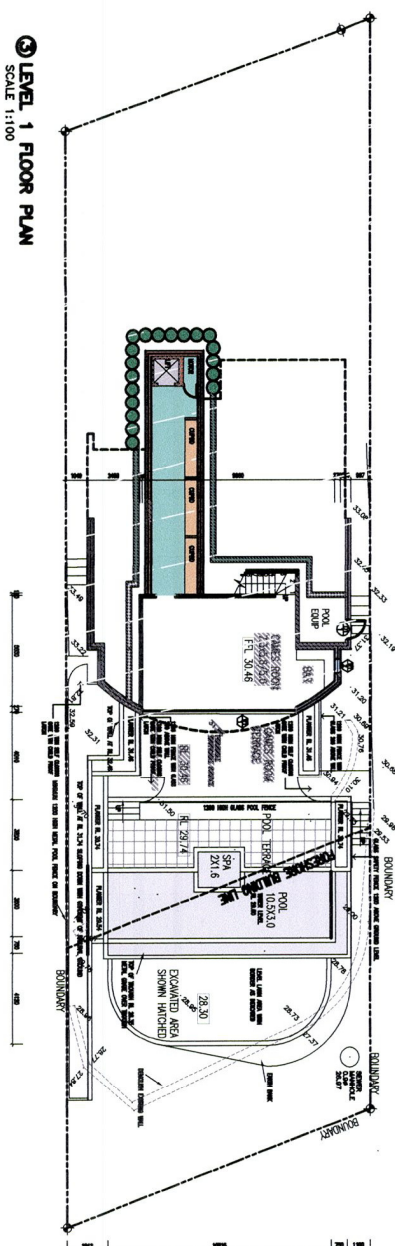
① EXISTING SITE CALCULATIONS
SCALE 1:200



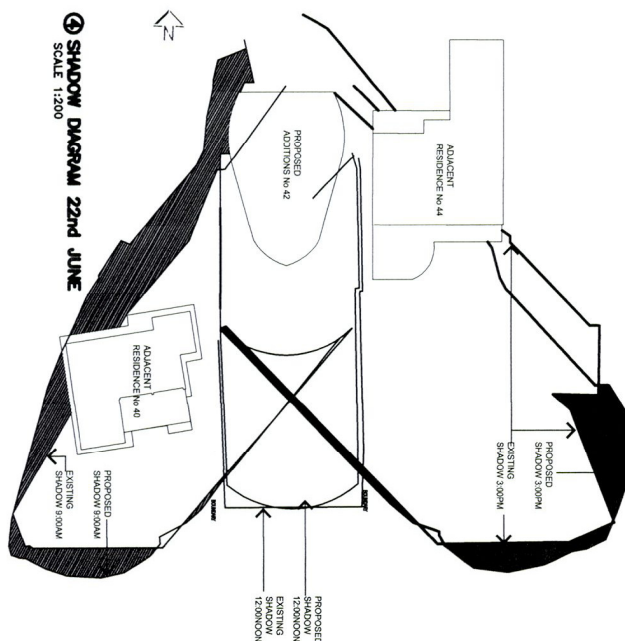
② PROPOSED SITE CALCULATIONS
SCALE 1:200



1 **③ SIDE BOUNDARY SETBACK PROFILE**
SCALE 1:100



③ LEVEL 1 FLOOR PLAN
SCALE 1:100



④ SHADOW DIAGRAM 22nd JUNE
SCALE 1:200

EXISTING SITE CALCULATIONS 7128
SITE AREA

MAX PERMISSIBLE SITE COVER	40% x 712.8 =	285.12
EXISTING SITE COVER		
HOUSE & GARAGE		170.61 sqm
DRIVEWAY / PAVING		153.31 sqm
TOTAL SITE COVER		326.80 sqm
MAX PERMISSIBLE OPEN SPACE	6% x 712.8 =	42.76 sqm
EXISTING OPEN SPACE		54.46 sqm
UNOCCUPIED OPEN SPACE % 80.2%		

PROPOSED SITE CALCULATIONS

MAX PERMISSIBLE SITE COVER	40% x 712ft =	286.12
PROPOSED SITE COVER	HOUSE	231.65sqm
DRAINAGE	49.78sqm	
TOTAL SITE COVER	281.44sqm	39.5%
MAX PERMISSIBLE OPEN SPACE	68% x 712ft =	42.8sqm
PROPOSED OPEN SPACE	35.00sqm	
UNCOVERED AREA %		60.5%
MAX PERMITTED NET AREA OF POOL		
PERMITTED AREA	45sqm	
PROPOSED NET AREA	44.04sqm	

[illegible]

