
C12.1	N0031/15 - 23 Plateau Road Avalon Beach - Alterations and additions to the existing residence
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Meeting: Sustainable Towns and Villages Committee

Date: 18 May 2015

COMMUNITY STRATEGIC PLAN STRATEGY: Land Use & Development

COMMUNITY STRATEGIC PLAN OBJECTIVE:

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

DELIVERY PROGRAM ACTION:

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

1.1 SUMMARY

The Development Unit at its meeting held on the 16 April 2015 considered the Assessing Officers report (refer **Attachment 1**) for determination of N0031/15 - 23 Plateau Road, Avalon Beach NSW 2107 - alterations and additions to the existing residence.

- 1.2 It is a policy requirement of the NSW Department of Planning that applications involving a State Environmental Planning Policy No. 1 (SEPP 1) objection supporting a variation to a development standard of more than 10% be referred to the elected Council for determination. The actual height recommended for approval of 9.5m represents a 17.5% variation greater than the standard.
 - 1.3 Discussion in relation to this variation is contained within Section 8.0 (Discussion of Issues) of the Assessing Officer's report.
 - 1.4 Neither the applicant nor any objector were present at the meeting, however the Development Unit considered the issues raised in the Assessing Officer's report and supported the Officer's recommendation for approval subject to the conditions contained in the draft consent.
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2.0 RECOMMENDATION

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Development Application N0031/15 for alterations and additions to the existing residence at 23 Plateau Road Avalon Beach NSW 2107 subject to the draft conditions of consent attached.

3.0 BACKGROUND

3.1 PURPOSE

To seek endorsement of the Development Unit's recommendation following consideration of Development Application N0031/15 - 23 Plateau Road, Avalon Beach NSW 2107 - Alterations and additions to the existing residence.

3.2 BACKGROUND

The Development Unit at its meeting held on the 16 April 2015 considered the Development Officer's report (refer **Attachment 1**) for determination of Development Application N0031/15 - 23 Plateau Road, Avalon Beach NSW 2107 - Alterations and additions to the existing residence.

Despite the height variation the Development Unit considered that the merits of the application warranted support of the Assessing Officer's recommendation for approval.

3.3 POLICY IMPLICATIONS

The NSW Department of Planning requires that applications involving a variation to a development standard of more than 10% be referred to the elected Council for determination.

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 16 April 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: N0031/15 - 23 Plateau Road, Avalon Beach NSW 2107 -
Alterations and additions to the existing residence**

Meeting: Development Unit

Date: 16 April 2015

SUMMARY OF RECOMMENDATION

Consent with Conditions

REPORT PREPARED BY:	Elise Leeder
APPLICATION SUBMITTED ON:	3/02/2015
APPLICATION SUBMITTED BY:	NATHAN GARRY GENE GIBSON CRISTEN ELIZABETH GILES
OWNER(S):	NATHAN G G GIBSON, CRISTEN E GILES JOSHUA L GIBSON

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 N0031/15 for Alterations and additions to the existing residence at 23 Plateau Road, Avalon Beach NSW 2107 subject to the draft conditions of consent attached.

Report prepared by
Elise Leeder, Planner

Andrew Pigott
MANAGER, PLANNING & ASSESSMENT

SUBJECT: N0031/15 - 23 PLATEAU ROAD, AVALON BEACH NSW 2107 Alterations and additions to the existing residence

Determination Level:

Development Unit

SUMMARY OF RECOMMENDATION: CONSENT WITH CONDITIONS

REPORT PREPARED BY:

Elise Leeder

APPLICATION SUBMITTED ON:

3 February 2015

APPLICATION SUBMITTED BY:

CHRISTINE E GILES AND NATHAN G G GIBSON
23 PLATEAU ROAD
AVALON BEACH NSW 2107

OWNER(S):

MS CRISTEN ELIZABETH GILES
MR NATHAN GARRY GENE GIBSON
MR JOSHUA LUKE GIBSON

1.0 SITE DETAILS

The site is known as 23 Plateau Rd and legally referred to as Lot 156 DP 16902. The site is rectangular in shape and the total area of the site is 482.3 m² with a frontage of 13.105 m, facing the North. The site contains a 1 & 2 storey dwelling that is located towards the front boundary on the site. Adjoining the site are similar dwellings. The slope of the site is 24.803% and falls from the frontage to the rear.

2.0 PROPOSAL IN DETAIL

The application seeks consent for alterations and additions. In particular the application seeks to add an additional storey and balcony.

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 to dwelling houses are permissible with consent.

The following relevant state, regional, local policies and instruments apply:
Environmental Planning and Assessment Act 1979 (The Act)
Environmental Planning and Assessment Regulation 2000 (The Regulation)

Pittwater Local Environmental Plan 2014 (PLEP 2014)
Acid Sulphate Soils Map - class 5
Height of Buildings Map- H~ 8m
Lot Size Map- Q ~ 700sqm
Geotechnical Hazard Map

Pittwater 21 Development Control Plan (P21 DCP)
Bilgola Locality
OSD Required
Landscaped Area Map- Area 1
Geotechnical Risk Management Policy
Bushfire Prone Property

Variation to development standards:

Refer to discussion of Clause 4.3 in Clause 4.6.

4.0 BACKGROUND

N0031/15 was lodged at council at 3/2/15 and referred to council's natural environment officer, development engineer and the NSW RFS.

A search of council's records revealed no relevant information.

5.0 NOTIFICATION

N0031/15 was notified from 6/2/15 to 20/2/15 to adjoining property owners in accordance with council's notification policy. The site inspection on the 17/2/15 confirmed the placement of the notification sign. During the notification period, 0 (zero) submissions were received.

6.0 ISSUES

- 4.3 Height of buildings
- 4.6 Exceptions to development standards
- D3.3 Building colours and materials
- D3.9 Building envelope
- D3.11 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			N	Y	Y
4.6 Exceptions to development standards	Clause 4.3 Height of Buildings		Y	Y	Y
5.10 Heritage conservation			Y	Y	Y
7.1 Acid sulfate soils		Acid Sulphate Region 5.	Y	Y	Y
7.2 Earthworks			Y	Y	Y
7.7 Geotechnical hazards			Y	Y	Y
7.10 Essential services			Y	Y	Y
Pittwater 21 Development Control Plan 2014					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification		N0031/15 was notified from 6/2/15 to 20/2/15 to adjoining property owners in accordance with council's notification policy. The site inspection on the 17/2/15 confirmed the placement of the notification sign. During the notification period, 0 (zero) submissions were received.	Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
3.6 State Environment Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs)			Y	Y	Y
A1.7 Considerations before consent is granted			Y	Y	Y
A4.3 Bilgola Locality			Y	Y	Y
B1.3 Heritage Conservation - General			Y	Y	Y
B1.4 Aboriginal Heritage Significance		No apparent issues.	Y	Y	Y
B3.1 Landslip Hazard			Y	Y	Y
B3.2 Bushfire Hazard			Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y

Control	Standard	Proposal	T	O	N
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land		The property contains a modified landscape typical of a suburban garden. The proposed works include construction of another level on the existing dwelling and new deck. No trees or vegetation are proposed for removal and none should be negatively impacted provided appropriate tree protection methods are adopted. No new landscaping has been proposed. There are no further natural environment issues.	Y	Y	Y
B5.2 Wastewater Disposal			Y	Y	Y
B5.10 Stormwater Discharge into Public Drainage System			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		For comment see B4.3	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			Y	Y	Y
C1.12 Waste and Recycling Facilities			Y	Y	Y
C1.13 Pollution Control				Y	Y
C1.23 Eaves			Y	Y	Y
D3.1 Character as viewed from a public place			Y	Y	Y
D3.3 Building colours and materials			N	Y	Y
D3.6 Front building line		The existing dwelling encroaches on the front building line. The proposed addition is compliant with the control. No changes are proposed to the existing front building line.	N	Y	Y
D3.7 Side and rear building line		The existing dwelling does not comply with the side setback control. The proposal complies with the control. No changes are proposed to the building line of the existing dwelling.	N	Y	Y
D3.9 Building envelope			N	Y	Y
D3.11 Landscaped Area - Environmentally Sensitive Land			N	Y	Y
D3.15 Scenic Protection Category One Areas			Y	Y	Y
State Environmental Planning Policies and other					

Control	Standard	Proposal	T	O	N
SEPP (Building Sustainability Index: BASIX) 2004			Y	Y	Y

8.0 DISCUSSION OF ISSUES

• 4.3 Height of buildings

There is a non-compliance with the 8 m height control on the western side of the proposed extension. The non-compliance results from an existing garage which is situated below the existing upper ground floor. The eastern component of the extension is compliant with the control. The applicant has lodged a clause 4.6 exceptions to development standards for the breach.

See clause 4.6 for discussion.

• 4.6 Exceptions to development standards

The applicant seeks to vary a development standard which requires a clause 4.6 - Exceptions to Development Standards. Clause 4.6 (3) states:

Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant has submitted a written statement to request a variation and support why compliance with the development standard is unreasonable and unnecessary and justification for the request to vary the standard.

Clause 4.6 (4) states:

Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Director-General has been obtained.

The assessment of the clause 4.6 is as follows:

Development Standard to be Varied

PLEP 2014 Clause 4.3 - Height of Buildings States:

The height of a building on any land is not to exceed the maximum building height shown for the land on the Height of Buildings Map.

The maximum building height for the subject site is 8m. The applicant has sought consent for alterations and additions to an existing dwelling in the form of a first floor addition. The existing height of the dwelling has been measured at approx. 5.6m (eastern side) or 7.4m (western side) above existing ground level. The addition measured from existing ground level has been measured at 8m (eastern side) and 9.5m (western side) at its highest point. It is also noted that the eastern side as shown in section- A-A is measured at 9.5m however this height is not seen from the public domain. The applicant seeks to vary the development standard by approx. 17.5%.

Objectives of the Development Standard

- (1) The objectives of this clause are as follows:
- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
 - (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
 - (c) to minimise any overshadowing of neighbouring properties,
 - (d) to allow for the reasonable sharing of views,
 - (e) to encourage buildings that are designed to respond sensitively to the natural topography,
 - (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Objectives for Development in the Zone

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The site is located in an E4- Environmental living zone.

The objectives of this zone are as follows;

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To provide for residential development of a low density and scale integrated with the landform and landscape.
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors

1. The proposed extension is low impact and is sympathetic to the surrounding area both aesthetically and ecologically.
2. The proposed extension is situated over the footprint of the existing dwelling and as such minimises the adverse effects of further development on the site in regards to the ecological impacts. It is noted that aesthetically the addition may appear more significant however when it is considered in the context of the site being only 482.3m², and that the existing dwelling is only single storey.
3. The proposed extension may appear as larger in scale than other development in similar areas. It is noted that there is space below the existing dwelling which may be utilised as further floor space and may be considered to be better integrated with the landform than the proposal. It is however important to consider that this may be difficult due to the slope and may require excavation and require further sacrifice of landscaped area to achieve adequate levels for building.
4. The development has been proposed over the existing footprint of the dwelling and as such is considered to be sensitive to the existing landscape. The rear portion of the property is well vegetated and has potential for further native growth.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case

The submitted Clause 4.6 request seeks to establish that requiring compliance with the development standard in this case is unreasonable or unnecessary because the proposal will maintain the objectives and the desired character of the locality in accordance with the controls of the Pittwater Local Environmental Plan and will maintain the visual continuity, development and pattern of buildings within the locality. Also that the nature of the site and design of the proposal will achieve the future character of the locality.

The objectives of Clause 4.3 Height of Buildings in the PLEP 2014 have been addressed by the applicant as follows (officers comments are under bullet points):

- (a). “to ensure that buildings by virtue of its height and scale, is consistent with the desired character of the locality”

The proposed alterations and additions to the existing residence have been designed to be compatible with the height and scale of adjoining buildings.

- The two adjoining properties are of differing heights to the proposed extension. The property to the Western boundary consists of three blocks on which the dwelling is situated on 25A which is on the block below and to the side of number 23 Plateau Rd. The property on the eastern boundary is at a similar height to the existing dwelling. The proposed addition would be higher than both dwellings. It is however noted that the dwelling on the western boundary is unable to be seen from the property due to both its position and dense vegetation.

- (b). “to ensure that buildings are compatible with the height and scale of surrounding and nearby development”

Adjoining properties have existing developments that contravene the building height limit of 8m. We believe that the proposal is compatible with the height and scale of surrounding development.

- This section of Plateau Road has a number of properties which are consistent with the proposed extension. The property heights vary significantly along the road, some being a similar height and others significantly lower as such there is no clear

established height across properties.

(c). "to minimise any overshadowing of neighbours property"

The proposal will maintain the amenity, privacy and solar access provided and maintained to the adjoining properties.

- The adjoining properties currently enjoy an appropriate level of solar access. The proposed development has minimal additional impact and is still allows for the adjoining properties to achieve these levels.

(d). "to allow for a reasonable sharing of views"

The proposal will maintain all existing views from adjoining properties. There will be no view loss from adjoining properties.

- The subject property and adjoining properties currently enjoy views to the rear of the property. The proposed extension will not impact the ability for the neighbouring properties to enjoy this view as it is set toward to the front of the existing dwelling. It is likely that the proposed extension would allow the owners to further enjoy the view from the rear. It is also noted that they would be unlikely to receive this view if the development was proposed under the existing dwelling.

(e). "to encourage buildings that are designed to respond sensitively to the natural topography"

The proposal has been designed with a low pitched colorbond hipped roof to respond with the natural topography. We believe that the nature of the property is only 482.3m² in size which limits development at ground level.

- The site is on a relatively steep slope of approximately 26% which slopes from the frontage to the rear. The existing dwelling is on the upper portion of the site toward the road frontage. It is noted that there is potential for further building at ground level underneath the existing dwelling however it would be limited due to the slope of the land unless it is excavated or the footprint is extended.

(f). "to minimise the adverse impact of development on natural environmental, heritage conservation area and heritage items"

The proposal as viewed from the adjoining escarpment to the south and the section of Barrenjoey Road (The Bends) will be compatible with height and scale of surrounding and nearby development.

- The development is sensitive to the natural environment in that it does not propose to further encroach on the natural landscape of the site. It appears to be consistent with the existing development as seen from surrounding places of significance.

It has been demonstrated above that although the proposal does not comply with the development standard, it is able to achieve the objectives of the control.

In this case, strict compliance with this control is considered to be unnecessary and unreasonable.

Is there sufficient environmental planning grounds to justify contravening the development standard

The following reasons are considered to be sufficient environmental planning grounds to vary the height of buildings development standard:

1. The proposal will be able to satisfy the objectives of Clause 4.3 -Height of Buildings under PLEP 2014;
2. The proposal is considered to be consistent with surrounding development of the area;
3. The site is on a significant slope (although less than 30%) meaning achieving levels for building is difficult without further environmental impacts;
4. The proposal will not result in any adverse impacts on the surrounding built and natural environment;
5. The proposal will not result in any adverse impacts on adjoining properties in regards to view loss, visual privacy and overshadowing;
6. The proposal will maintain the existing views and vistas from the public domain;
7. The largest portion of the non-compliance stems from an existing garage which sits below the existing dwelling.

Is Contravention of the Development Standard Justified?

Clause 4.6 (1) outlines the objectives of the clause:

- (a) To provide an appropriate degree of flexibility in applying certain development standards to particular development
- (b) To achieve better outcomes for and from development by allowing flexibility in certain circumstances.

The above assessment provides justification for the variation of Clause 4.3- Height of Buildings by demonstrating that in this instance strict compliance with the development standard is unreasonable. It is considered that there are sufficient planning grounds to warrant a variation. The proposal is considered to be consistent with both the objectives of Clause 4.3 Height of Buildings and Clause 4.6 Exceptions to development standards.

In this instance, the Clause 4.6 variation is supported.

- **D3.3 Building colours and materials**

The existing dwelling has dark beige/ neutral coloured cladding. The proposed extension is proposed to match the existing dwelling. The proposed roof colour is compliant. Being that the extension is to match the exiting dwelling variation is considered acceptable.

- **D3.9 Building envelope**

The proposal is compliant with the building envelope control on the eastern boundary side but is non-compliant with the control on the western boundary. The existing dwelling is non-compliant with this control. It is noted that the dwellings is not orientated in line with the front boundary and as such will have varying setbacks across all boundaries also resulting in differing levels of compliance with this control.

- **D3.11 Landscaped Area - Environmentally Sensitive Land**

The existing dwelling does not comply with the landscaped area control. The proposed addition is almost entirely within the existing footprint of the dwelling excluding a 5sqm increase in the form of a minor deck extension. There is a front patio area which is considered to be an area for the purposes of outdoor recreation. On these grounds, variation is considered acceptable.

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 PLEP 2014 and P21 DCP. The proposal is considered to be consistent with the existing character of Avalon and the desired future character of the Bilgola Locality. As a result of these considerations the proposal is recommended for approval.

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 N0031/15 for alterations and additions to the existing dwelling involving a first floor addition at 23 Plateau Road, Avalon, NSW 2107 subject to the draft conditions of consent attached.

Report prepared by

Elise Leeder
PLANNER

Date: 8 April 2015

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**CONSENT NO: N0031/15
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)
NOTICE TO APPLICANT OF DETERMINATION
OF A DEVELOPMENT APPLICATION**

Applicant's Name and Address:
CHRISTINE E GILES AND NATHAN G G GIBSON
23 PLATEAU ROAD
AVALON BEACH NSW 2107

Being the applicant in respect of Development Application No N0031/15

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 **N0031/15** for:

Alterations and additions to the existing residence

At: **23 PLATEAU ROAD, AVALON BEACH NSW 2107 (Lot 156 DP 16902)**

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 1704-1-11, prepared by J.D Evans and Company, all dated 3/12/14**
- **Geotechnical Risk Management Report, J0335, prepared by White Geotechnical Group, dated 15/12/14;**
- **BASIX Certificate, A208117, Dated 17 December 2014;**
- **Bushfire Risk Assessment Report, prepared by Bushfire Planning Services, dated 17/12/14**
- **Rural Fire Service Report "Land Use Application for 156//16902 23 Plateau Road Avalon Beach NSW 2107", ID: 95709/89288/5, Ref: D15/0328, Dated 20 February 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:

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Conditions of Approval

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

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

A. Prescribed Conditions:

1. All works are to be carried out in accordance with the requirements of the Building Code of Australia.
2. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
3. A sign must be erected in a prominent position onsite only showing:
 - a) the name, address and telephone number of the Principal Certifying Authority for the work, and
 - b) the name of the principal contractor or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
 - c) that unauthorised entry to the work site is prohibited.The sign must to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
4. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - a) in the case of work for which a principal contractor is required to be appointed:
 - i) The name and licence number of the principal contractor, and
 - ii) The name of the insurer by which the work is insured under Part 6 of that Act.
 - b) in the case of work to be done by an owner-builder:
 - i) The name of the owner-builder, and
 - ii) If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
 - c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under a or b above becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information
5. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

1. The commitments identified in the BASIX Certificate and on the plans or specifications are to be fulfilled and maintained for the life of the development.
2. 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.
3. The recommendation of the risk assessment required to manage the hazards as identified in Geotechnical Report prepared by White Geotechnical are to be incorporated into the construction plans.
4. At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
5. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
6. To aid in fire fighting activities, unobstructed pedestrian access to the rear of the property shall be provided and is to be maintained at all times.
7. New construction of the deck shall comply with section 9 (BAL FZ) Australian Standard AS 3959-2009 'Construction of buildings in bushfire-prone areas'. However, where any material, element of construction or system when tested to the method described in Australian Standard AS 1530.8.2 'Methods for fire tests on building materials, components and structures Part 8.2: Tests on elements of construction for buildings exposed to simulated bushfire attack—Large flaming sources', it shall comply with Clause 13.8 of the Standard except that flaming of the specimen is not permitted and there shall be no exposed timber.
8. New construction on the eastern, southern and western elevations shall comply with section 8 (BAL 40) Australian Standard AS 3959-2009 'Construction of buildings in bushfire-prone areas' and section A3.7 of Addendum Appendix 3 of 'Planning for Bush Fire Protection 2006'.
9. New construction on the northern elevation shall comply with section 7 (BAL 29) Australian Standard AS 3959-2009 'Construction of buildings in bushfire-prone areas' and section A3.7 of Addendum Appendix 3 of 'Planning for Bush Fire Protection 2006'.
10. 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.
11. 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.

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12. 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.
13. Any vegetation planted onsite outside approved landscape zones is to be consistent with locally native species selected from the list pertaining to the vegetation community growing in the locality as per the vegetation mapping and Native Plants for Your Garden available on the Pittwater Council website http://www.pittwater.nsw.gov.au/environment/species_lists
14. No building materials or other materials are to be placed on Bushland vegetation. Sediment is not to leave the site or enter areas of Bushland vegetation, and the appropriate sediment fencing is to be installed.
15. All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.
16. 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.
17. The finished surface materials, including colours and texture of any building, shall match the detail and materials of the existing building.
18. 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.
19. The commitments identified in the BASIX Certificate and on the plans or specifications are to be fulfilled and maintained for the life of the development.

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.
2. The Principal Certifying Authority must be provided with a copy of plans that a Quick Check agent/Sydney Water has stamped before the issue of any Construction Certificate.
3. The person having the benefit of this consent is required to notify the Principal Certifying Authority to ensure that the following critical stage inspections are undertaken, as required under clause 162A(4) of the Environmental Planning and Assessment Regulation 2000:
 - a) after excavation for, and prior to the placement of, any footings, and
 - b) prior to pouring any in-situ reinforced concrete building element, and
 - c) prior to covering of the framework for any floor, wall, roof or other building element, and
 - d) prior to covering waterproofing in any wet areas, and

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- e) prior to covering any stormwater drainage connections, and
- f) after building work has been completed and prior to any occupation certificate being issued in relation to the building.

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

4. Construction works approved by this consent must not commence until:
 - a) Construction Certificate has been issued by a Principal Certifying Authority
 - b) a Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment, and
 - c) at least 2 days notice, in writing has been given to Council of the intention to commence work.
 5. Plans and details demonstrating that the commitments identified in the BASIX Certificate that apply to the construction certificate plans and specifications are fulfilled.
 6. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
 7. Details in the Construction Certificate are to reflect the recommendations/requirements of the Bushfire Risk Assessment Report prepared by Bushfire Planning Services dated 17 December 2014.
 8. Drainage plans including specifications and details showing the site stormwater management are to be submitted to the Accredited Certifier with the Construction Certificate application. Such details are to be accompanied by a certificate from (as appropriate) either a Licensed plumber or qualified practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field, that the stormwater management system complies with the requirements of section 3.1.2 Drainage of the Building Code of Australia Housing Provision and AS/NZS 3500.3.2 - Stormwater Drainage. The details shall include disposal of site stormwater (if the site is in a known slip area the stormwater disposal system must comply with the recommendations of a Geotechnical Engineers Report).
- Note: Where Council is the Principal Certifying Authority 3 sets of plans/specifications are to be submitted.
9. The finished surface materials, including colours and texture of any building, shall blend with the surrounding and/or natural materials. The colours and materials used shall be non-glare and of low reflectivity. A satisfactory specification which achieves this shall be submitted to the Accredited Certifier or Council with the Construction Certificate application in the form of a *Schedule of Finishes*.
 10. Plans and details demonstrating that the commitments identified in the BASIX Certificate that apply to the construction certificate or complying development plans and specifications are fulfilled.

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

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

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

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

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

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

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

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

3. A stamped copy of the approved plans is to be kept on the site at all times, during construction.
4. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
5. 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.
6. Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.
7. 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.
8. 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.
9. No skip bins or materials are to be stored on Council's Road Reserve.
10. A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:
 - a) The builder's name, builder's telephone contact number both during work hours and

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after hours.

- b) That no works are to be carried out in Council's Road Reserve without prior application and approval of a Road Opening Permit from Council.
 - c) That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
 - d) That no skip bins or materials are to be stored on Council's Road Reserve.
 - e) That the contact number for Pittwater Council for permits is 9970 1111.
11. 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.
12. All works within 5 metres of the existing trees to be retained including pruning, demolition, excavation, civil works, fencing and the like must be carried out by hand. Should roots larger than 50mm be encountered all excavation works are to cease immediately and a qualified Arborist is to advise on the impacts of the roots removal on the tree's survival and report to the Principal Certifying Authority prior to works recommencing. If tree roots are present a pier and beam method of footing construction is to be adopted so as to bridge/span any identified lateral roots.

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

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

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

- 1. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.
- 2. Certification is to be provided that the commitments identified in the BASIX Certificate have been fulfilled.
- 3. Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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4. An Accredited Bushfire consultant is to provide a certification to the Principal Certifying Authority confirming that; A) the requirements of the NSW Rural Fire Service have been complied within relation to any potential risk to dwellings or occupants within the development from bushfire in landscaped areas in or adjoining the creekline corridor or other natural bushland areas in or adjoining the site. B) The listed requirements of the Rural Fire Service report "Land Use Application for 156//16902 23 Plateau Road Avalon Beach NSW 2107" ID: 95709/89288/5, Ref: D15/0328 dated 20 February 2015 must be satisfied.
5. Prior to the issue of an Occupation Certificate, a suitably qualified professional is to certify that the as-built development is consistent with the recommendations/requirements of the Bushfire Risk Assessment Report prepared by Bushfire Planning Services dated 17 Decemeber 2014.
6. The stormwater drainage system must be constructed and completed in accordance with the approved design and relevant Australian Standards.

A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a Licensed Plumber or qualified practicing Civil Engineer that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards must be provided.
7. 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.
8. Certification is to be provided that the commitments identified in the BASIX Certificate have been fulfilled.

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.

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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.

LOCALITY MAP



NOTIFICATION PLANS

DEVELOPMENT CALCULATIONS			
SITE AREA	482.30 SQUARE METRES		
DESCRIPTION	EXISTING SQM	PROPOSED SQM	
FLOOR	119.12	162.04	
ROOF	119.12	119.12	
DRIVEWAY	27.50	27.50	
VERANDAH	21.80	21.80	
DECK	10.00	15.20	
SHED	9.80	9.80	
TOTAL	208.47	482.30	
TOTAL HARD SURFACE	208.47	(43.22%)	
		212.17 (43.99%)	


- NOTES:
1. THE BUILDER IS TO CHECK AND CONFIRM ALL NECESSARY DIMENSIONS AND LEVELS ON SITE PRIOR TO ORDERING MATERIALS AND COMMENCING CONSTRUCTION DO NOT SCALE OFF THE DRAWING.
 2. SHOULD ANY DEVELOPMENT OR CONSTRUCTION OCCUR ON OR NEAR BOUNDARIES, THE BOUNDARIES SHOULD BE CLEARLY MARKED ON SITE BY THE REGISTERED LAND SURVEYORS.

It takes a great deal of time and resources to develop a good business plan. It is important to know that the business plan is not a document that sits on a shelf and is never used. It is a living document that is updated as the business evolves. It is a tool that is used to communicate the business vision to the bank, investors, and other stakeholders. It is a tool that is used to track the progress of the business and to make adjustments as needed. It is a tool that is used to attract new customers and to retain existing ones. It is a tool that is used to manage the business and to ensure its long-term success.

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INFRINGEMENT BY USING, REPRODUCING OR
COPYING SAME, WHOLLY OR IN PART, WITHOUT
PRIOR WRITTEN PERMISSION WILL RESULT IN
LEGAL PROCEEDINGS.

1215 VAN NASSAUX COMPANY, PVT. LTD.,
INCORPORATED IN CANADA
100 BAYVIEW AVE., AVALON BEACH, ONT.

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DESIGN AND BUILDING CONSULTANTS
74 RIVIERA AVENUE, AVALON BEACH, 2107
Phone 9018 9206
www.jedco.com.au
mobile 0418 976 596
email info@jedco.com.au

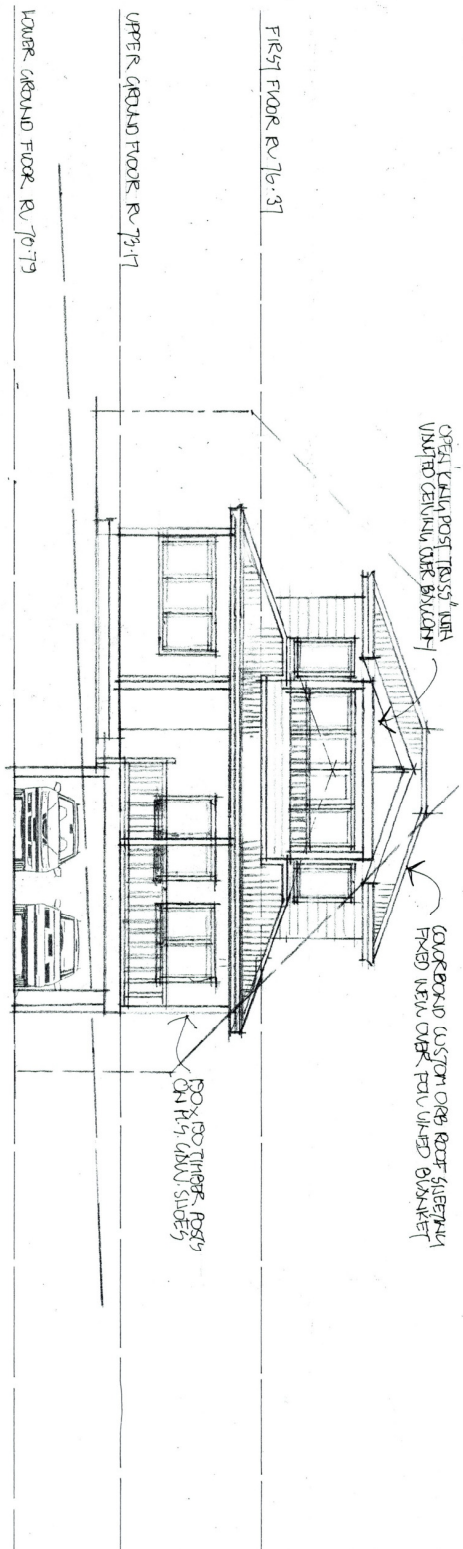
PROJECT
PROPOSED ALTERATIONS/ADDITIONS
No. 23 PLATEAU ROAD
PAVALON BEACH N.S.W. 2107
CLIENT
NATHAN GIBSON & CRISTEN GILES

DATE	3/12/2014	SCALE	1,200
DRAWN	JOE	CHECKED	
DRAWING NO.		ISSUE	
1704-1		A	
26-2-15			

SITE PLAN

WOT 156 JN D.P. 16902

PLATEAU ROAD



NORTH ELEVATION

1. All drawings and specifications shall be in accordance with the latest editions of the following codes and standards: AIA, ASCE, and the International Building Code (IBC) as amended by the local jurisdiction. 2. All drawings and specifications shall be in accordance with the latest editions of the following codes and standards: AIA, ASCE, and the International Building Code (IBC) as amended by the local jurisdiction. 3. All drawings and specifications shall be in accordance with the latest editions of the following codes and standards: AIA, ASCE, and the International Building Code (IBC) as amended by the local jurisdiction. 4. All drawings and specifications shall be in accordance with the latest editions of the following codes and standards: AIA, ASCE, and the International Building Code (IBC) as amended by the local jurisdiction. 5. All drawings and specifications shall be in accordance with the latest editions of the following codes and standards: AIA, ASCE, and the International Building Code (IBC) as amended by the local jurisdiction. 6. All drawings and specifications shall be in accordance with the latest editions of the following codes and standards: AIA, ASCE, and the International Building Code (IBC) as amended by the local jurisdiction. 7. All drawings and specifications shall be in accordance with the latest editions of the following codes and standards: AIA, ASCE, and the International Building Code (IBC) as amended by the local jurisdiction. 8. All drawings and specifications shall be in accordance with the latest editions of the following codes and standards: AIA, ASCE, and the International Building Code (IBC) as amended by the local jurisdiction. 9. All drawings and specifications shall be in accordance with the latest editions of the following codes and standards: AIA, ASCE, and the International Building Code (IBC) as amended by the local jurisdiction. 10. All drawings and specifications shall be in accordance with the latest editions of the following codes and standards: AIA, ASCE, and the International Building Code (IBC) as amended by the local jurisdiction.

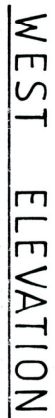
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THIS DOCUMENT IS THE PROPERTY OF THE ARCHITECT
AND IS TO BE KEPT IN CONFIDENCE. IT IS TO BE
RETURNED TO THE ARCHITECT UPON REQUEST.

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J.D. EVANS and COMPANY
ARCHITECTS AND PLANNING CONSULTANTS
74 RIVERVIEW AVENUE, AVALON BEACH, 3107
PHONE: 904.882.0068 MOBILE: 0918.876.6586
WWW.JDEVANS.COM EMAIL: JDEVANS@JDEVANS.COM

PROPOSER
PROPOSED ALTERATIONS/ADDITIONS
NO. 23 PLATEAU ROAD
AVALON BEACH N.S.W. 2107
CLIENT: NATHAN GIBSON & CRISTEN GILES

DATE: 3/17/2015 SCALE: 1/80
DRAWN BY: JDE
CHECKED BY: JDE
1704-4215
A



1. This drawing is made and issued at the office of the architect, and is not to be used for any other purpose than that for which it is made.

2. The architect is not responsible for the accuracy of the data furnished by the client, nor for the construction of the building, nor for the safety of the building, nor for the safety of the people using the building.

3. The architect is not responsible for the construction of the building, nor for the safety of the building, nor for the safety of the people using the building.

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10. The architect is not responsible for the construction of the building, nor for the safety of the building, nor for the safety of the people using the building.

SOUTH ELEVATION

FIRST FLOOR RV 10-37

UPPER GROUND FLOOR RV 13-17

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11. The architect is not responsible for the construction of the building, nor for the safety of the building, nor for the safety of the people using the building.

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20. The architect is not responsible for the construction of the building, nor for the safety of the building, nor for the safety of the people using the building.

J.D. EVANS and COMPANY

DESIGN AND BUILDING CONSULTANTS

74 RIVERA AVENUE, AVALON BEACH, 2107

PHONE 904.892.5906

WWW.JDEVANS.COM

MOBILE 904.892.5906

CRISTEN@JDEVANS.COM

PROJECT

PROPOSED ALTERATIONS/ADDITIONS

NO. 23 PLATEAU ROAD

AVAILON BEACH N. S. W. 2107

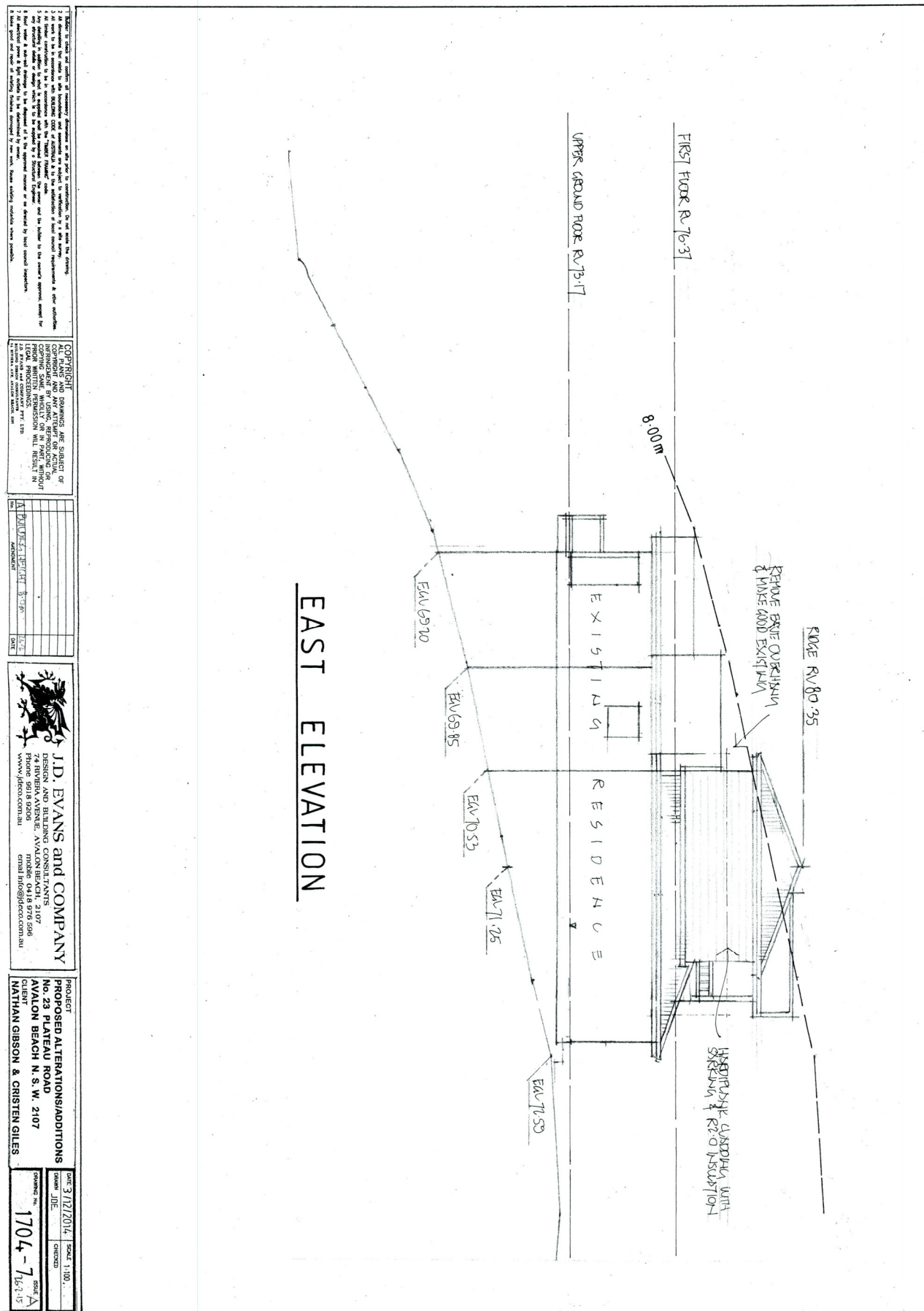
CLIENT

NATHAN GIBSON & CRISTEN GILES

DATE 3/12/2014 **SCALE** 1/8" = 1'-0"

DESIGNED BY JDE **CHECKED BY** JDE

PROJECT NO. 1704-6 **SCALE** A



1. The owner is to provide all necessary information at the time of construction, to and under the drawing.

2. The drawing is to be used for the construction of the building and is not to be used for any other purpose.

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PROJECT

PROPOSED ALTERATIONS/ADDITIONS

NO. 23 PATEAU ROAD

CLIENT

AVAILON BEACH N.S.W. 2107

NATHAN GIBSON & CRISTEN GILES

DATE 3/12/2014	SOLD 1/10/15
DRAWN JDE	CHECKED
1704-712-15	SOLD 1/10/15

C12.2	N0278/14 - 980 Barrenjoey Road Palm Beach - Additions to the dwelling involving the addition of a third level
--------------	--

Meeting: Sustainable Towns and Villages Committee

Date: 18 May 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 07 May 2015 considered the Assessing Officers report (refer **Attachment 1**) for determination of N0278/14 – 980 Barrenjoey Road, Palm Beach NSW 2108 - additions to the dwelling involving the addition of a third level.

- 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 One objector and the applicant's two representatives were present at the meeting. The Development Unit considered the issues raised by the objector and the applicant's representatives as well as the issues addressed in the Assessing Officer's report and supported the Officer's recommendation for approval subject to the conditions contained in the draft consent.
-

2.0 RECOMMENDATION

That the Development Officer's recommendation be endorsed and Development Application N0278/14 – 980 Barrenjoey Road Palm Beach NSW 2108 - Additions to the dwelling involving the addition of a third level, be granted development consent subject to the draft conditions of consent.

3.0 BACKGROUND

3.1 PURPOSE

To seek endorsement of the Development Unit's recommendation following consideration of Development Application N0278/14 – 980 Barrenjoey Road, Palm Beach NSW 2108 - Additions to the dwelling involving the addition of a third level.

3.2 BACKGROUND

The Development Unit at its meeting held on the 07 May 2015 considered the Development Officer's report (refer **Attachment 1**) for determination of Development Application N0278/14 – 980 Barrenjoey Road Palm Beach NSW 2108 - additions to the dwelling involving the addition of a third level.

Despite the large height variation to policy of 64.7% the Development Unit considered that the merits of the application warranted support of the Assessing Officer's recommendation for approval as the main reason for the breach was as a result of the excessive slope of the land (34%). (Refer to discussion at Section 8.0 of the Assessing Officer's report)

3.3 POLICY IMPLICATIONS

The NSW Department of Planning requires that applications involving a variation to a development standard of more than 10% be referred to the elected Council for determination.

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 05 May 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: N0278/14 - 980 Barrenjoey Road, Palm Beach NSW 2108 - Additions to the dwelling involving the addition of a third level

Meeting: Development Unit

Date: 7 May 2015

SUMMARY OF RECOMMENDATION

Consent with Conditions

REPORT PREPARED BY:	Cheryl Williamson
APPLICATION SUBMITTED ON:	21/08/2014
APPLICATION SUBMITTED BY:	CSQUARED ARCHITECTS PTY LTD
OWNER(S):	BRANDON S BRANSGROVE

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 N0278/14 for additions to the dwelling involving the addition of a third level at 980 Barrenjoey Road, Palm Beach NSW 2108 subject to the draft conditions of consent attached.

Report prepared by
Cheryl Williamson, Senior Planner

Andrew Pigott
MANAGER, PLANNING & ASSESSMENT

SUBJECT: N0278/14 - 980 BARRENJOEY ROAD, PALM BEACH NSW 2108 additions to the dwelling involving the addition of a third level

Determination Level:

Development Unit

SUMMARY OF RECOMMENDATION:

CONSENT WITH CONDITIONS

REPORT PREPARED BY:

Cheryl Williamson

APPLICATION SUBMITTED ON:

21 August 2014

APPLICATION SUBMITTED BY:

CSQUARED ARCHITECTS PTY LTD
11 CLAUDE STREET
CHATSWOOD NSW 2067

OWNER(S):

MR BRANDON STEPHEN BRANGSGROVE

1.0 SITE DETAILS

The site is known as 980 Barrenjoey Road, Palm Beach and has a legal description of Lot 12 in Deposited Plan 28669. The site has an area of 999m² and is wedge-shaped with a 24.5 metre curved frontage to the eastern side of Barrenjoey Road, narrowing to an 8.5 metre rear boundary. Vehicular and pedestrian access is gained via an existing shared crossover and driveway from Pittwater Road, which also serves 972, 974, 976 and 978 Barrenjoey Road; the subject site is located at the northern end of this driveway.

The total site experiences a decrease in level of 25.9 metres from east to west (rear to front), resulting in a 40% or 22.7 degree slope. Underneath the subject dwelling alone, a decrease of 7.2 metres exists, resulting in a 34% or 19 degree slope. Construction works are currently underway on the site relating to a prior development approval for the construction of a dwelling on the site (further discussed below). Surrounding land uses are primarily residential in nature; dwellings on the eastern side of Barrenjoey Road are of a similar scale, height and position to that now proposed. Dwellings on the western side of Barrenjoey Road are situated approximately 12 metres lower than the subject dwelling and appear as single storey structures from the roadway but appear much larger from Pittwater. A height difference of approximately 10 metres exists between the ground level of the subject dwelling and the carriageway of Barrenjoey Road. Coupled with the existing dense, mature vegetation between the roadway and the subject site, this means that the subject dwelling is not readily apparent when travelling along Barrenjoey Road in either direction.

2.0 PROPOSAL IN DETAIL

The application form describes the proposed development as '*proposed new entertainment level above approved new dwelling.*' The physical works proposed relate to the construction of an additional storey above the rear part of the existing dwelling (currently under construction). The new level includes a shallow pitched roof sloping back from the front toward a pitch at the rear of the site. Internally, the new level includes the continuation of the approved lift core and chimney up to the new level and continuation of a lower level staircase within the rear portion of the dwelling. The proposed internal spaces include lounge, kitchen and dining areas, games lounge, billiard area and bathroom, with the use of the area of roof which is not proposed to be built upon as a front balcony area. A fireplace is proposed within the chimney breast toward the front of the new level. Bi-fold glazed doors are proposed to the western and northern elevations with the southern and eastern elevations (adjacent to 978 Barrenjoey Road) comprising of solid walls or glazing.

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, dwelling houses and ancillary development 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 (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)
- State Environmental Planning Policy No 71 - Coastal Protection (SEPP 71)
- Located within 10/50 Vegetation Clearing Code of Practice Area
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
 - Acid Sulphate Soils Map - Class 5
 - Biodiversity Map
 - Geotechnical Hazard Map - Hazard H1
 - Height of Buildings Map - 8.5 metres
- Pittwater 21 Development Control Plan (P21 DCP)
 - Palm Beach Locality
 - Slip-affected/Geotechnical Risk Management Policy for Pittwater
 - Bushfire Prone
- Scenic Streets Register

Variation to development standards:

Refer to discussion of clause 4.3 within Section 8.0.

4.0 BACKGROUND

Background of the site

Development application N0071/99 sought the construction of a new residential building on the site. The application was refused due to insufficient information, adverse impacts on the natural environment, aboriginal heritage and threatened species, breaches of building height, building envelope and side setback controls, driveway design and lack of Roads and Maritime Services approval.

Development application N0321/09 approved the construction of a new dwelling and the extension of the shared driveway. The application was later amended (Section 96 approval N0321/09/S96/1) to reduce the floor level of the garage, include a new internal lift, remove the ground level pedestrian access, extend a cantilevered planter box and extend the dwelling a further one metre to the rear.

Complaints have been received during the course of the current development application alleging unauthorised works at the site, relating to prior development approvals N0321/09 and N0321/09/S96/1. Council's Compliance Unit has investigated this matter, inspecting the site on 11 November 2014 and subsequently sending a letter to the objector to confirm that '*all works to date are in accordance with the previously approved development consent*' and that the officer '*could not determine any areas of non-compliance with the current development application*'. Following this, a further complaint relating to the size and dimension of two south-facing windows was received, and this was found to be substantiated. Council's Compliance Unit has issued a Notice regarding this which requires the rectification of these windows to reflect the approved size and dimension. The matter is ongoing, but forms a wholly separate matter to the development now under assessment.

Complaints have also been received from this neighbour alleging the commencement of works relating to the development now proposed. In a separate letter to the objector Council's Compliance Unit has advised:

'It was noted that there are some starter bars protruding from concrete on this upper level in anticipation of an approval for the proposed upper level but if this level is refused the starter bars are to be removed. The scaffolding over the lift well is to support an electronic winch used by the builder to raise and lower building materials and is in no way associated with any proposed building works which have not been previously approved.'

This situation was also apparent during the assessing officer's second visit to the subject site on 12 February 2015.

The objector has suggested that due to the construction of the proposed new level that Council does not have the authority to assess or determine the application. However, as described above, Council is satisfied that the works have not already been constructed, and that the application is appropriately prospective rather than retrospective. Council can therefore be satisfied that the application is able to be assessed and determined by way of the development application process.

Background of the subject development application

The subject development application was lodged on 20 August 2014 and was referred to Council's Development Engineer and Natural Resources Officer for comments and/or recommendations. The application was also referred to NSW Rural Fire Service. The application was publicly notified in accordance with Council's Notification Policy (further detail below) and a site notice was displayed at the front of the site, first on the hoarding of the subject site and subsequently on the wall of the shared driveway, visible from Pittwater Road. Site inspections of the subject site were carried out on 28 August 2014 and 12 February 2015 and a site inspection from the internal and external areas of the southern neighbouring property, 978 Barrenjoey Road, was carried out on 14 January 2015.

Additional information was received from the applicant on 9 March 2015. This comprised a Clause 4.6 objection statement relating to the proposed building height as well as information relating to overshadowing and view sharing. This information was provided to the southern neighbour on 10 March 2015 and a further submission from this neighbour was received on 17 March 2015 (discussed below).

The application was discussed at the Development Unit meeting dated 26 March 2015. Amongst other matters, discussion took place as to the correct measurement of building height and the Panel determined that the application be deferred to permit further consideration of this issue. It was agreed within the meeting that any additional information received would be provided to the owner of the southern neighbouring property, who attended and spoke at the meeting.

Additional information from the applicant was received on 20 April 2014 comprising:

- ***Transcript of the applicant's presentation to the 26 March 2015 Development Unit meeting;***
- ***Excerpt from a Planning Institute of Australia newsletter dated 11 April 2014;***
- ***Copy of Land and Environment Court judgement Boston Blyth Fleming Pty Ltd v Woollahra Municipal Council 2014;***
- ***Architectural drawings showing different height controls from different perspectives and differing points in time (it should be noted that no amendments to the development as originally proposed have been put forward within these drawings);***
- ***Statement from JBA in support of the development as proposed.***

These documents were forwarded to the southern neighbouring property on 20 April 2014 via email, and hard copies forwarded via mail on 21 April 2015.

Prior to the receipt of this additional information, the southern neighbour submitted further documentation in objection of the development proposed and the manner in which the application had been assessed. The areas of objection are outlined within Section 5.0. Following the submission of the additional information described above, a further email from the southern neighbour was received on 27 April 2014 confirming that the previously raised objections continued to stand.

5.0 NOTIFICATION

The application was notified to eight (8) adjoining property owners for a period of 14 days between 29 August 2015 and 12 September 2015. Council was contacted by the owner of the southern neighbouring property, 978 Barrenjoey Road, who advised that no notification letter had been received, and to complain that the site notice was not sufficiently visible to those passing the site. A notification letter was subsequently sent to this neighbouring property by mail and by email, and a further 14 days provided to allow for comments to be submitted. The matter of the site notice location was also raised with the applicant who relocated the sign to the rendered wall at the entrance to the private driveway from Pittwater Road.

Following the initial notification and the subsequent letter to the southern neighbour, a number of submissions were received from one (1) neighbouring property, 978 Barrenjoey Road, located directly to the south of the site. These submissions comprised a series of emails from the property owner plus a letter submission from a Planning Consultant on behalf of the owner. The matters raised within these submissions are as follows:

- Initial lack of notification (discussed above);
- Objection to works approved within development approvals N0321/09 and N0321/09/S96/1;
- Objection to unauthorised works relating to development approvals N0321/09 and N0321/09/S96/1;
- Objection to works relating to the current application being carried out prior to the issue of a development consent;
- Loss of northerly views from side-facing bedrooms;
- Loss of sunlight and daylight;
- Excessive increase in floor space ratio;
- Loss of acoustic privacy from the use of the space as an entertainment area;
- Loss of visual privacy from proposed south-facing windows;
- Future use of the new level as a separate dwelling.

The works approved within development application N0321/09 and Section 96 modification application N0321/09/S96/1 are not able to be revoked or amended through the assessment of this development application. The impacts of the development which was the subject of these prior applications was assessed at the time and the impacts found to be acceptable. The matter of unauthorised works and the commencement of the subject works prior to the issue of a development consent is discussed within section 4.0 above.

The application site is not the subject of a floor space ratio control within Council's planning controls, and therefore the amount of floorspace itself is not restricted, subject to the built form controls which pertain to the site such as building height, front, side and rear setbacks and building envelope. These built form controls are discussed within the following report.

The new level has not been proposed as a separate dwelling, and as it is only accessible from inside the dwelling beneath it, does not lend itself to this form of use. Nonetheless a condition has been recommended which ensures that this space will be used ancillary to the existing dwelling only, and not as a separate habitable space.

The remainder of the above listed matters are discussed within the below report.

Additional information was received by Council on 9 March 2015. The additional information did not include amendments to the proposed development and as such the formal renotification of the application was not required. However, the additional information was provided to the southern neighbouring property and further comments invited. A further submission from this neighbour was received on 17 March 2015 reiterating the following objections:

- Loss of view
- Loss of acoustic privacy

These matters are discussed within the below report.

In the intervening period between the deferral of the matter and the submission of additional information, the southern neighbour submitted further documentation in objection to the development proposed and the manner in which the application had been assessed. The matters raised are summarised as follows and are discussed further within the body of this revised report:

- ***Loss of private view;***
- ***Loss of acoustic privacy;***
- ***Loss of visual privacy;***

- **Breach of height control;**
- **Request for chimney to be relocated to the rear of the dwelling;**
- **Breach of the front building line**
- **Non-compliance with previous approvals**

Following the submission of additional documentation by the applicant, and the provision of this information to the southern neighbouring property, a further email was received on 27 April 2015 confirming that the previously raised objections continue to stand.

6.0 ISSUES

- 4.3 Height of buildings
- 3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings
- 3.6 State Environment Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs)
- 4.5 Integrated Development: Bushfire
- A1.7 Considerations before consent is granted
- A1.9 Definitions
- A4.12 Palm Beach Locality
- B1.4 Aboriginal Heritage Significance
- B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community
- C1.3 View Sharing
- C1.4 Solar Access
- C1.5 Visual Privacy
- C1.6 Acoustic Privacy
- C1.7 Private Open Space
- C1.9 Adaptable Housing and Accessibility
- C1.13 Pollution Control
- C1.25 Plant, Equipment Boxes and Lift Over-Run
- D12.1 Character as viewed from a public place
- D12.3 Building colours and materials
- D12.8 Building envelope
- D12.14 Scenic Protection Category One Areas

7.0 COMPLIANCE TABLE

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

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
1.9A Suspension of covenants, agreements and instruments			Y	Y	Y
Zone E4 Environmental Living			Y	Y	Y
4.3 Height of buildings		Refer to Section 8.0.	N	Y	N
4.6 Exceptions to development standards		Refer to discussion of clause 4.3 within Section 8.0.	Y	Y	N
5.10 Heritage conservation			Y	Y	Y
7.1 Acid sulfate soils			Y	Y	Y
7.2 Earthworks			-	-	-
7.6 Biodiversity protection			Y	Y	Y
7.7 Geotechnical hazards			Y	Y	Y
7.10 Essential services			Y	Y	Y
Pittwater 21 Development Control Plan 2014					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings		Refer to Section 8.0.	N	Y	N
3.4 Notification		Refer to Section 5.0.	Y	Y	N
3.5 Building Code of Australia			Y	Y	Y
3.6 State Environment Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs)		Refer to Section 8.0.	Y	Y	Y
4.1 Integrated Development: Water Supply, Water Use and Water Activity			-	-	-
4.5 Integrated Development: Bushfire		Refer to Section 8.0.	-	-	-
4.6 Integrated Development: Aboriginal Places of Heritage Significance and Aboriginal Objects			-	-	-
4.8 Integrated Development - Roads			-	-	-
5.3 Referral to NSW Office of Environment and Heritage			-	-	-
A1.7 Considerations before consent is granted		Refer to Section 8.0.	Y	Y	Y
A1.9 Definitions		Refer to Section 8.0.	-	-	-
A4.12 Palm Beach Locality		Refer to Section 8.0.	N	Y	N
B1.3 Heritage Conservation - General			Y	Y	Y

Control	Standard	Proposal	T	O	N
B1.4 Aboriginal Heritage Significance		Refer to Section 8.0.	Y	Y	Y
B3.1 Landslip Hazard			Y	Y	Y
B3.2 Bushfire Hazard		Refer to discussion of 4.5 in Section 8.0.	Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community		Refer to Section 8.0.	Y	Y	Y
B5.2 Wastewater Disposal			Y	Y	Y
B5.4 Stormwater Harvesting			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		Refer to discussion of B4.7 in Section 8.0.	Y	Y	Y
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing		Refer to Section 8.0.	Y	Y	N
C1.4 Solar Access		Refer to Section 8.0.	Y	Y	N
C1.5 Visual Privacy		Refer to Section 8.0.	Y	Y	N
C1.6 Acoustic Privacy		Refer to Section 8.0.	N	Y	N
C1.7 Private Open Space		Refer to Section 8.0.	Y	Y	Y
C1.9 Adaptable Housing and Accessibility		Refer to Section 8.0.	Y	Y	Y
C1.12 Waste and Recycling Facilities			Y	Y	Y
C1.13 Pollution Control		Refer to Section 8.0.	Y	Y	Y
C1.14 Separately Accessible Structures			-	-	-
C1.19 Incline Passenger Lifts and Stairways			-	-	-
C1.23 Eaves			Y	Y	Y
C1.24 Public Road Reserve - Landscaping and Infrastructure			-	-	-
C1.25 Plant, Equipment Boxes and Lift Over-Run		Refer to Section 8.0.	Y	Y	Y
D12.1 Character as viewed from a public place		Refer to Section 8.0.	N	Y	Y
D12.3 Building colours and materials		Refer to Section 8.0.	Y	Y	Y
D12.5 Front building line	10 metres.	15.4 metres.	Y	Y	Y
D12.6 Side and rear building line	2.5 metres to one side 1 metre to other side 6.5 metres to rear	4 metres to south 2.8 metres to north 32.2 metres to rear	Y	Y	Y
D12.8 Building envelope		Refer to Section 8.0.	N	Y	Y
D12.10 Landscaped Area - Environmentally Sensitive Land	Min. 60%	60% (602m ²) - unchanged from previous approval	Y	Y	Y
D12.12 Fences - Flora and Fauna Conservation Areas			-	-	-

Control	Standard	Proposal	T	O	N
D12.13 Construction, Retaining walls, terracing and undercroft areas			-	-	-
D12.14 Scenic Protection Category One Areas		Refer to Section 8.0.	N	Y	Y

8.0 DISCUSSION OF ISSUES

• 4.3 Height of buildings

The LEP specifies an overall height control of 8.5 metres for the subject site. Subsection (2D) of this clause permits consideration up to a maximum of 10 metres however, for significantly sloping sites (in excess of 16.7 degrees), provided that the non-compliance is minor, takes into account the natural topography of a site and complies with the objectives of the development standard. In this instance, the existing house has been constructed following excavation, meaning that the lowest storey and part of the next storey is submerged beneath the natural ground level. The definition of building height is measured from the existing ground level, which in this case is approximately 6 metres below natural ground level. Measured from existing ground level, the uppermost part of the proposed new development reaches a maximum of 13 metres.

Council has the ability to consider a variation to a development standard under clause 4.6 of the LEP, if the applicant has submitted a written request for variation. A clause 4.6 objection statement was submitted on 9 March 2015 seeking to vary the development standard and providing a justification as to why this should be supported.

Approximately 25% of the proposed new level is proposed to be wholly above both the 8.5 metre overall height limit and the 10 metre height limit applying to significantly sloping sites. The western portion of the proposed new level is 4.5 metres above the 8.5 metre control, which is considered excessive and is not supported. In addition to the technical non-compliance with the numerical control, concerns are identified in terms of the proposed four storey nature of the resulting dwelling and the potential impact of this upon the character of the area. A condition is recommended which requires the further setting back of the proposed new level by 4.6 metres in order to address this.

It should be noted that this condition does not require the setting back of the proposed chimney breast. The LEP definition of building height expressly excludes chimneys, meaning that this structure is not included in the calculation of building height. The deletion of this chimney breast at this level would result in amenity and health issues with the discharge of the approved fireplaces below; without the chimney breast now proposed, emissions from these fireplaces would discharge at the floor level of the new level. This chimney has a slender one metre depth as seen from the west and is not held to present an excessive level of bulk or scale.

The 4.6 metre set back has been recommended to allow the retention of the lift core which already runs through the building and is proposed to continue into the new level. This section of the lift core would continue to measure 13 metres from the base of the lift shaft to the roof directly above, with all other parts of the new level located wholly within the 8.5 metre height control. Figure 1 below demonstrates the applicable height controls relative to the proposed development and the recommended amendment:

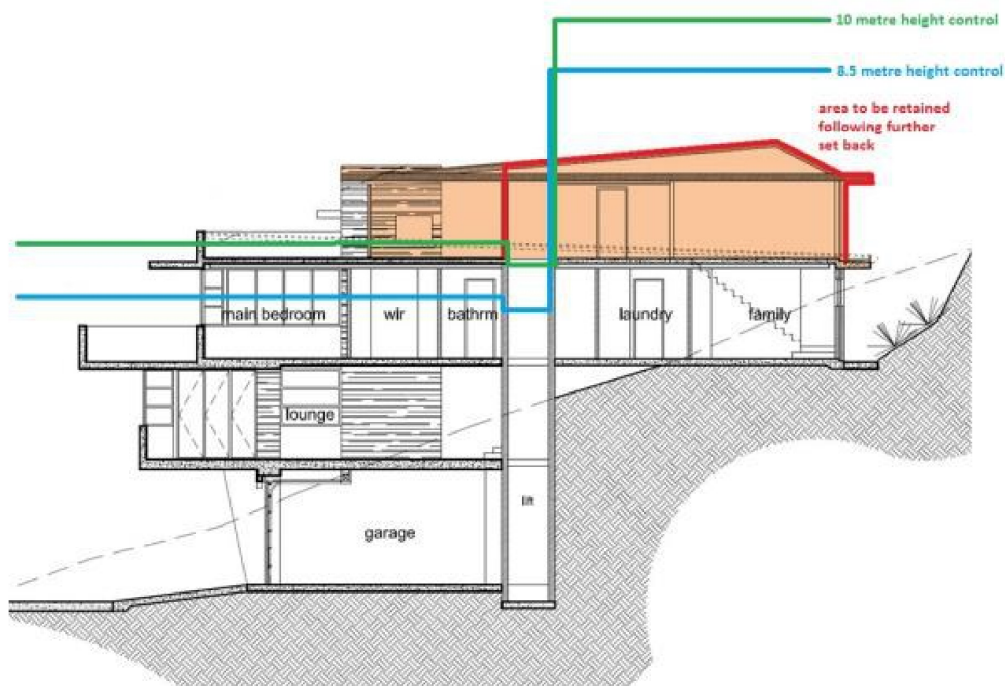


Figure 1: Relationship of the proposed development to the two applicable height controls

Given that this 1.4 metre deep section of the amended upper level continues to breach the height control, consideration against clause 4.6 (exceptions to development standards) of the LEP is required. This clause states that consideration may be given to the variation of a development standard but only if it can be demonstrated that strict compliance would be unreasonable or unnecessary, that the development would comply with the objectives of the development standard and that the development would comply with the objectives of the land use zone. These points are discussed below:

Strict numerical compliance unreasonable or unnecessary

The applicant seeks a variation to the numerical height control on the following grounds:

- That the majority of the proposed development is less than 8.5 metres high;
- That the development is generally compliant when measured from the natural ground level;
- That the reason for the non-compliance originates from the significant slope of the site (22.7 degrees);
- That the variation sought is minor;
- That the objectives of the development standard are met;
- That the new level would be significantly set back from the floor below, minimising its visual impact;

- That the resulting development would be similar in terms of height and scale than that of the neighbouring properties;
- That the new level includes generous side setbacks.

The majority of the above points are discussed further above and below. In terms of the comparison of height and bulk with the neighbouring properties, the below two diagrams assist in demonstrating this:

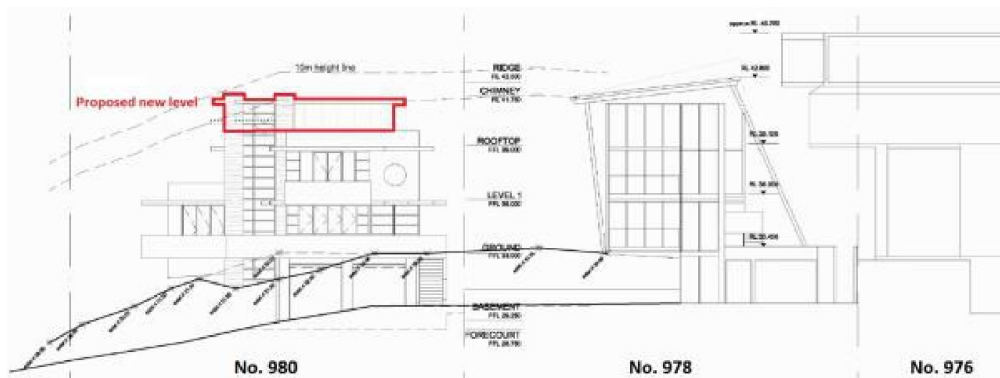


Figure 2: Applicant demonstration of proposed development compared to southern neighbouring properties



Figure 3: Photograph (supplied by applicant) showing subject site (left), 978 Barrenjoey Road (centre) and 976 Barrenjoey Road (right)



Figure 4: Photograph (supplied by applicant) showing subject site (top left) and surrounding sites as viewed from Pittwater

Compliance with the objectives of the development standard

CI. 4.3 development standard objective	Compliance
(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality	The new level, as amended by the recommended conditions, is of an appropriate height and scale and is consistent with the desired future character of the locality.
(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development	The resulting dwelling will be of a similar, if not lesser height and scale than neighbouring dwellings including the two dwellings directly to the south as well as the dwellings on the western side of Barrenjoey Road (refer to figures 3 and 4 above).

(c) to minimise any overshadowing of neighbouring properties	The impact of the proposed development on the solar access of the southern neighbouring property is discussed within C1.4 below and has been found to be acceptable. The further setting back of the level is likely to increase the amount of sunlight reaching the southern neighbouring property above that shown on the submitted shadow diagrams.
(d) to allow for the reasonable sharing of views	The development will not adversely impact upon public views. The impact upon views gained from the southern neighbouring property to the south is discussed within C1.3 above and the development is held to allow for a reasonable sharing of views.
(e) to encourage buildings that are designed to respond sensitively to the natural topography	The new level, as amended, will result in a two storey element at the rear of the site, with the already approved three storey element at the front of the site. This will allow for a stepping of the building in line with the slope of the land. No excavation or groundworks are proposed within this application.
(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items	The rockface and bushland to the rear of the site will remain untouched by the proposed development and the bushland will continue to be visible from Pittwater and the public domain (as can be seen within figures 3 and 4 above) and the intervening trees between sites will be unaffected by the proposed development. Neither the site itself, nor the surrounding area is heritage affected.

Compliance with the objectives of the land use zone

E4: Environmental Living zone objective	Compliance
<ul style="list-style-type: none"> To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values. To ensure that residential development does not have an adverse effect on those values. 	The development will not result in any increase in density given that the site will continue to comprise one dwelling occupied by one household. The new level will not adversely affect ecological or scientific processes. The aesthetic value of this part of Palm Beach will be maintained, subject to the recommended conditions of consent.
<ul style="list-style-type: none"> To provide for residential development of a low density and scale integrated with the landform and landscape. 	The new level, as amended, will integrate appropriately with the landform of the site, allowing for a stepping down of the building along with the slope. The new level will not harm any existing trees or landscaping on this or neighbouring sites.

<ul style="list-style-type: none"> To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors. 	The new level will not materially impact upon riparian or foreshore vegetation, and will not inhibit the movement of wildlife in or around the site.
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It is concluded therefore, that the nature of the non-compliance with the height of buildings development standard is of a minor nature and one which will not result in undue adverse impacts to the character of the locality, the natural environment or the amenity of surrounding properties. It is held to be unreasonable to require that the westernmost 1.4 metres of the new level be deleted (which would preclude the continuation of the lift) so as to ensure full numerical compliance, and it has been demonstrated that the development, as amended by the suggested conditions, is in line with the objectives of both the height of buildings development standard and the objectives of the E4 zone.

The determination of the application was deferred at the previous Development Unit meeting to allow for the submission of documentation outlining arguments relating to building height. A number of documents were submitted by the applicant on 20 April 2015 with regard to this issue.

Within the applicant's transcript, the applicant notes the differing definitions of ground level (existing), ground level (finished) and basement. It appears clear that the floor of the garage level as it has already been built would meet the definition of ground level (finished) but it does not necessarily follow that this does not also constitute ground level (existing). In terms of the definition of basement, it is not clear that the garage level would meet with this definition; to be a basement, the space has to be predominantly below ground level (existing) – this space is not beneath the ground, it is at the level of the driveway access into the site and is clearly visible (this garage level can be seen in figure 4 of this report).

The submitted documentation also includes an excerpt from a Planning Institute of Australia newsletter, dated 11 April 2015, which includes a question and answer section addressing this issue. The response to the question includes the following statement:

'on the face of it, the definition does appear to require the proponent to calculate the proposal's building height from the base of any existing excavated area of the site which would include a basement car park.'

The advice goes on to say however, that as 'basement' is separately defined within the standard instrument, that any basements should not be taken into account for these purposes and that it would be more appropriate to take the existing ground level as being the roof slab of any such basement structure.

In this instance, it is not agreed that the car parking area is a basement, which would suggest that it was predominantly, or wholly submerged beneath the ground and not perceptible from outside of the site. Rather, this area is visible, particularly from a distance, and is accessed at the same level as the driveway.

The advice within this newsletter excerpt points to the recent Land and Environment Court judgement Boston Blyth Fleming Pty Ltd v Woollahra Municipal Council. This judgement does not deal with the same definitions given that the LEP in question is not of the standard instrument form. The facts of the case also differ given that the experts in that matter agreed that there would be no resultant contribution to the bulk of the subject building (in this case it is considered that the visual bulk and scale is of concern). However, at paragraph 15 of the judgement the Commissioner notes:

‘under the definitions in LEP 1995, “height” is measured from “existing ground level” which is the existing excavated ground level of the basement on the site.’

It is clear therefore that the court, as well as other Councils, has previously considered the existing ground level to be the level of an excavated ground level. It is conceded however, that there remains ambiguity surrounding this matter, and that ground level could be reasonably considered to be taken from a number of different points. Setting aside the technicalities of the control, it is more important to consider the eventuating impact that the development causes. In the event that condition B1(a) were to be deleted as requested, concern continues to be raised regarding the visual bulk and scale of the development and the number of storeys.

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

The application is not accompanied by a Schedule of Finishes; a condition is recommended to require that a schedule of finishes is prepared which comprises dark, earthy and non-reflective tones, in line with Council's controls. Due to the cost of works for the project, neither a photomontage nor a scale model are required in this instance.

An objection has been received relating to a lack of view loss assessment in the application documents. Additional information in this regard was received from the applicant on 9 March 2015. The objection states that without this document the application is deficient and should not be determined; it should be noted however that the suggestion of lodging a view loss assessment is contained within the 'advisory notes' section of DCP control C1.3, not within the technical requirements or outcomes of that control, not within DCP control 3.3 (submission of supporting documents) and not within Part 1 Schedule 1 of the Environmental Planning and Assessment Regulation 2000 which stipulates which documents must be provided in the lodgement of a development application. The application was not therefore deficient at the point of lodgement and in any case, a view loss assessment has since been submitted.

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

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

The application is accompanied by a BASIX certificate in line with the provisions of this SEPP. Conditions are recommended to ensure that this document is adhered to through construction and for the life of the development.

State Environmental Planning Policy No 71 - Coastal Protection

The site is not located within the Coastal Zone as defined within this instrument (the boundaries of the coastal zone, which encompasses the perimeter of the peninsula are located 24 metres to the west of the site and 460 metres to the north east of the site). The provisions of this SEPP do not therefore apply to the proposed development.

- **4.5 Integrated Development: Bushfire**

The site is identified as being bushfire prone and a Bushfire Risk Assessment accompanies the development application. The application does not form Integrated Development under the Rural Fires Act 1977 but was nonetheless referred to NSW Rural Fire Service given that the site is located within a BAL-FZ area. NSW Rural Fire Service has reviewed the application documentation and has raised no concerns subject to the inclusion of a number of conditions within any future approval. These are included as recommended conditions of this consent, along with a condition to require compliance with the provisions of the submitted Bushfire Risk Assessment.

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

The whole of Barrenjoey Road (approx. 13km) is listed within Council's Most Scenic Street Register. Within this document the discussion of Barrenjoey Road describes Pittwater Estuary views, locally indigenous vegetation and the winding road as contributing to its special character. The proposed development would not have an adverse impact upon any of these features and would not diminish the special character of Barrenjoey Road, as defined within this document.

- **A1.9 Definitions**

Within the applicant's transcript submitted by the applicant on 20 April 2014 the applicant refers to this clause of the Pittwater 21 DCP and in particular to definitions of 'height', 'natural ground level' and 'wall height'. However, it appears that the applicant has referred to a superseded version of the DCP in this regard. Following the gazettal of the Pittwater LEP 2014 on 26 June 2014, an amended and associated version of the DCP came into force on 27 June 2014. This version of the DCP was in force between 27 June 2014 and 20 December 2014 when it was replaced by the current version. The subject development application was lodged with Council on 20 August 2014, meaning that this previous version of the DCP is the relevant version in this instance. Pages 21 and 27 do not relate to definitions or issues concerning building height (as stated within the transcript) and control A1.9 does not, either in the previous version or the current version, define height or natural ground level, given that these are now defined within the LEP. It is therefore not reasonable or logical to rely on previous versions of the DCP in this regard. Further discussion relating to the height of buildings is provided below.

- **A4.12 Palm Beach Locality**

The control provides a character statement for the Palm Beach locality to enable an assessment as to whether a development complies with the desired future character of the area. The statement requires that development remains primarily low-density in nature with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.

The dwelling as already approved comprises three storeys at the front and one storey at the rear, integrating with the significant slope of the site. The proposed new level is positioned such that the resulting dwelling would be four storeys in some places and two storeys in others. This is not held to be consistent with the desired character of the locality. A condition is recommended which requires that the western elevation of the new level be further set back by 4.6 metres, such that it is located above the single storey element of the existing dwelling only. This will mean that the resulting dwelling will be two storeys at the rear (in line with the control) and three storeys at the front (as already approved). The below diagram demonstrates the intent of this condition:

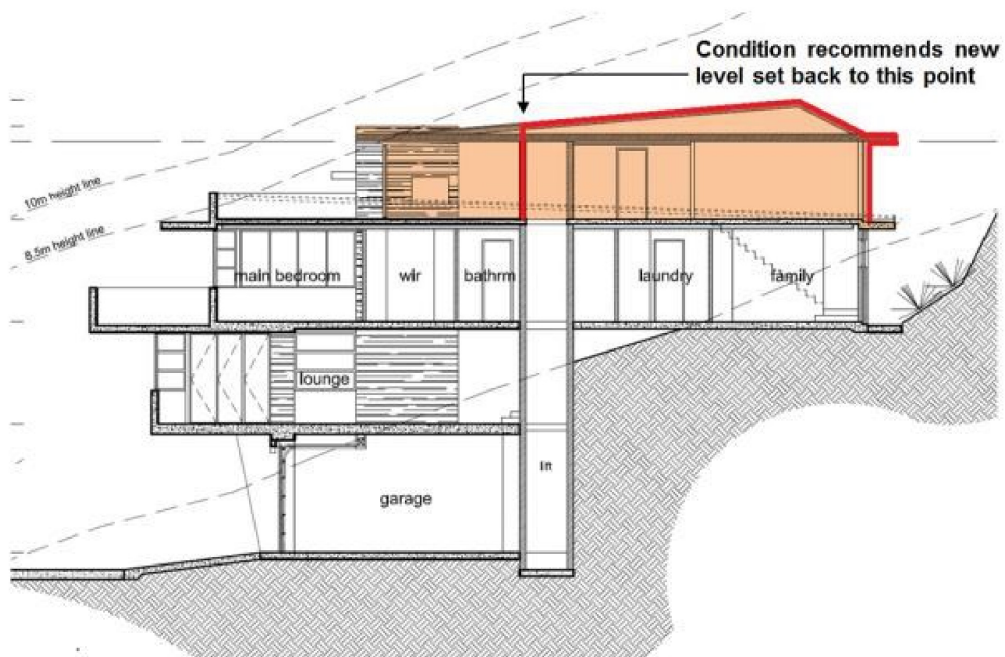


Figure 5: Proposed amendment of development to include a further set back

The resulting level will continue to include a generous amount of habitable floorspace and include the lift core which already runs through the building. It must be noted however, that the recommended condition does not include the chimney breast proposed at the front of the site; the deletion of this section of brickwork would mean that emissions from the fireplaces below would discharge onto the new front balcony which would result in unacceptable amenity impacts and potential health hazards. The chimney is not classed as a storey and is expressly excluded from the definition of building height within the Pittwater LEP 2014. From the west this will appear as a slim structure (one metre in width) which will not add a significant or unacceptable amount of bulk to the site.

The character statement seeks to minimise bulk and scale and to protect trees and vegetation. The new level will not be readily visible from public domain immediately to the west, in either direction along Barrenjoey Road, or from the private shared driveway serving the site. Distant views from Pittwater would be possible, however the level of bulk displayed by the new level, as amended by this condition and once finished in dark, earthy and non-reflective tones, will recede appropriately into the natural environment beyond and will not appear overly obtrusive or harmful from the wider area.

Within the documents submitted by JBA, the requirements of control A4.12 are identified in so far as the requirement of a building to appear as two storeys, however the requirement for a building to physically comprise no more than two storeys in any one place is not discussed. In any case, the development as proposed does not appear as two storeys and does not constitute two storeys in reality. The dwelling would become a part two and part three storey dwelling, elevated and cantilevered over a garage level (which could be considered a fourth level). This is inconsistent with the technical requirements or objectives of the control.

Condition B1(a) seeks to redress this, ensuring that the new development would result in two storeys only above the rear portion of the site, and ensuring that the new development would be significantly recessed in order to minimise its appearance from the surrounding locality and particularly the waterway.

- **B1.4 Aboriginal Heritage Significance**

Council's Natural Resources Officer notes: *No apparent issues.*

Within the assessment of previous development application N0071/99 it was noted that items of aboriginal significance may be located within the bushland and rock outcrops to the east of the site. This application proposes a new level above a previously approved dwelling however, with no ground works proposed and no expansion of the development into the portion of land to the rear of the dwelling. The development is therefore not held to be of risk to any potential aboriginal heritage objects which may exist within the adjacent bushland.

- **B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community**

Council's Natural Resources Officer advises:

The property is currently under construction for DA N0321/09. The proposed works are the construction of a third level and minor alterations to the approved dwelling. None of the works are proposed for outside the approved building footprint. There will be no impacts on existing vegetation to be retained. There are no further natural resource issues.

The proposed development will not adversely affect the existing trees or vegetation on this site or surrounding sites and will not inhibit the passage of wildlife. The proposal is consistent with the provisions of this control.

- **C1.3 View Sharing**

Objections have been raised regarding a loss of view by the southern neighbouring property, 978 Barrenjoey Road. The objection relates to a loss of northerly views which are currently gained from the upper level side-facing bedrooms and their associated side-facing balconies. The objection notes that previous development consents have already taken away northerly views from the neighbouring dwelling's living, kitchen and dining areas, meaning that no northerly view from these areas is currently possible. In addition to the concerns raised regarding a potential view loss, the applicant objects to the fact that the applicant has not undertaken their own view loss assessment. This is further discussed within section 3.3 above.

This neighbouring property currently benefits from spectacular panoramic views of Pittwater, which is located approximately 65 metres to the west, spanning approximately 115 degrees from south west to north north west. The existing views can be understood from the below photographs:



Figure 8: Existing northerly view from the living area of 978 Barrenjoey Road



Figure 9: Existing view from side-facing balcony of bedroom 1 (left) and from side facing balcony of bedrooms 2 and 3 (right)

The outcomes of this DCP control seek a reasonable sharing of views amongst dwellings. The technical requirements of the control call for an assessment against the Land and Environment Court planning principle *Tenacity Consulting v Warringah Council* in order to identify what a reasonable sharing of views would be. This assessment is provided below.

Planning Principle: Tenacity Consulting v Warringah Council

In the judgement of the Land and Environment Court appeal *Tenacity Consulting v Warringah Council*, the Commissioner establishes a planning principle for the assessment of view sharing. The Commissioner notes that:

'The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment.'

Given that the southern neighbouring property currently enjoys panoramic 115 degree views and that the large majority of this view could not be obstructed by the development of the subject site, the development is held to constitute view sharing.

The planning principle establishes a four step assessment:

Step 1: The first step is the assessment of views to be affected. The principle notes that water views are valued more highly than land views, and that iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Assessment: In terms of the whole view enjoyed by the property, the view is an 115 degree water view which includes the intersection of land and water between Pittwater and the western foreshore. This view would be appropriately described as 'spectacular' or 'significant'. In terms of the part of the view in question relating to the proposed development, the view is considered to be much less significant. When standing in the side-facing bedrooms and on their associated balconies the view relates to the upper floor of the subject dwelling, the trees between the subject site and the neighbouring site, trees on the northern side of the subject site, with a distant view of the western foreshore beyond. A small glimpse of water is visible from the balcony of the rearmost bedrooms. Figure 9 above demonstrates this view.

This is not held to be a significant view particularly when considered against the view gained to the front of the property. This glimpse of water from the rear, side-facing bedrooms, across the subject site is held to be highly vulnerable to the future growth of vegetation over the coming years, even without the consideration of any additional building works.

Step 2: The second step is to consider from what part of the property the views are obtained. The principle notes that the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries and that the expectation to retain side views is often unrealistic.

Assessment: In terms of the whole view enjoyed by the property, the 115 degree view of Pittwater and the western foreshore is located directly to the front (west) of this neighbouring property. This view is visible from the ground level and entry foyer, level 1 bedroom, level 2 living, kitchen and dining areas as well as the associated western (front) balcony and northern (side) terrace and the western (front) face of bedroom 1 which looks across the void space of the living area and out of the double height glazing toward Pittwater.

In terms of the part of the view in question, this view is visible only from three side-facing bedrooms and their associated balconies, and wholly across the side boundary with the subject site. Northerly views are not achieved by the lower levels of the dwelling or the living, kitchen or dining areas. The principle notes that the protection of views across side boundaries is often more difficult than the protection of views from front and rear boundaries and that the expectation to retain side views is often unrealistic. In this instance the expectation to retain this glimpse view is held to be unreasonable as it is gained wholly across a side boundary, is gained from the rear part of the property and taking into account the spectacular and expansive view which will be retained unimpeded by this or future development to the front of the site.

Step 3: The third step is to assess the extent of the impact. The principle notes that the impact on views from living areas is more significant than from bedrooms or service areas and includes a qualitative scale of the extent of the impact of negligible, minor, moderate, severe or devastating.

Assessment: The objection relates to a loss of view from bedrooms only, with northerly views from the living, dining and kitchen areas and the front balcony not being present. The principle anticipates that it is more reasonable to seek the retention of views to the front of a dwelling rather than across side boundaries, and as such the proposed situation is held to be acceptable.

In terms of the qualitative scale put forward within the principle, it is contended that the extent of the view loss would be more appropriately described as 'minor' if not 'negligible' given the substantial view which will be retained to the front of the property.

Step 4: The fourth step is to assess the reasonableness of the proposal that is causing the impact. The principle notes that a development that complies with all planning controls would be considered more reasonable than one that breaches them. The principle also questions whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.

Assessment: Non-compliances have been identified with the site's height control and building envelope control, with the development complying with the front, side and rear setback requirements (in the case of the front building line control, the front elevation of the proposed new level is set back by 16 metres from the front elevation, which is significantly further back than the 6.5 metre control envisages). The further setting back of the level (recommended as a condition of consent) significantly reduces the level of non-compliance.

The objector is of the opinion that a more skilful design, namely the setting of the level further back and the setting in of the level further away from the southern boundary would resolve the issues raised. A condition is recommended to further set the level back by 4.6 metres due to concerns relating to the character of the area. This may result in the retention of a part of a view from the front-most side-facing bedroom. The development already complies with and exceeds the stated side setback controls for the site and the suggestion to further set in this upper level is not considered warranted given the circumstances of the case.

Summary

The above commentary has identified that the nature of the view in question is spectacular and panoramic to the front of the neighbouring property, but comparatively unremarkable and highly vulnerable to the northern side. It has been established that the significant view to the west is visible from every level of the dwelling and would remain uninterrupted by the proposed development, or indeed the development of surrounding sites. The portion of the view to be affected is gained wholly across side boundaries from bedroom areas which are held to be the lesser used areas of a dwelling. The extent of the impact has been identified as minor and the proposal has been found to be largely compliant with the relevant built form controls, save for the overall height and the building envelope. It is held that design amendments to ensure compliance in these two regards would not have the effect of preserving the glimpse of water from the rear bedroom areas. In light of the above, the proposal is found to be acceptable when considering the individual points of assessment from this planning principle.

The southern neighbouring property continues to object to the proposed development on the grounds of a loss of view. As outlined above, the impacts of the development on the views of this neighbouring property are found to be acceptable. In recent submissions two points have been raised however, which require discussion.

Assessment of the cumulative impacts of this and previous development applications

The assessment of previous applications N0321/09 and N0321/09/S96/1 and the current development application were not carried out by the same planner, meaning that the original northward view, prior to construction works commencing, from the southern neighbouring site, cannot be known by the author of this report. However, the assessment reports for both applications have been reviewed as part of the assessment of the current application. Within the assessment report for N0321/09 the assessing officer has noted:

‘A site inspection was carried out in order to determine whether the proposal could result in view loss in relation to the property at 978 Barrenjoey Road it was evident from the site inspection that the predominant views obtained from 978 Barrenjoey Road in are in a easterly and north easterly direction, given the location of the two dwellings it was not considered the erection of height poles was necessary and the proposal was considered to be acceptable in this respect.’

Photographs accompanying this assessment show the presence of dense vegetation to the north of the sites, of a similar nature to that now in place. The assessment of N0321/09/S96/1 is not accompanied by photographs, however the assessment report notes:

‘The proposal will continue to provide a reasonable sharing of views and vistas.’

It is clear from a review of the above two assessment reports that the easterly and north easterly views were at that time considered to be the most significant, as they are with the current application. It is also clear that any loss of view to the north from 978 Barrenjoey Road was considered to be negligible at the time of the previous assessments, as it is with the current application.

Lack of reference to the judgements contained within Tenacity

The owner of the southern neighbouring property questions why the planning principle contained within this judgement was considered, but not the judgement/outcome of that particular case. This judgement related to an appeal against the refusal of a mixed use building comprising 18 residential apartments and two levels of basement car parking; the particulars of the case are not directly comparable to the development now before Council. In directing the assessing officer to this court judgement it is clear that it is the overarching planning principles which are to be applied to the assessment rather than seeking to emulate a similar outcome to the other development.

Request for relocation of chimney

The southern neighbour has suggested that the chimney be relocated to the rear of the dwelling so as to preserve northerly views. The portion of the chimney now proposed represents the continuation of the existing chimney which has already been approved; it is not now possible to request the relocation of works which already benefit from consent. If the portion of the chimney now proposed were to be removed, smoke and odour from the fireplaces below would discharge at the level of the new front terrace; this would represent an unacceptable outcome on health and amenity grounds and such an amendment is not supported.

- **C1.4 Solar Access**

An objection has been received relating to a loss of sunlight and loss of daylight to the southern neighbouring property resulting from the creation of the proposed new level.

The outcomes of the control seek development which maximises solar access during mid-winter, reduces dependence on artificial lighting and maintains a reasonable level of solar access to adjoining residential properties. In terms of the subject site, the new level has been designed to maximise sunlight by including glazed bifolding doors to the northern elevation to gain sunlight. These doors, along with the bifolding doors to the western elevation will provide natural cross-ventilation and good levels of daylight, reducing the need to rely on artificial lighting and mechanical heating or cooling systems, in line with the intent of the control.

In terms of the impact upon the solar access of the southern neighbour, the arrangement is held to maintain a reasonable level of solar access. The control requires that the main private open space of any adjoining dwelling receives a minimum of three hours of sunlight between 9.00am and 3.00pm on June 21st. This neighbouring property benefits from numerous balconies and a terrace, however the main area of private open space is considered to be the western deck adjoining the living, dining and kitchen area on level 2 of this building. The shadow diagrams accompanying the application show that this deck will not receive additional shadowing as a result of the proposed works.

The control also requires that windows to the principal living area of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9.00am and 3.00pm on June 21st to at least 50% of the glazed area of those windows. In this case, the principal living area of the adjoining dwelling is held to be the living, kitchen and dining area within the western portion of level 2, with the remainder of areas of the dwelling forming bedroom spaces and garaging. This living area is a double height space with floor to ceiling glazing on both the northern and western elevations; more than 50% of this glazing will receive at least 3 hours of sunlight between 9.00am and 3.00pm in line with the technical requirements of the control.

No solar collectors for hot water or electricity were identified during site inspections of the neighbouring property, nor were areas for the drying of clothes identified in areas where additional shadows would fall. Regarding the retention of daylight, a sufficient distance will be maintained between the new level and the southern neighbouring property (6 metres) to ensure that all windows and areas of open space continue to benefit from appropriate levels of daylight.

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

Benevolent Society vs Waverley Council

The judgement relates to a development proposal containing a wide range of issues, including the impact of new development on the solar access of neighbouring properties. The principle references the previous planning principle known as Parsonage v Ku-Ring-Gai but notes weaknesses in the qualitative criteria put forward and the propensity to achieve compliance with the numerical requirements through the provision of smaller openings, which is undesirable. Paragraph 144 of the judgement provides a revised, consolidated planning principle based on consideration of seven points:

- The first point relates to the density of the site and surrounding area, and notes that higher densities often result in a lesser amount of retained solar access. The area is held to be of a low density, and the 3 hour control specified within the DCP control is held to be reasonable.
- The second point notes that the amount of sunlight lost should be considered alongside the amount of sunlight to be retained. In this case, while small amount of additional shading to the side-facing bedrooms will occur, the amount of sunlight retained by the property overall is considered to be satisfactory.
- The third point notes that overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. In this instance the proposed design is not considered to be poor, and includes front and side setbacks well in excess of the minimum requirement to assist in its relationship with neighbouring properties and the surrounding area.
- The fourth point notes that a quantitative calculation of the amount of sunlight falling onto a glazed surface is often unhelpful and seeks consideration of the size of that glazed area and the proportion of sunlight falling upon it. In this instance, the western portion of the northern elevation of the neighbouring building includes a floor to ceiling double height glazed wall, which will retain a meaningful amount of sunlight for much of the day.
- The fifth point relates to private open space and seeks consideration of the size of the space as well as the amount of sunlight received. The discussion notes that '*a useable strip adjoining the living area in sunlight usually provides better solar amenity*'. In this instance, the shadow diagrams show that the western balcony off the living, kitchen and dining area (the principal area of private open space) will be unaffected in terms of solar access by the proposed works.
- The sixth point notes that overshadowing by fences and other structures should be considered, but that overshadowing by vegetation should not be considered. This is of little relevance in the subject matter given that boundary fences are located much lower, and given that the intervening trees do not result in a significant loss of sunlight (dappled sunlight through the trees will remain)

- The seventh point calls for consideration of the likely future development of adjoining sites. In this case, the land to the east is zoned E2: Environmental Conservation which does not permit the construction of new buildings permitting only environmental facilities and recreation areas. To the west is Barrenjoey Road and then a row of dwellings located some 14 metres lower than 978 Barrenjoey Road. Any future redevelopment on these sites would not result in significant overshadowing to 978 Barrenjoey Road.

• **C1.5 Visual Privacy**

An objection has been received from the southern neighbouring property relating to a loss of privacy from the south-facing window now proposed, as well as from two south-facing windows approved as part of a previous consent.

The outcomes of the control seek the optimisation of visual privacy through good design. The technical requirements of the control specify that neighbouring properties and their areas of private open space are protected from direct overlooking within a distance of 9 metres. The control suggests the use of a range of design methods and screening methods to ensure privacy where lesser separation distances are evident.

The proposed new level has been designed with floor to ceiling glazed bifolding doors to the northern and western elevations (where there are no nearby adjoining properties) and including a primarily solid face to the southern elevation (adjacent to the southern neighbour) with only a high level window proposed. This high level window has a lower sill height of 1.6 metres above finished floor level and is intended to provide daylight rather than outlook, with further windows proposed to the front and rear of the level for this purpose. The DCP control specifies a lower sill height of at least 1.7 metres in this regard; a condition is recommended to ensure that the lower sill height is built at no less than 1.7 metres. It will not be readily possible for occupants of the proposed 'games lounge' or bathroom to look down into the living areas of 978 Barrenjoey Road.

The control specifies that elevated decks or balconies be located at the front and rear of properties; the creation of the proposed new level results in a new balcony area at the front of the dwelling. No trafficable areas of open space along the side elevations are proposed. The front balcony to the new level will be separated from the balcony of the frontmost upper level bedroom of the neighbouring property by 10 metres and from the level 2 living area and western balcony by at least 12 metres. This is held to be a sufficient distance to protect the privacy of both properties.

With regard to the objections to the two south facing windows within a lower level of the approved dwelling, no changes to these windows are proposed as part of the current development application, and Council's Compliance Unit are currently investigating this matter separately to the assessment of this DA. Further discussion on this can be found within Section 4.0 above.

Objection has again been raised regarding the overlooking of the new development onto the north facing areas of the southern neighbour. To reiterate, the only south facing window proposed is a high level window, fixed shut, which would not permit direct views of this neighbouring property.

• **C1.6 Acoustic Privacy**

Objections have been received from the southern neighbouring property regarding a loss of acoustic privacy arising from the use of the proposed new level being described as an entertainment area. The submission objects to the placement of an area of entertainment directly adjacent to bedroom areas of the adjoining property.

The outcomes of the control seek to contain noise within a dwelling and to limit noise from areas of private open space. The technical requirements of the control state that noise-sensitive rooms such as bedrooms should be located away from noise sources including living areas. The control requires mechanical equipment to comply with a noise level of 5dBA or lower, and requires the overall use to comply with the provisions of the Protection of the Environment Operations Act 1997, and other relevant legislation.

The application describes the use of the new level as an entertainment area, and the floorplans show a games lounge, billiard area, lounge area, dining area, kitchen and bathroom. While no specific detail is given as to exactly how this area would be used, it is clear that this forms part of the overall dwelling house and will be used by the occupants of the house and their guests on an ancillary basis. No separate access to this level is provided and no separate or commercial use of the space is proposed. The activities which could take place within this new level are no different to those which could take place within the lower levels of the dwelling, which is located a similar distance away from this neighbouring property. For this reason, the stated intended use of the space in itself is not held to be inappropriate or unreasonable in this instance.

Notwithstanding this, the control seeks to protect the acoustic privacy of noise-sensitive areas, and ideally seeks to relocate living areas away from bedrooms where possible. In this instance it is not possible to locate living areas away from the southern neighbouring bedrooms given that the whole of the floorspace of the new level would be a living area. The applicant has sought to address this however by a number of methods; firstly, the new level would be located 7 metres away from the neighbouring bedrooms and balconies. Secondly, a solid southern elevation has been proposed, with only one high level window and no trafficable outdoor areas along the southern elevation. Glazed bifolding doors are proposed along the northern and western elevations where there are no nearby neighbouring properties. This design will limit the transmission of noise toward the south and encourage people to gravitate toward the northern and western parts of the level. The new level can be said to 'turn its back' on the southern neighbour in this regard. It is not clear from the application documentation whether the proposed high level window would be fixed or openable, however it is considered reasonable to specify that this be fixed, given the presence of numerous other windows on other elevations to provide ventilation to the area, as a way to further mitigate any potential noise impacts to the southern neighbour.

The control specifies that all development is to comply with the provisions of the *Protection of the Environment Operations Act 1997* and a condition to this effect is included within the consent. It is not considered appropriate to place a restriction on the overall hours of operation of an area of a residential dwelling, however it is considered appropriate to limit the use and level of amplified sound used within this level. The following conditions are recommended to ensure that the acoustic privacy of the neighbouring property is protected:

- That the use of the space is used as part of the residential dwelling only and is not used separately or commercially at any time;
- That no amplified music or other amplified sound occurs outside of the hours of 9.00pm and 7.00am;
- That speakers are not installed and amplified music or other amplified sounds are not played within the outside areas of the new level;
- That noise associated with plant, mechanical equipment and the lift shaft is restricted to a noise level of 5dB(A) as measured from any adjoining residence.

Subject to the imposition of the above conditions it is considered that the relationship between the proposed new level and the southern neighbouring property will be satisfactory.

The southern neighbouring property objects to the presence of a lift within the building on acoustic privacy grounds. The existing development consents for the site already include a lift, and the continuation of this existing lift to one more level is not likely to result in a material increase in noise. A condition is included within the recommended consent to limit the level of noise emitted to 5dB(A), which the neighbour also objects to. This noise level is the standard level applied by Council in such cases, and also considered acceptable in this instance.

- **C1.7 Private Open Space**

The outcomes of the control require useable and well located areas of private open space accessed directly from living areas. The approved dwelling includes a series of balconies and courtyards (three on the ground floor level and three on the first floor level). The proposed new level would create a new terrace at the western edge, which increases the amount of private open space available to the occupants. These seven spaces equate to 112m² in area, which exceeds the minimum 80m² control.

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

The control requires the provision of adaptable housing for a variety of multi-dwelling types, however the variations to the control exclude single dwellings. Notwithstanding this, the dwelling is accessible from ground level through to the now-proposed level via the lift core which runs through the building.

- **C1.13 Pollution Control**

The application proposes to continue the existing approved chimney which runs through the approved levels of the dwelling. Conditions are recommended relating to the proper management of this chimney and fireplace, to ensure that no loss of amenity occurs to neighbouring properties through odour or smoke.

- **C1.25 Plant, Equipment Boxes and Lift Over-Run**

The continuation of the approved lift will be contained within the proposed upper level and will not protrude above the proposed roof.

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

The control seeks to ensure that new development is in keeping with the desired future character of the area, sensitively relates to the context around it and minimises bulk. In particular, the outcomes of the control seek to enhance the streetscape, maintain a two storey appearance and preserve district and local views.

The development as proposed would result in a building which was four storeys in height in some places. This is not held to comply with the intent of the control, which specifically seeks a maximum of two storeys. A condition is recommended which requires the setting back of the proposed new level such that it results only in a two storey section at the rear of the site. Subject to this amendment the resulting development is held to be consistent with the desired future character of the Palm Beach locality (further discussed within A4.12 above) and will sensitively relate to the surrounding context. It will be of a similar or lesser bulk and scale that its two southern neighbours (as can be understood from figure 2 below) and it will continue to be possible to perceive the bushland to the rear of the site and the intervening trees between sites. In terms of the enhancement of the streetscape, the subject site is located significantly higher than Barrenjoey Road (approximately 10 metres) and the set back of the proposed new level means that it will not be readily perceptible from this location; it will be concealed behind the cantilevered front balcony of the level below. In terms of district views, distant views of the site will be possible from across Pittwater (refer to figures 3 and 4 below); the set back of the new level combined with its finish in dark, earthy and non-reflective tones and the presence of existing natural vegetation in front of and around the site, mean that the new level will not cause any undue harm to visual amenity from this location. In terms of local views, an assessment of the view impacts from 978 Barrenjoey Road to the south is discussed within C1.3 above; the development represents a reasonable sharing of private views.

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

No schedule of finishes was submitted as part of the application. While not readily visible from Barrenjoey Road or the public domain directly adjacent to the site, distant views of the new level would be possible from across Pittwater. The assessment report for the dwelling already approved notes the following finishes:

- Roof: Colorbond Woodland Grey (dark grey)
- Rendered masonry walls: Dulux Bedbox (mid-brown)
- Rendered Masonry parapets: Dulux hogbristle (light brown)
- Chimney and feature stone walls: selected stone

It is anticipated that the new addition would follow this approved colour scheme, however to ensure an appropriate finish, a condition is recommended to ensure that dark, earthy and non reflective tones are used.

- **D12.8 Building envelope**

The control seeks to protect and enhance existing and future character, to limit the amount of bulk proposed, and to ensure that development responds appropriately to the spatial characteristics of the natural environment. The outcomes also seek the protection of views, amenity and vegetation. The technical requirements of the control specify an envelope within which development should be sited.

However, the variations to the control permit the consideration of a variation to the technical requirements of the control on sites where the building footprint is situated on a slope in excess of 16.7 degrees. This is the case with the subject site which decreases beneath the footprint of the dwelling by 7.2 metres, resulting in a 19 degree or 34% slope. These variations also apply where an additional storey is proposed above an existing dwelling, as is also the case in this instance.

For the subject development a minor non-compliance is evident on the southern side of the new level, limited to the westerly projecting eave of the level. The control permits the exclusion of eaves from consideration, meaning that this elevation is generally compliant with the technical requirements of the control. The recommended condition to further set back the level results in the elimination of this non-compliance. A non-compliance is also evident on the northern side where the new level is located much closer to the boundary. The siting of the level closer to the northern boundary is positive however, as directly to the north of the site there are no adjoining dwellings or other structures (the closest dwelling is located approximately 42 metres to the north east), and the intervening land is densely vegetated meaning that this elevation of the new level will not be readily visible from the surrounding area. Again, this non-compliance will be lessened by the further setting back of the level.

Given the permitted variations stated within the control and the fact that the non-compliances identified will not have an adverse impact on either the amenity of neighbouring properties or the character of the locality, a variation is held to be warranted in this instance.

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

The control requires that screen planting be located between structures and boundaries facing waterways, that canopy trees are planted between dwellings and that development is to minimise the impact on existing significant vegetation. Mature trees and vegetation are already present along the road reserve between the western boundary of the site and the waterway and no further screen planting is considered necessary in this regard. There are trees located to the north, south and east of the site which will remain unaffected by the proposed development given that no groundworks or lateral expansion are proposed by the subject development. A condition is included to ensure that the finishes of the development are suitably dark, earthy and non-reflective.

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 development as proposed has been identified as having a potential adverse impact on the character of the surrounding area through the extent of the new level breaching the maximum building height, and through the resulting development creating a four storey dwelling. Associated breaches to the building envelope control were also identified in this regard. These concerns have been addressed through the recommendation of a condition to further set the new level back such that it does not create a four storey building and such that the non-compliance with the maximum building height is minor in nature and does not result in adverse amenity or character impacts.

Objections to the application raise concern regarding a loss of northerly view. The above assessment has considered the relationship between the southern neighbouring dwelling and the subject site against the relevant Land and Environment Court principle and the proposed development is held to represent a reasonable sharing of views.

Objections also raise the issue of acoustic privacy between dwellings, resulting from the identification of the new floorspace as an entertainment area. The word 'entertainment' can encompass a wide range of activities, but it is clear that the floorspace is intended for use on an ancillary basis to the existing dwelling, which is to be inhabited by one household. The new level has been designed to 'turn its back' on the southern neighbouring property as far as possible, orientating the outlook from this level, and the openings toward the north and west where they will have the least impact on the southern neighbour. A range of conditions are recommended to ensure that the use of this level does not cause unreasonable disturbance to the surrounding neighbourhood.

The development has been found to be generally compliant with the relevant planning controls which relate to the site. Where non-compliances have been identified, these have either been found to be reasonable or are addressed within the conditions of consent. Accordingly, the application 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 N0278/14 for a proposed new level above an existing dwelling for use as an entertainment area in conjunction with the main dwelling at 980 Barrenjoey Road, Pittwater, subject to the recommended conditions of consent.

Report prepared by

Cheryl Williamson
SENIOR PLANNER

Date: 29 April 2015

DRAFT

**CONSENT NO: N0278/14
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)
NOTICE TO APPLICANT OF DETERMINATION
OF A DEVELOPMENT APPLICATION**

Applicant's Name and Address:
CSQUARED ARCHITECTS PTY LTD
11 CLAUDE STREET
CHATSWOOD NSW 2067

Being the applicant in respect of Development Application No N0278/14

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Pittwater Council, as the consent authority, of Development Application No **N0278/14** for:

additions to the dwelling involving the addition of a third level

At: 980 BARRENJOEY ROAD, PALM BEACH NSW 2108 (Lot 12 DP 28669)

Decision:

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

- **Architectural drawings prepared by Csquared Architects Pty Ltd dated August 2014:**
 - 0744_DA-2_01 - Site plan
 - 0744_DA-2_02 - First floor plan
 - 0744_DA-2_03 - Proposed rooftop entertainment lounge
 - 0744_DA-2_04 - Roof plan
 - 0744_DA-2_05 - South elevation
 - 0744_DA-2_06 - West elevation
 - 0744_DA-2_07 - North elevation
 - 0744_DA-2_08 - East elevation
 - 0744_DA-2_09 - Section a-a
- **Bushfire Risk Assessment prepared by Bushfire Planning Services Pty Ltd dated 11 August 2014**
- **Risk Analysis & Management Report ref. VU 26301B prepared by Jack Hodgson Consultants Pty Limited and dated 15 August 2014**
- **BASIX certificate ref. 500841S dated 24 July 2014**

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

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

Endorsement of date of consent _____

Mark Ferguson
GENERAL MANAGER
Per:

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:
 - a) the name, address and telephone number of the Principal Certifying Authority for the work, and
 - b) the name of the principal contractor or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
 - c) that unauthorised entry to the work site is prohibited.The sign must to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
4. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - a) in the case of work for which a principal contractor is required to be appointed:
 - i) The name and licence number of the principal contractor, and
 - ii) The name of the insurer by which the work is insured under Part 6 of that Act.
 - b) in the case of work to be done by an owner-builder:
 - i) The name of the owner-builder, and
 - ii) If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
 - c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under a or b above becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information
5. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.