

**SECTION 82A OF THE ENVIRONMENTAL PLANNING & ASSESSMENT
ACT – REVIEW OF DETERMINATION**

**FOR PROPOSED ADDITIONS & ALTERATIONS TO THE EXISTING
DWELLING**

LOCATED AT

1B THE SERPENTINE, BILGOLA BEACH

FOR

BRUCE McCONOCHIE

**Prepared
March 2016**

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Appendix 1 – 1959 Pittwater Council Building Record Card

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1.0 Introduction

This Statement of Environmental Effects accompanies plans prepared by Matthew Woodward Architecture, Drawings Numbers A-XX-01 - 04, B-01-01, B-01-02, B-02-01, B-02-02, B-03-01, C-XX-01, C-XX-02, D-XX-01 - 03, R-XX-01 – 03, variously dated, to detail proposed additions and alterations to the existing dwelling at **1B The Serpentine, Bilgola Beach**.

This application seeks a review of the determination of DA N0185/15 under the provisions of Section 82A of the Environmental Planning and Assessment Act.

This Statement describes the subject site and the surrounding area, together with the relevant planning controls and policies relating to the site and the type of development proposed. As a result of this assessment it is concluded that the development of the site in the manner proposed is considered to be acceptable and is worthy of the support of the Council.

In preparation of this document, consideration has been given to the following:

- *The Environmental Planning and Assessment Act, 1979 as amended.*
- *The Environmental Planning and Assessment Regulation 2000.*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Pittwater Local Environmental Plan 2014*
- *Pittwater 21 Development Control Plan 2014*

2.0 Executive Summary

A Development Application (DA No 185/15) seeking consent for additions and alterations to an existing dwelling at 1B The Serpentine, Bilgola Beach was lodged with Council on 27 May 2015.

The application was refused by Council under delegation and Notice of Determination letter dated 25 January 2016.

The reason for refusal and the response is detailed as:

1. *Pittwater Local Environmental Plan 2014 zones the site SP2 Infrastructure and prohibits residential development upon the site. The existing dwelling was constructed between 1951 and 1961, however the application has not shown that dwelling houses were permissible upon the site at this time. As such, the application has not established existing use rights and the proposed alterations and additions to the existing dwelling is prohibited development.*

This request to review the determination has responded to the issues raised by Council by introducing the following additional information to clarify that the subject development on the land was lawful at the time of the construction of the dwelling prior to 1961.

1. Pittwater Building Record Card dated 1959 with reference to building works carried out on "Lot 4A" within the immediate locality.
2. Letter prepared by Henningham Law, dated 16 December 2015 and accompanying attachments.
3. Copy of DP511677, noting the subject site as being Lot 4A within Plan H162644.

4. Copy of DP 232164, which was registered 28 August 1967, where the site became known as Lot 1 within DP 232164 (current legal description).

The additional information confirms that the site was known as Lot 4A at the time of the relevant notation on Council's Building Record and the building on the site was the subject of Council's Building Approval.

The issue of the establishment of existing use rights will be discussed further within this Statement.

3.0 Property Description

The subject allotment is described as No 1B The Serpentine, Bilgola Beach, being Lot 1 within Deposited Plan 232164. The property is zoned part E4 Environmental Living and part SP2 Infrastructure under the Pittwater Local Environmental Plan 2014. The land is also noted as being on the Land Acquisition – Classified Road.

The site is listed as a Heritage Item, specifically "Grove of Cabbage Tree Palms (*Livistona australis*)" located within The Serpentine and Barrenjoey Road (Bilgola Valley). This issue is discussed further within this submission.

The site is identified by Council as being affected by a landslip hazard and as such, a Geotechnical Risk Analysis and Management report has been prepared and accompanies the DA submission and is discussed further within this submission.

The site is also identified by Council as being Bushfire Prone Land and a bushfire risk assessment has been provided with the DA submission.

4.0 Site Description

The property is of an irregular shape and located on the western side of The Serpentine, with a right of carriageway access to the street. The total site area is 1130.70m².

The land falls gradually from west to east. The site has a total fall over approximately 10m over its depth.

Stormwater from the site is currently directed to the street.

The site is currently developed with a modest one and two storey timber and weatherboard dwelling with a tile roof.

The site currently has no formal off street car parking, with an open, informal concrete parking area over the driveway forward of the dwelling.

The details of the site are included on the survey plans prepared by Geomat Engineering Pty Ltd, Reference No 14107-01 & 14107-02, dated 23 February 2015 which accompany the DA submission.



Fig 1: Location of subject site
(Source: Google Maps)

5.0 The Surrounding Environment

The general vicinity of the site is characterised by low density residential development of typically one and two storeys, which enjoy an easterly outlook to Bilgola Beach and the Bilgola Valley.

The area is undergoing change and renewal, with newer, larger contemporary dwellings being constructed in the immediate vicinity.

The form of the dwellings and associated structures is influenced by the sloping terrain and existing tree cover within the vicinity. There are a number of parking structures located forward of the dwelling structures.

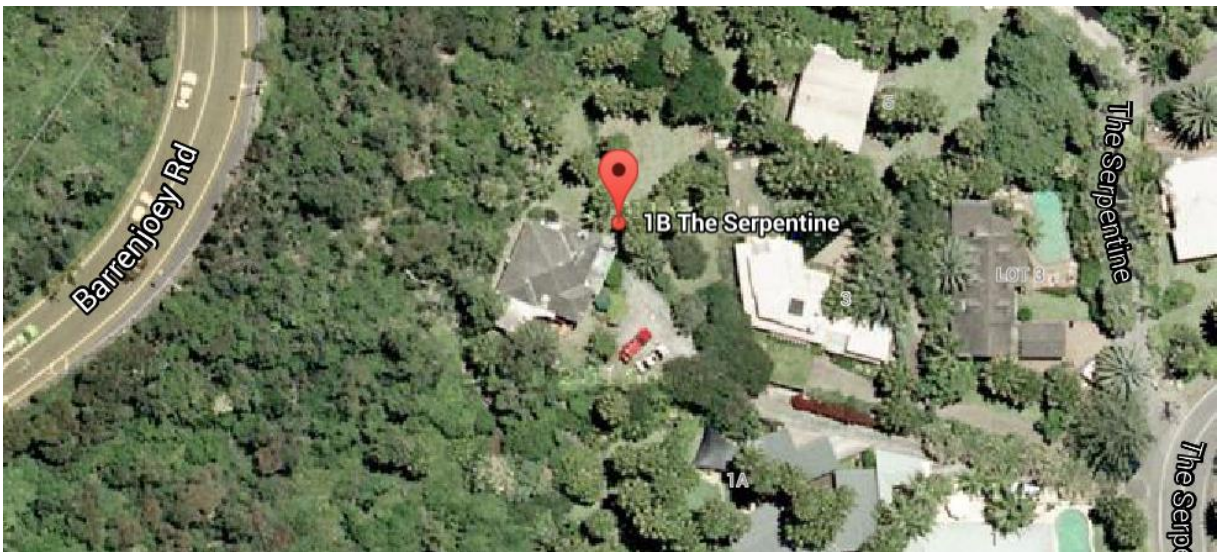


Fig 2: Aerial view of locality
(Source: Google Maps)



Fig 3: View of northern elevation of dwelling, looking south along rear boundary



Fig 4: View of northern elevation of dwelling, looking south-west from northern corner of the site

6.0 Proposed Development

The new works will provide for modest alterations and additions to the existing dwelling. This application seeks a review under S82A of the EPA Act. The proposed works will be substantially the same as originally considered under DA N0185/15.

In particular, the works comprise:

Lower Ground Floor Level

- New storage area and laundry (incorporating existing laundry) with external access from yard area.
- New single carport and turning bay, with access from existing driveway.
- Retention of trees #24 & 25 (See Arborists report).
- Landscaping to driveway and entry area.

Ground Floor Plan

- New addition to southern side of dwelling to provide for an ensuite and walk in robe to existing master suite.
- New low level timber deck to southern side of bedroom extension and deck addition to link to existing entry terrace.
- New addition to northern side of dwelling to provide for a new formal entry and entry courtyard, new living room & studio.
- Internal alterations to provide for a new bathroom/ensuite

The new additions will generally be constructed of timber framing and FC sheeting, together with fire rated panels and a new colourbond steel roof.

New windows and doors will be provided to the existing openings as detailed.

The site is noted as being bushfire prone land. A bushfire risk assessment has been prepared which concludes that the recommended level of compliance under AS 3959-2009 is BAL-FZ.

Accordingly, the design has been prepared to provide for noncombustible construction for the new works, with the planting schedule detailed in the landscape plan to include selected plantings which are listed in Pittwater Council's Littoral Rainforest Plant.

The development will comply with the requirements of AS 3959-2009.

The proposal results in the following indices:

Site Area:	1130.70m ²
Minimum landscape area required:	678.40m ² or 60%
Proposed landscaped area:	648.40m ² or 57.5% (See DCP discussion)

6.0 ZONING AND DEVELOPMENT CONTROLS

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

The proposal meets water, thermal and energy standards required by BASIX. A BASIX certificate has been submitted with the development application.

6.1 Environmental Planning and Assessment Act 1979 & Environmental Planning & Assessment Act Regulation 2000.

The additions and alterations to the existing dwelling are a prohibited use in the Zone SP2 Infrastructure Zone.

This application seeks approval to provide for additions and alterations to the dwelling, which itself was in existence prior to 1961.

The Zone 9 (d) Arterial Road Reservation affectation (Currently SP2 Infrastructure Zone under Pittwater Local Environmental Plan 2014) was initially introduced under Warringah Planning Scheme Ordinance 1963 and affects the rear, western portion of the subject land.

Under subsequent Environmental Planning Instruments (up to and including Pittwater Local Environmental Plan 1993 – Clause 28), consent could be granted for works within the Zone 9(d) Arterial Road Reservation zone.

Pittwater Local Environmental Plan 2014 was gazetted on 27 June 2014 and introduced the split zones affecting the land, being part E4 Environmental Living and part SP2 Infrastructure.

A dwelling house (and hence additions and alterations thereto) became a prohibited use within the SP2 Infrastructure Zone following the gazettal of PLEP 2014.

The additions to the dwelling as it stands within the Pittwater LLEP 2014 zoning map will rely on the establishment of “existing use rights” for the building under Clause 106 of the EPA Act 1979.

Investigations of Council’s records has revealed a Building Record Card (Appendix One) notes weatherboard additions to Lot 4A in 1959.

A supporting letter prepared by Henningham Law (Appendix Two) and dated 16 December 2015 and accompanying attachments confirms that the subject site was known under DP511677 as being Lot 4A within Plan H162644.

A further title extract provided by Henningham Law confirms that the subject site became known under DP 232164, which was registered 28 August 1967, as Lot 1 within DP 232164 (current legal description).

The building has been continually used as single residential dwelling and the continuance of the existing use is protected by Section 107(1) of the Environmental Planning & Assessment Act 1979.

Clause 41 of the Environmental Planning & Assessment Regulation 2000 is applicable to the proposed works to the existing dwelling.

Clause 41(1) states that:

- 41 (1) *An existing use may, subject to this division:*
- (a) be enlarged, expanded or intensified, or*
 - (b) be altered or extended, or*
 - (c) be rebuilt, or*
 - (d) be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act, or*
 - (e) if it is a commercial use—be changed to another commercial use (including a commercial use that would otherwise be prohibited under the Act), or*
 - (f) if it is a light industrial use—be changed to another light industrial use or a commercial use (including a light industrial use or commercial use that would otherwise be prohibited under the Act)*

Clause 42 notes that Development Consent is required for the enlargement, expansion or extension of an existing use.

The utilisation of the existing use right provisions of the Act is necessary in this instance due to the prohibited dwelling use within the SP2 Infrastructure zone affecting the land.

The information supplied by Council's Building Record card and dated 1959 confirm that works to the property were lawfully carried out and in my opinion, establish that the dwelling within the site benefits by the establishment of the existing use provisions as contained within the Act and therefore worthy of a favourable merit based assessment.

More recently Commissioner Roseth provided guidance for the assessment of existing use rights through a four step process under a Planning Principle in *Fodor Investments v Hornsby Shire Council* [2001] NSWLEC 71.

An assessment of the proposal under the Planning Principle is provided below:

How do the bulk and scale (expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

The subject site is zoned part E4 Environmental Living & part SP2 Infrastructure which permits dwelling houses within the E4 Environmental Living zone and forms the predominant use of land in the immediate locality.

The new works will largely maintain the existing generous spatial separation from its neighbours and low scale in terms of height and bulk which characterises this portion of Bilgola Beach.

The subject site is zoned part E4 Environmental Living which permits uses such as dwelling houses, which forms the predominant use of the locality. Whilst the SP2 Infrastructure zone does not permit dwelling house development, it does not accurately reflect the existing and past primarily residential

use of the land and is more related to the past road widening intentions, which are understaff to have been abandoned and will not proceed.

The Pittwater LEP 2014 and the supporting Pittwater 21 Development Control Plan contain provisions restricting bulk and scale for buildings in this locality, by restricting the overall height of a building to a maximum of 8.0m.

The proposal will observe this height control, as the part one and part two storey height will comfortably comply with Council's development standards.

What is the relevance of the building in which the existing takes place?

Commissioner Roseth provided in his judgement:

'Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists.'

It is noted that the proposal seeks to construct additions to the existing single dwelling house and will maintain the existing housing density. The surrounding properties commonly provide for one and two storey low scale single residential developments and in this regard, the proposal is consistent with the varied housing density of the immediate area.

What are the impacts on adjoining land?

The proposal seeks to provide for additions and alterations to the existing building, which are residential in their scale and form. The height and general form of the dwelling will be compatible with the surrounding properties and will not unreasonably affect the views and outlook for the surrounding properties. Given the northerly aspect, excellent solar access will be maintained for the neighbours.

What is the internal amenity?

The proposal will maintain excellent internal amenity for the single dwelling, with the northerly aspect providing for good solar access and natural light. The attached decks and yard areas will allow for private open space with convenient access from the living spaces.

The proposal will allow for perimeter landscape screening to be provided, enhancing privacy for the both the subject and neighbouring dwellings.

It is therefore considered that the proposal as assessed under the Planning Principles for Existing Use Rights is acceptable and should be supported by Council.

6.2 Pittwater Local Environmental Plan 2014

Clause 2.3 Zone Objectives and land Use Table

The subject site is zoned part E4 Environmental Living & part SP2 Infrastructure under the Pittwater LEP 2014.

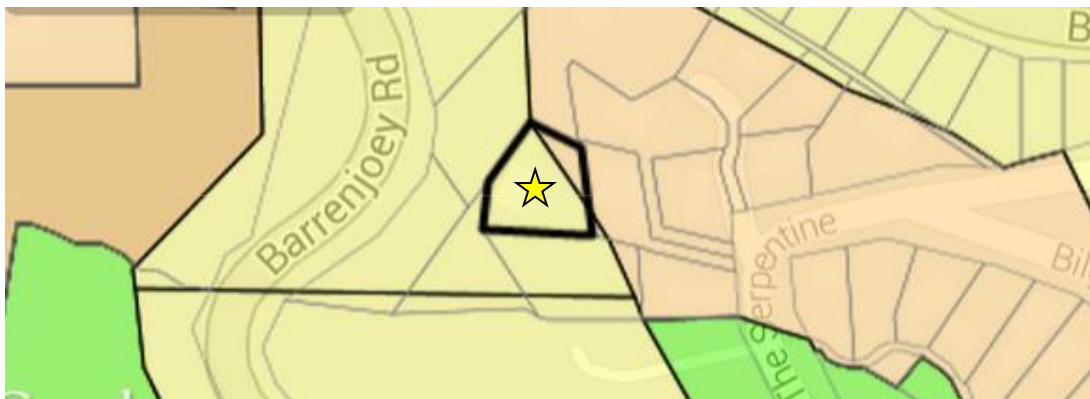


Fig 6: Extract of Pittwater Local Environmental Plan 2014 Zoning Map

The development of and use of the land for residential purposes within the E4 Environmental Living Zone is consistent with the zone objectives, which are noted as:

- *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*

It is considered that the proposed additions to the existing dwelling will be consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing detached style housing within the locality.
- The proposed development respects the scale and form of other new development in the vicinity and therefore complements the locality. The proposal provides for additions to the dwelling, which will not have any substantial impact to the neighbouring properties.
- The setbacks are compatible with the existing surrounding development.
- The proposal does not have any impact on long distance views.

The subject site is also zoned part SP2 Infrastructure under the Pittwater LEP 2014.

It is understood that the SP2 Infrastructure zone is a result of the previous intention of the Road & Maritime Services to widen the “Bilgola Bends” portion of Barrenjoey Road, however these plans have been abandoned.

As discussed within this Statement, the proposal seeks to rely in the existing use rights provisions of Clause 106 of the EPA Act & Regulations 2000.

The development of and use of the land for residential purposes within the SP 2 Infrastructure Zone is prohibited as it is not listed as either a use that is permitted without consent or permitted with Consent in the zoning table.

This application seeks approval for additions and alterations to the existing dwelling, to support the existing single residential use of the site and will rely on the establishment of “existing use rights” for the building.

The existing dwelling is believed to have been erected over seventy years ago and has been continuously used for residential purposes. The current owners have used for the property for residential purposes for in excess of twenty years.

Clause 4.3 – Height of Buildings

The maximum building height in this portion of Bilgola is 8.0m.

Given the modest height of the new works, the proposal will comply with the maximum height control and will present a modest single and part two storey scale to the adjacent properties and to the surrounding public domain.

Clause 5.1 relates to Relevant Acquisition Authority.

Clause 5.1 notes as its objectives:

- *The objective of this clause is to identify, for the purposes of section 27 of the Act, the authority of the State that will be the relevant authority to acquire land reserved for certain public purposes if the land is required to be acquired under Division 3 of Part 2 of the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) (the owner-initiated acquisition provisions).*
- *The authority of the State that will be the relevant authority to acquire land, if the land is required to be acquired under the owner-initiated acquisition provisions, is the authority of the State specified below in relation to the land shown on the Land Reservation Acquisition Map (or, if an authority of the State is not specified in relation to land required to be so acquired, the authority designated or determined under those provisions).*

Type of land shown on Map	Authority of the State
Zone SP2 Infrastructure and marked “Classified road”	Roads and Maritime Services

- *Development on land acquired by an authority of the State under the owner-initiated acquisition provisions may, before it is used for the purpose for which it is reserved, be carried out, with development consent, for any purpose.*

Clause 5.1A Development on land intended to be acquired for public purpose

Clause 5.1A notes as its objectives:

- *The objective of this clause is to limit development on certain land intended to be acquired for a public purpose.*
- *This clause applies to land shown on the Land Reservation Acquisition Map and specified in Column 1 of the table to this clause and that has not been acquired by the relevant authority of the State specified for the land in clause 5.1.*
- *Development consent must not be granted to any development on land to which this clause applies other than development for a purpose specified opposite that land in Column 2 of that table.*

Column 1

Land

*Zone SP2 Infrastructure and marked
"Classified road"*

Column 2

Development

Roads

In this regard, it is understood that the future road widening plans of the RMS have been abandoned and this clause should not have determining weight in the consideration of this application.

Clause 5.9 relates to the preservation of trees or vegetation.

Clause 5.9(7) seeks to achieve the following objectives:

- (7) *A permit under this clause cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation:*
- (a) *that is or forms part of a heritage item or that is within a heritage conservation area,*
or
 - (b) *that is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance,*
unless the Council is satisfied that the proposed activity:
 - (c) *is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area, and*
 - (d) *would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.*
- Note.** *As a consequence of this subclause, the activities concerned will require development consent. The heritage provisions of clause 5.10 will be applicable to any such consent.*

The proposal will not see the any loss of any significant vegetation. An arborist's report has been prepared by Bluegum Tree Care and Consultancy which notes 18 trees of Low-High Retention Value to be retained, with a further 1 x High Retention Value tree and 1 x Medium Retention Value to be retained on site.

The development will require the removal of a total of 6 x Medium – Low Retention Value trees to accommodate the new works. The Landscape Plan prepared by Eclipse Landscapes notes the

inclusion of further screen planting, which will assist in largely maintaining the existing levels of privacy and amenity between the properties.

Clause 5.10 relates to Heritage conservation

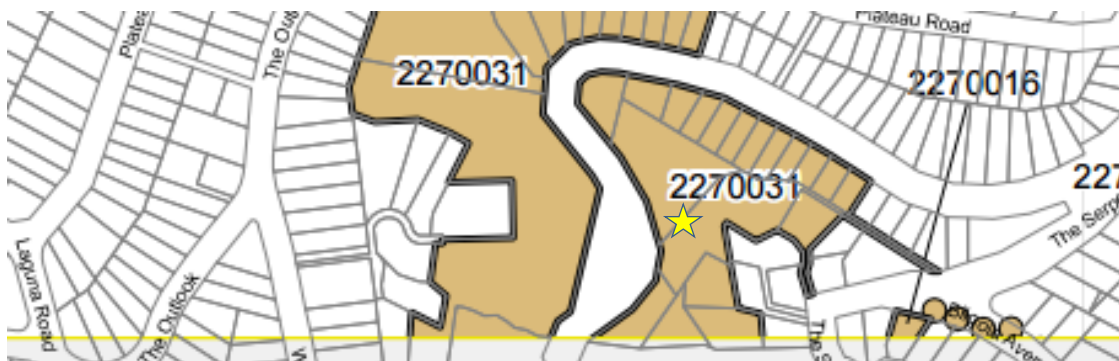


Fig 7: Extract of Pittwater Local Environmental Plan 2014 Zoning Map

The clause seeks to achieve the following objectives:

- to conserve the environmental heritage of Pittwater,
- to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- to conserve archaeological sites,
- to conserve Aboriginal objects and Aboriginal places of heritage significance.

The site is listed as a Heritage Item, specifically “Grove of Cabbage Tree Palms (*Livistona australis*)” located within The Serpentine and Barrenjoey Road (Bilgola Valley).

Suburb	Item name	Address	Property description	Significance	SHI No
Bilgola	Grove of Cabbage Tree Palms (<i>Livistona australis</i>)	The Serpentine and Barrenjoey Road (Bilgola Valley)	Lots 139–144, 336–338, 547–557, 566 and 569, DP 16902; Lots 1, 4, DP 232164 ; Lot 2, DP 395158; Lot 3, DP 511677; Lot 4C, DP 413781; Lot 300, DP 1035587; Lot 7328, DP 1164236; Part Lot 7327, DP 1164236	Local	2270031

Fig 8: Extract of Schedule 5 Environmental heritage

The works will not have any significant impact on the Cabbage Tree Palm species within the site and within the Bilgola Valley. Only one Cabbage Tree Palm within the site is affected, and it is to be relocated within the site to stand clear of the proposed carport location.

The heritage value of the locality will not be unreasonably diminished through the construction of the modest alteration and additions to the dwelling.

Clause 7.1 relates to Acid sulfate soils. The proposal will not see any significant excavation of the site and as such, no acid sulfate soils are disturbed.

Clause 7.2 relates to earthworks. The proposal will not require any significant excavation of the site other than for the slight benching of the site for the store room under the garage. A Geotechnical Risk Analysis and Management report has been prepared and accompanies the DA submission and addresses the extent of the proposed earthworks.

All cut areas will be suitably retained in accordance with the structural engineer's design and under the supervision of the Geotechnical Engineer.

Clause 7.6 – Biodiversity protection

The land is noted within Council's Biodiversity mapped area.

- (1) The objective of this clause is to maintain terrestrial, riparian and aquatic biodiversity by:*
- (a) protecting native fauna and flora, and*
 - (b) protecting the ecological processes necessary for their continued existence, and*
 - (c) encouraging the conservation and recovery of native fauna and flora and their habitats.*

The development will not see any substantial disturbance to the existing flora, with no significant High Retention Value trees or natural vegetation to be removed. The existing vegetation outside of the new disturbed footprint will be retained and can be supplemented by new locally occurring species as directed by Council.

Clause 7.7 – Geotechnical Hazards

The Geotechnical Risk Analysis and Management report prepared by Barker Harle Consulting Engineers, BH Ref: 5702, dated 10 April 2015 has been provided to address the provisions of this Clause.

The report concludes that the proposed developments are suitable for the site and the site can achieve the Acceptable Risk Management Criteria of Council's Geotechnical Risk Policy.

There are no other provisions of the Pittwater LEP 2014 that are relevant to the proposed works.

6.3 Pittwater 21 Development Control Plan 2014

Council's Pittwater 21 DCP Part B (General Controls), Part C (Design Criteria) and Part D Newport Locality Statement provides a range of outcomes and controls which form the primary criteria for the control for development within the subject locality.

6.3.1 Shaping Development – Desired Character

The desired outcomes for the Bilgola Locality, specifically The Bilgola Beach Area as identified in the Bilgola Locality Map 2, in which this site falls, are as follows:

A4.3 Bilgola Locality

The Bilgola locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

The three distinct areas within the Bilgola locality (as identified in Bilgola Locality Map 2) will, by their unique differences, require differing and distinct degrees of control to ensure the individual characteristics and essence of each area are maintained and enhanced:

The Bilgola Beach Area:

Is a visual catchment that is environmentally significant and extremely susceptible to degradation. Its unique local and regional significance requires protection and preservation, and further investigation for listing as an environmental protection and/or conservation area. Strict development controls will apply to this area (including a reduced building height limit to 8m) to ensure that its unique qualities are preserved through development that is sensitive to the area's characteristics. A Visual Protection Area (as identified in Bilgola Locality Map 3) contains particular controls to minimise the impact of development that is visible from public places. The beach, valley and headlands represent a quiet uncrowded environment with no formal commercial activity. Its unique natural, unspoilt, non-commercial character makes it attractive to local residents and visitors alike and reflects the relaxed beach lifestyle. The local topography and natural features, notably the beachfront, headlands and stands of cabbage tree palms in the valley demand different sets of constraints on building design.

Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy

and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

Natural scenic views from the Bicentennial Walkway will be preserved.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

It is considered that the proposal is consistent with the desired character of the locality by providing for minor additions and alterations to the dwelling, together with a new low pitched roof form, which are consistent with the scale and style of the newer development in the vicinity.

The proposal will have little impact on the existing tree canopy and will provide an appropriate area of soft landscaping.

The proposal has been designed to reflect the existing setbacks provided to all boundaries existing in the immediate area.

The building materials and colours will harmonise with the natural environment and will not detract from the existing locality.

6.3.2 Part B General Controls

The General Controls applicable to the proposed additions and alterations are summarised as:

B1.1 Heritage Conservation – Heritage items, heritage conservation areas and archaeological sites listed in PLEP 2014

The controls seek to achieve the outcomes:

Conservation of items and areas of local heritage significance. (S)

As discussed, the proposal will see the relocation of one Cabbage Tree Species, with the majority of the Cabbage Tree Palms within the site and the surrounding locality being unaffected. The heritage value of the area will not be unreasonably affected by the proposed additions and alterations to the dwelling.

B3.1 Landslip Hazard

The controls seek to achieve the outcomes:

Protection of people. (S)

Protection of the natural environment. (En)

Protection of private and public infrastructure and assets. (S)

The controls seek to ensure that all development complies with Council's Interim Geotechnical Risk Management Policy for Pittwater. A report has been provided for Council's consideration, prepared by Barker Harle Consulting Engineers, Reference No BH REF: 5702, dated 12 April 2015 which concludes that the site is stable subject to the recommendations contained within the report.

The works will be constructed in accordance with the recommendations contained within the Geotechnical Report.

B3.2 Bushfire Hazard

The controls seek to achieve the outcomes:

Protection of people. (S)

Protection of the natural environment. (En)

Protection of private and public infrastructure and assets. (Ec)

A Bushfire Risk assessment has been prepared to accompany the DA submission. The development will comply with the requirements of AS 3959-2009.

B4.17 Littoral Rainforest – Endangered Ecological Community

The controls seek to achieve the outcomes:

The conservation of littoral rainforest vegetation in Pittwater. (En)

The regeneration and /or restoration of littoral rainforest. (En)

The preservation of littoral rainforest as habitat for fauna. (En)

The proposal will not have any direct impact on any substantial tree cover and landscaped area, with managed re-planting of the site with locally occurring species contemplated.

B4.22 Preservation of Trees or Bushland Vegetation

The controls seek to achieve the outcomes:

To protect and enhance the amenity that trees and/or bushland vegetation provide.

To protect and enhance the scenic value and character that trees and/or bushland vegetation provide (En, S).

To protect, enhance and account for the contribution trees and/or bushland vegetation provide to the ecological value and biodiversity of Pittwater, including habitat for locally native plant and animal species, threatened species populations and endangered ecological communities (En).

To promote the benefits that corridors of trees and/or bushland vegetation provide for the movement of flora and fauna (En, S).

The development will not see any substantial disturbance to the existing flora, with no significant High Retention Value trees or natural vegetation to be removed. The existing vegetation outside of the new disturbed footprint will be retained and can be supplemented by new locally occurring species as directed by Council.

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

The controls seek to achieve the outcomes:

No increase in pollutants discharged with stormwater into the environment. (En)

Development is compatible with Water Sensitive Urban Design principles. (En)

Roofwater from the new roof areas will be connected to the existing system which directs stormwater to the street gutter. As there is no substantial change to the runoff characteristics of the site, the retention of the existing arrangements is reasonable in this instance.

B5.12 Stormwater Discharge Systems and Natural Watercourses

The controls seek to achieve the outcomes:

The integrity of stormwater drainage systems, easements and natural watercourses are maintained. (En)

Stormwater flows including overland flow have continuity and are not impeded. (En)

The stormwater from the roof areas will be connected to the existing system which directs stormwater to the street gutter by gravity.

As such, there will not be any substantial change to the existing stormwater discharge arrangements.

B6.1 Access driveways and works on the Public Road Reserve – Low Density Residential

The controls seek to achieve the outcomes:

Safe and convenient access. (S)

Adverse visual impact of driveways is reduced. (En)

Pedestrian safety. (S)

An effective road drainage system. (En, S)

Maximise the retention of trees and native vegetation in the road reserve. (En, S)

The proposal will provide for a new carport over the existing driveway to formalise the parking arrangements. The existing driveway from The Serpentine will be retained in accordance with Council's driveway standards.

B6.5 Off-street Vehicle Requirements – Low Density Residential

The controls seek to achieve the outcomes:

Safe and convenient parking (En,S)

The controls require a minimum of 2 parking spaces for each dwelling. The proposal will provide for two off street spaces within the new double carport, with area to be provided to allow vehicles to readily turn within the site to enter and leave in a forward direction.

B8.1 Construction & demolition – excavation and landfill

The controls seek to achieve the outcomes:

Site disturbance is minimised.(En)

Excavation and construction not to have an adverse impact. (En)

Excavation operations not to cause damage on the development or adjoining property. (S)

There will not be any significant excavation of the site or disturbance to the exterior ground levels. It is anticipated that all structural loads from the new works will bear off the existing framing, with no new footings required.

B8.2 Construction & Demolition – Erosion and Sediment Management

The controls seek to achieve the outcomes:

Waterways, coastal areas, watercourses, drainage systems and the public domain are protected from the transportation of sedimentation from development sites. (En)

Reduction of waste throughout all phases of development. (En)

Public safety is ensured. (S)

Protection of the public domain. (S, En)

As required, appropriate sedimentation controls will be implemented throughout construction to prevent transportation of sediment to adjoining properties.

6.3.3 Part C Design Criteria

The Design Criteria applicable to the proposed development and are summarised as:

C1.1 Landscaping

The controls seek to achieve the outcome:

- A built form softened and complemented by landscaping. (En)*
- Landscaping reflects the scale and form of development. (En)*
- Retention of canopy trees by encouraging the use of pier and beam footings. (En)*
- Development results in retention of existing native vegetation. (En)*
- Landscaping results in the long-term retention of Pittwater's locally native tree canopy. (En)*
- Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species (En)*
- Landscaping enhances habitat and amenity value. (En, S)*
- Landscaping results in reduced risk of landslip. (En, Ec)*
- Landscaping results in low watering requirement. (En)*

The proposal retains the majority of the existing areas of soft landscaping on the site. The site will maintain its contribution to the landscaped character of the locality.

C1.2 Safety and Security

The controls seek to achieve the outcomes:

- On-going safety and security of the Pittwater community. (S)*
- Opportunities for vandalism are minimised. (S, Ec)*
- Inform applicants of Council's requirements for crime and safety management for new development. (S)*
- Improve community awareness in relation to Crime Prevention through Environmental Design (CPTED), its principle strategies and legislative requirements (S)*
- Identify crime and safety priority areas in Pittwater LGA (S, Ec)*
- Improve community safety and reduce the fear of crime in the Pittwater LGA (S)*
- Develop and sustain partnerships with key stakeholders in the local area who are involved in community safety. (S)*

The access to the main entry stairs to the dwelling from the driveway is maintained. With the battle-axe handle shape of the site, direct views from the entry door to the street are not possible from inside the dwelling.

C1.3 View Sharing

The controls seek to achieve the outcomes:

- A reasonable sharing of views amongst dwellings. (S)*
- Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced. (S)*

Canopy trees take priority over views. (En, S)

The subject and adjoining properties currently enjoy a filtered outlook to Bilgola Beach and the ocean. There are no properties immediately to the rear of the property, with the Barrenjoey Road reserve to the rear and upslope of the site. The new works will not unreasonably impact on the outlook or views for the neighbours.

C1.4 Solar Access

The controls seek to achieve the outcomes:

Residential development is sited and designed to maximise solar access during mid-winter. (En)

A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)

Reduce usage and/dependence for artificial lighting. (En)

The required controls to achieve the outcomes are to ensure that private open spaces of the subject and adjoining dwellings maintain a minimum of 3 hours of solar access in mid winter.

Given the east-west orientation of the subject and neighbouring properties, together with the relatively low level of the dwelling, new works will not unreasonably remove solar access to the primary living spaces of any neighbouring properties.

C1.5 Visual Privacy

The controls seek to achieve the outcomes:

Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)

A sense of territory and safety is provided for residents. (S)

The required controls to achieve the outcomes are to ensure that the private open space, recreation areas and living rooms within 9m of a development are suitably protected to limit the effects of direct overlooking.

The new floor areas and the extension of the existing terrace areas will not unreasonably overlook the neighbours, with the existing levels of amenity enjoyed by the neighbours to be maintained.

C1.6 Acoustic Privacy

The controls seek to achieve the outcomes:

Noise is substantially contained within each dwelling and noise from any communal or recreation areas are limited. (S)

Noise is not to be offensive as defined by the Protection of the Environment Operations Act 1997, including noise from plant, equipment and communal or recreation areas (S)

The required controls to achieve the outcomes are to ensure that noise sensitive living areas and bedrooms are located away from major noise sources.

Given the residential nature of the works, there will not be any significant Impact on the surrounding locality in terms of acoustic privacy. The works will maintain the current ample separation to living areas of adjoining properties, thereby maintaining existing levels of acoustic privacy.

C1.7 Private Open Space

The controls seek to achieve the outcomes:

Dwellings are provided with a private, usable and well-located area of private open space for the use and enjoyment of the occupants. (S)

Private open space is integrated with, and directly accessible from, the living areas of dwellings. (S)

Private open space receives sufficient solar access and privacy (En, S).

The required controls to achieve the outcomes are to ensure that dwellings are provided suitable private open space with an area and at a grade which will facilitate outdoor private recreation. The proposal retains the existing areas of private open space, which are largely provided as elevated, private balconies to supplement the garden areas at ground floor level.

C 1.12 Waste and Recycling Facilities

The controls seek to achieve the outcomes:

Waste facilities are accessible and convenient, and integrate with the development. (En)

Waste facilities are located such that they do not adversely impact upon amenity of the land adjoining development or natural environment. (En, S)

The required controls to achieve the outcomes are to ensure that adequate area remains for the storage of waste and recyclable materials. There is sufficient area surrounding the dwelling for on-site storage of waste and recyclables, with the waste removed by Council contractors via the household garbage service.

6.3.4 Part D Design Criteria

The **D3 Bilgola Locality Statement** contains a number of outcomes for development. The proposal has been assessed in regard to the Locality Statement and is summarised in the following table.

In support of the proposal, it is considered that this proposal is well designed, comprehensive and consistent with the community's vision for development in Pittwater in that it is:

- Proposing a form of development which is compatible with the existing residential character of the area by maintaining an appropriate development scale which is compatible with the vicinity.
- The proposal maintains existing views and amenity to adjoining properties.
- The proposal will not result in additional run-off to adjoining properties or public spaces.
- The development will not place additional demands on local infrastructure or on the sewage disposal system for the site.

A summary of the DCP controls for the **D3 Bilgola Locality** is provided below:

D3.1 Character As Viewed From A Public Place

The control seeks to achieve the outcomes:

To achieve the desired future character of the Locality.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)

To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.

The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)

High quality buildings designed and built for the natural context and any natural hazards. (En, S)

Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum. (S)

To preserve and enhance district and local views which reinforce and protect Pittwater's natural context.

To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures being a secondary component.

To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (En, S)

The required controls to achieve the outcomes are to ensure that the building maintains a compatibility with the locality through appropriate design relief including roof forms textures, materials, the arrangement of windows, modulation of wall and roof planes, spatial separation, landscaping etc.

The proposal will provide for modest additions and alterations to the existing dwelling at the existing floor levels and incorporating a new low pitch roof form. The dwelling is well screened from any public place and is not prominently viewed from The Serpentine.

The proposed additions to the dwelling are well articulated to provide visual interest and reduce bulk when viewed from the neighbours. In addition, the existing landscaping will ensure that the proposed works will be interspersed with the natural landscape setting.

D3.2 Scenic Protection – General

The controls seek to achieve the outcomes:

Achieve the desired future character of the Locality.

Scenic bushland and geographical landforms are the predominant features of Bilgola with the built form being the secondary component of the visual catchment. (En, S)

Preserve scenic quality as part of the recreational amenity. (S)

The proposal will maintain a compatible bulk and scale to its neighbours and will also retain the opportunity for screen planting to its curtilage, which will assist in respecting the existing bushland character of the area when viewed from a distance.

D3.3 Building colours and materials

The controls seek to achieve the outcomes:

Achieve the desired future character of the Locality.

The development enhances the visual quality and identity of the streetscape. (S)

To provide attractive building facades which establish identity and contribute to the streetscape.

To ensure building colours and materials compliments the visual character of its location with the natural landscapes of Pittwater.

The colours and materials of the development harmonise with the natural environment. (En, S)

The visual prominence of the development is minimised. (S)

Damage to existing native vegetation and habitat is minimised. (En)

The required controls to achieve the outcomes are to ensure that the external colours and materials shall be dark and earthy tones as indicated within the DCP.

It is considered that the development is appropriate as the proposal will utilise recessive finishes and colours which are compatible with the DCP, existing building finish and the surrounding properties.

D3.6 Front Building Line

The controls seek to achieve the outcomes:

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

Equitable preservation of views and vistas to and/or from public/private places. (S)
The amenity of residential development adjoining a main road is maintained. (S)
Vegetation is retained and enhanced to visually reduce the built form. (En)
Vehicle manoeuvring in a forward direction is facilitated. (S)
To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.
To encourage attractive street frontages and improve pedestrian amenity.
To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.

The control to achieve this outcome is to provide a setback of 6.5m, or the established building line to the street frontage.

The site is accessed from The Serpentine by a right of way driveway, which results in all new works being well in excess of the 6.5m front setback.

D3.7 Side and rear building line

The controls seek to achieve the outcomes:

To achieve the desired future character of the Locality. (S)
The bulk and scale of the built form is minimised. (En, S)
Equitable preservation of views and vistas to and/or from public/private places. (S)
To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.
To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)
Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)
Flexibility in the siting of buildings and access. (En, S)
Vegetation is retained and enhanced to visually reduce the built form. (En)
To ensure a landscaped buffer between commercial and residential zones is established. (En, S)

The relevant controls to achieve this outcome are to maintain a minimum side boundary setback of 2.5m for at least one side and min 1.0m setback for the other side.

The proposed new works will stand from 1100mm to the southern boundary and to within 1010mm to the rear, north-western boundary.

The new carport will extend to the common southern boundary, however the existing boundary fence and dense planting zone within the neighbouring property, combined with the separation from the neighbouring dwelling reduces any significant impact resulting from the structure and its proximity to the boundary.

Given the existing building footprint and the fact that there are no adjoining properties to the west or north-west, it is considered that the site characteristics warrant some flexibility in the application of Council's side setback controls.

The articulated form of the design and the varying side setbacks are considered to be adequate in this instance and will achieve the outcomes of Clause D3.7.

D3.11 Building Envelope

The controls seek to achieve the outcomes:

To achieve the desired future character of the Locality.

To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.

To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.

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

Equitable preservation of views and vistas to and/or from public/private places. (S)

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)

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

The required controls to achieve the outcomes are to maintain the development within a height envelope which provides for a height of 3.5m with an angle projected at 45°.

Given the minor slope of the site to the east and the modest single storey height of the new works, the proposed additions to the dwelling will comply with the building height plane controls.

The building will continue to maintain appropriate access to the available views and levels of solar access in accordance with Council's policy for the primary living and outdoor recreation spaces for both the neighbouring and subject dwellings.

D3.11 Landscaped Area – Environmentally Sensitive Land

The controls seek to achieve the outcomes:

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

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

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

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

Conservation of natural vegetation and biodiversity. (En)

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

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

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

The required controls to achieve the outcomes are to limit residential development in order to maintain a minimum landscaped area of 60% of the site area.

The proposal will retain a soft landscaped area of 57.5% of the site, without the application of any available concessions for functional outdoor recreation space. It is noted that the driveway configuration at the head of the right of way access driveway contributes significantly to the numerical non-compliance, however the extent of the driveway allows for turning and manoeuvring to permit vehicles to enter and leave in a forward direction.

As this site is not prominently viewed from the public areas in The Serpentine or from the neighbouring properties, the current planting and tree cover is considered to be adequate to screen the built form.

D3.14 Construction, retaining walls, terracing and undercroft areas

The controls seek to achieve the outcomes:

To achieve the desired future character of the Locality.

To protect and minimise disturbance to natural landforms.

To encourage building design to respond sensitively to natural topography.

The proposal satisfactorily responds to the topography of the site. The works will not see any significant excavation of the site.

The excavated cut areas will be suitably retained in accordance with the directions of the Structural and Geotechnical Engineer.

7.0 Matters for Consideration under Section 79c of The Environmental Planning and Assessment Act, 1979

7.1 The provisions of any environmental planning instrument

The proposal is subject to the provisions of the Pittwater Local Environmental Plan 2014 and the relevant supporting Council policies.

Given the mixed E4 Environmental Living Zone & SP2 Infrastructure Zone, the proposal seeks to rely on the Existing Use Rights provisions of the Environmental Planning & Assessment Act 1979 & The Regulations to allow for the continuation of the existing non-conforming residential use and the proposed additions to support the primary use of the land for residential purposes.

It is considered that the provisions of this environmental planning instrument have been satisfactorily addressed within this report and that the proposal achieves compliance with its provisions.

There are no other environmental planning instruments applying to the site.

7.2 Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

There are no draft instruments applying to the land.

7.3 Any development control plan

The development has been designed to comply with the requirements of Council's Pittwater 21 Development Control Plan 2014.

The application has been prepared having regard to the requirements of Part B, Part C and Part D of the Pittwater 21 DCP.

It is considered that the proposed design respects the desired character objectives of the DCP in that it reinforces the existing residential character of the area and is compatible with the existing uses in the vicinity.

7.4 Any matter prescribed by the regulations that apply to the land to which the development relates.

No matters of relevance are raised in regard to the proposed development.

7.5 The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

It is considered that the proposal, which seeks consent for additions and alterations to the existing dwelling, will not unreasonably impact upon the amenity of adjoining properties or upon the

character of the surrounding area. It is considered that the resultant development is compatible with and will complement the residential character of the area.

The proposal is considered to be well designed having regard to the relevant provisions of the Council's PLEP 2014 and Council's Codes and Policies, in particular the Pittwater 21 DCP 2014 and the Bilgola Locality Statement.

7.6 The suitability of the site for the development

The subject land is currently zoned part E4 Environmental Living & part SP2 Infrastructure under the Pittwater Local Environmental Plan 2014 and as the future road widening intentions of the RMS have been abandoned, it is considered suitable for the proposed development.

7.7 Submissions made in accordance with this Act or the regulations

This is a matter for Council in the consideration of this proposal.

7.8 The public interest

The proposal will not impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered to be within the public interest.

8.0 Conclusion

The revised proposal appropriately addresses the reasons for refusal detailed in Council's Notice of Determination dated 25 January 2016.

This submission seeks a review of the determination in accordance with Section 82(a) of the Environmental Planning & Assessment Act 1979.

It is considered that the additional information to support the position that the development was lawful at the time of its construction in or prior to 1959 should satisfy Council that the property enjoys the benefit of existing rights as detailed under part 5 of the EPA Regulations 2000.

Accordingly, we seek Council's consent under Clause 42 of the EPA regulations 2000.

The proposal for the additions and alterations to the existing dwelling is consistent with the aims and provisions of Council's Codes and Policies. The proposal is considered to have been well designed and such that it will provide a pleasant and enjoyable living environment for the residents in a location which is suited to this form of development.

The area will be enhanced by a quality development, which has been specifically designed to respect the constraints of the site and respond in a positive manner to take advantage of the opportunities presented by the site.

In summary, the proposal has satisfactorily addressed the heads of consideration under Section 79C of the Environmental Planning and Assessment Act and, specifically, the aims and objectives and planning controls of Pittwater LEP 2014.

We commend the proposal to Council as being worthy of consent.

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Appendix 1 – 1959 Pittwater Council Building Record Card

Appendix 2 – Henningham Law letter 16 December 2015