

STATEMENT OF ENVIRONMENTAL EFFECTS

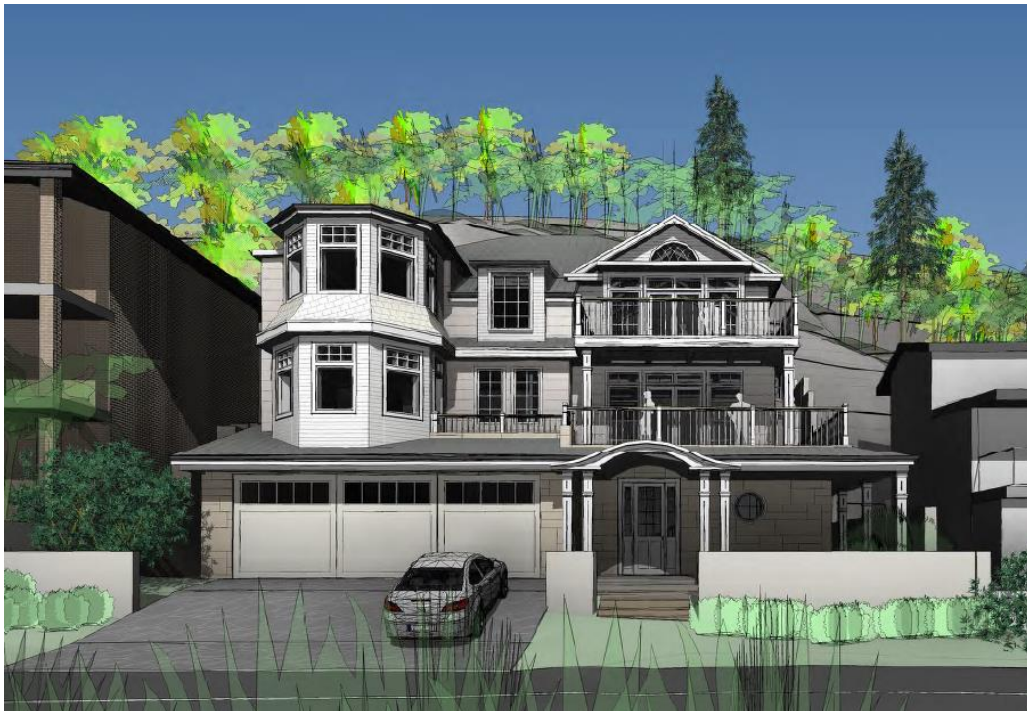
**FOR THE PROPOSED DEMOLITION OF THE EXISTING STRUCTURES
AND THE CONSTRUCTION OF A NEW DWELLING WITH ATTACHED
GARAGE AND ASSOCIATED LANDSCAPING**

LOCATED AT

9 OCEAN ROAD, PALM BEACH

FOR

JOHN BUBB & CHRISTINA NEUMANN-BUBB



**Prepared
January 2020**

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1.0 Introduction

This Statement of Environmental Effects accompanies details prepared on behalf of John Bubb & Christina Neumann-Bubb by Map Architecture + Interiors, Project No. 1907, variously dated to detail the proposed demolition of the existing structures and the construction of a new dwelling with attached garage and associated landscaping at **9 Ocean Road, Palm Beach**.

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*
- *State Environmental Planning Policy (Coastal Management) 2018*
- *Pittwater Local Environmental Plan 2014*
- *Pittwater 21 Development Control Plan 2014*

2.0 Property Description

The subject allotment is described as 9 Ocean Road, Palm Beach, being Lot 22 within Deposited Plan 11552 and is zoned E4 Environmental Living under the Pittwater Local Environmental Plan 2014.

The site is noted as being Acid Sulfate Soils Class 5.

The site is noted on Council's Geotechnical Hazard Map (W Hazard H1) and the Coastline Hazard Map (D Wave Inundation). The issue will be discussed further within this submission and a Coastline Risk Management Report prepared by Horton Coastal Engineering, dated 4 January 2020.

A small portion of the north-eastern corner of the site is identified as Low Risk Flood Prone Land. This matter will be discussed further within this statement.

There are no other hazards affecting this site.

The site is noted as being within the Coastal Environment Area and Coastal Use Area under the provisions of the SEPP (Coastal Management) 2018. This will be discussed further within this statement.

3.0 Site Description

The site is an irregular shaped allotment located on the western side of Ocean Road.

The site is generally irregular in shape and has a total frontage of 21.44m to Ocean Road and northern and southern side boundaries measuring 64.445m and 48.095m respectively. The angled rear boundary measures 26.515m. The total site area is 1189m².

The bottom portion of the site has a relatively gentle slope and supports the existing two storey dwelling.

The land has a general fall to the east, with stormwater from the roof areas directed to Ocean Road. The site has a total fall of 30.8m over its length or approximately 47%.

The site contains an existing one and two storey dwelling and over garaging.

Vehicular access to a site is provided via a paved driveway from Ocean Road.

The details of the lots which comprise the parcel are contained within the survey report prepared by Adam Clerke Surveyors Pty Ltd, Reference No. 819B, dated 21 August 2019, which accompanies the DA submission.



Fig 1: Location of Subject Site
(Source: Google Maps)



Fig 2: View of subject site and existing dwelling, with current driveway access from Ocean Road, looking south – west



Fig 3: View of neighbouring dwelling at No 8 Ocean Road, looking west



Fig 4: View of subject site and neighbouring dwelling at No 10 Ocean Road, looking west



Fig 5: View of neighbouring dwelling at No 10 Ocean Road, looking west



Fig 6: View of subject dwelling and streetscape to the south of the site, looking south-west

4.0 The Surrounding Environment

The general vicinity of the site is characterised by irregular shaped allotments within a natural setting, with a mix of low density residential developments within landscaped settings, the design of which reflects the sloping terrain and significant ocean vistas and retains a dominance of natural features and vegetation.

The immediate area is characterised by two and three level dwellings facing the beach, with reduced front setbacks being a feature and a response to the more steeply sloping land at the rear of the site.



Fig 7: Aerial Photograph
(Source: Google Maps)

5.0 Proposed Development

As detailed within the accompanying plans, the proposal seeks to provide for the demolition of an existing dwelling and construction of a new three storey dwelling and attached garage.

The new works will comprise:

Level 1

- Proposed new Level 1 to provide for entry, wet room, sauna, bin storage, battery room, water tanks, internal access stairs and lift shaft
- Proposed new double garage to provide for car parking and store/cellar

Level 2

- Proposed new Level 2 to provide for bedroom 2 with walk-in robe and ensuite, bedroom 3 with ensuite, media room, sitting room, WC, internal access stairs, lift shaft and balcony

Level 3

- Proposed new Level 3 to provide for open plan living, dining and kitchen with butlers, laundry, WC, sewing room, front balcony, rear terrace, bedroom 1 with ensuite and walk-in robe, internal access stairs, lift shaft and balcony

External Works

- Proposed new paved driveway
- Retaining walls within rear yard

The proposed new dwelling provides a contemporary form, with articulated wall lines and modulated elements which provide visual interest and reduce the bulk and scale of the development.

The external colours and finishes of the new works will comprise weatherboard cladding and sandstone cladding. The earthy tones of the proposed dwelling will ensure the development is in keeping with the landscaped character of the locality.

The proposed external finishes have been detailed within Sheet DA-200 of the architectural plans.

The development indices for the development are summarised as:

Site Area	1189m ²
Required landscaped area	60% or 713.4m ²
Proposed landscaped area	55% or 659.6m ² (exclusive of 6% functional open space allowance - See DCP discussion)

6.0 Zoning and Development Controls

6.1 State Environmental Planning Policy No. 55 – Remediation of Land

SEPP 55 – Remediation of Land and in particular Clause 7(1)(a) suggests that a consent authority must not grant consent to the carrying out of any development on land unless it has considered whether the land is contaminated.

Given the history of residential use of the land, the site is not considered to be subject to contamination and further investigation is not required at this stage.

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

The proposal provides for a new dwelling, and a BASIX certificate has been prepared for this submission.

6.3 State Environmental Planning Policy (Coastal Management) 2018

The subject site is identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is applicable to the proposed development.

The stated Aim of the Policy under Clause 3 is to:

The aim of this Policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016, including the management objectives for each coastal management area, by:

- (a) managing development in the coastal zone and protecting the environmental assets of the coast, and
- (b) establishing a framework for land use planning to guide decision-making in the coastal zone, and
- (c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.

The Coastal Management Act 2016 states within Clause 3:

The objects set out in Clause 3 of the Coastal Management Act 2016 are:

- (a) to protect and enhance natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem integrity and resilience, and
- (b) to support the social and cultural values of the coastal zone and maintain public access, amenity, use and safety, and
- (c) to acknowledge Aboriginal peoples' spiritual, social, customary and economic use of the coastal zone, and
- (d) to recognise the coastal zone as a vital economic zone and to support sustainable coastal economies, and
- (e) to facilitate ecologically sustainable development in the coastal zone and promote sustainable land use planning decision-making, and

- (f) to mitigate current and future risks from coastal hazards, taking into account the effects of climate change, and
- (g) to recognise that the local and regional scale effects of coastal processes, and the inherently ambulatory and dynamic nature of the shoreline, may result in the loss of coastal land to the sea (including estuaries and other arms of the sea), and to manage coastal use and development accordingly, and
- (h) to promote integrated and co-ordinated coastal planning, management and reporting, and
- (i) to encourage and promote plans and strategies to improve the resilience of coastal assets to the impacts of an uncertain climate future including impacts of extreme storm events, and
- (j) to ensure co-ordination of the policies and activities of government and public authorities relating to the coastal zone and to facilitate the proper integration of their management activities, and
- (k) to support public participation in coastal management and planning and greater public awareness, education and understanding of coastal processes and management actions, and
- (l) to facilitate the identification of land in the coastal zone for acquisition by public or local authorities in order to promote the protection, enhancement, maintenance and restoration of the environment of the coastal zone, and
- (m) to support the objects of the Marine Estate Management Act 2016.

It is submitted that the assessment detailed under the Statement of Environmental Effects suggests that the proposed development is consistent with the objects of the SEPP (Coastal Management) 2018, as set out in Clause 3 of the Coastal Management Act 2016.

The relevant provisions of this clause are addressed as follows:

Division 3 Coastal environment area

13 Development on land within the coastal environment area

- (1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - (b) coastal environmental values and natural coastal processes,
 - (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (f) Aboriginal cultural heritage, practices and places,
 - (g) the use of the surf zone.
- (2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or

- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.
- (3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Comment:

The proposal provides for the demolition of existing structures and construction of a new dwelling. The proposed works will be carried out in accordance with the recommendations of the consulting Structural Engineer, which will ensure that appropriate structural integrity for the site will be maintained.

The collected stormwater will be directed to the street gutter in Ocean Road and the stormwater provisions have been detailed in the Stormwater Management Plans prepared by NB Consulting Engineers. As the site is at the bottom of the sub-catchment, the inclusion of an on-site detention facility is not considered to be necessary. The proposed stormwater management system will comply with Council's Water Management Policy.

Sediment and erosion control measures will be carried out to minimise the impact of the works on the waterway.

Division 4 Coastal use area

14 Development on land within the coastal use area

- (1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
 - (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

- (2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Comment

The proposal will not result in the removal of any existing public access along the foreshore, nor will it result in any overshadowing to the foreshore area.

The proposed new development is compatible in bulk and scale to its neighbours and will not result in the unreasonable loss of views to the foreshore area. By being stepped to follow the sloping topography of the site, the proposal will protect the visual amenity of the locality.

The site does not contain any heritage items, nor is it within a conservation area. The site is within the vicinity of a number of heritage items, and will not detract from their significance. The site has been previously cleared, and it is not anticipated that any items of Aboriginal heritage will be encountered.

Division 5 General

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment

The proposal provides for the construction of a new dwelling. The proposal is accompanied by a Coastline Risk Management Report prepared by Horton Coastal Engineering, dated 4 January 2020, which concludes that the proposed new works are not considered to increase the risk of coastal hazards for the subject property or adjoining land.

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

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

Comment: No coastal management programs have been identified.

17 Other development controls not affected

Subject to clause 7, for the avoidance of doubt, nothing in this Part:

- (a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or

- (b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.

Comment: Noted

18 Hierarchy of development controls if overlapping

If a single parcel of land is identified by this Policy as being within more than one coastal management area and the development controls of those coastal management areas are inconsistent, the development controls of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency:

- (a) the coastal wetlands and littoral rainforests area,
- (b) the coastal vulnerability area,
- (c) the coastal environment area,
- (d) the coastal use area.

Comment

Noted

6.4 Pittwater Local Environmental Plan 2014

Clause 2.2 Zone objectives and Land Use Table

The site is zoned E4 Environmental Living under the provisions of the PLEP 2014.

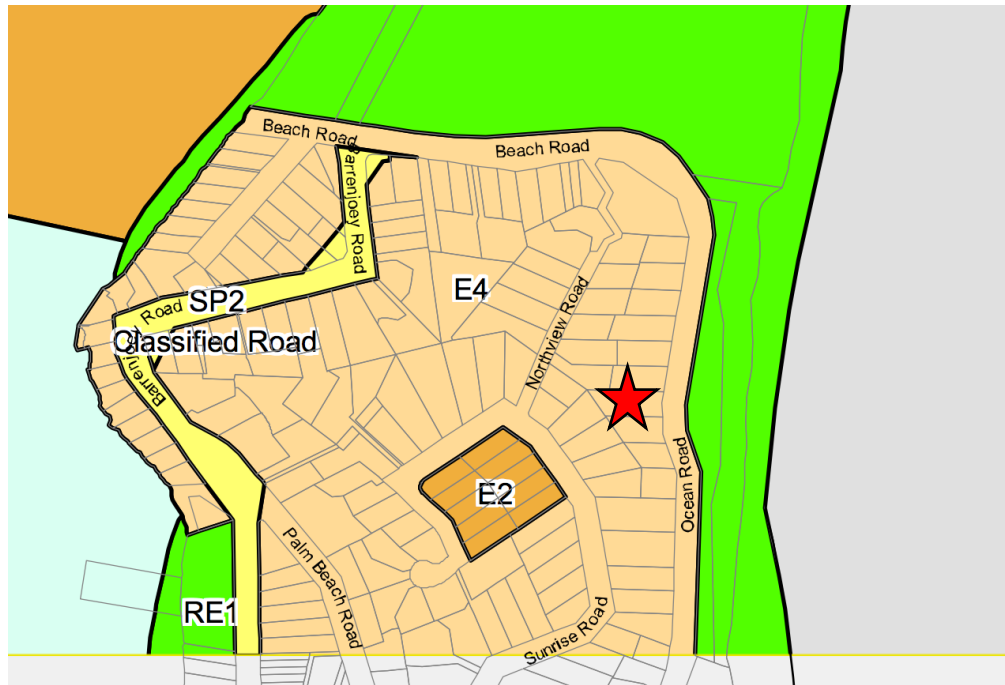


Fig 8: Extract of Pittwater Local Environmental Plan 2014 Zoning Map

The proposed demolition of existing structures and construction of a new dwelling with attached garage and associated landscaping is considered to be permissible with the consent of Council.

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 demolition of existing structures and construction of a new dwelling with attached garage and associated landscaping will be consistent with the desired future character of the surrounding locality for the following reasons (over):

- 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 setbacks are compatible with the existing surrounding development.
- The proposal does not have any adverse impact on long distance views, with suitable view corridors to retained to allow views to and from the public domain.

Clause 4.3 – Height of Buildings

The maximum building height in this portion of Palm Beach is 8.5m. As the site's slope exceeds 30% (49% within the building footprint), the maximum allowable height is 10m.

The maximum proposed height of the new works is approximately 10.55m, for the easternmost portion of the roof form. The proposed new works will therefore not comply with the maximum height control. A submission has been prepared pursuant to Clause 4.6 and accompanies this statement.

Clause 5.10 – Heritage Conservation

The site has not been identified as a Heritage Item, nor is it within a Heritage Conservation Area.

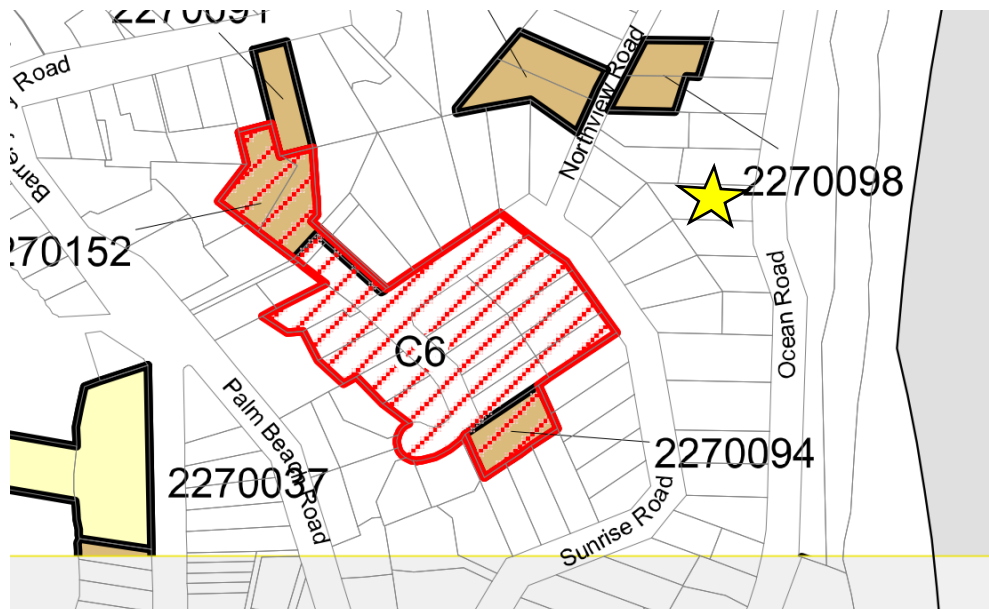


Fig 9: Extract of Pittwater Local Environmental Plan 2014 Heritage Map

However, the site is within the vicinity of a Heritage Conservation Area (C6 – Sunrise Hill Heritage Conservation Area).

The proposal provides for a new dwelling which is complementary to existing surrounding development in the locality. Through the use of recessive colours and finishes and with a scale consistent with adjoining development, the proposal is considered to be sensitive to the heritage conservation area.

Clause 7.1 – Acid Sulfate Soils

The site is identified as being within an area affected by Acid Sulfate Soils (Class 5). The proposal is not considered to significantly alter the water table, and accordingly it is not anticipated that acid sulfate soils will be disturbed.

Clause 7.2 – Earthworks

The proposal will see some excavation of the site to accommodate the proposed works. Accordingly, a Geotechnical Investigation has been prepared by Douglas Partners, Project 86970.00, dated January 2020. Subject to compliance with the recommendations contained within the report, the proposal will satisfy the provisions of this clause.

Clause 7.3 – Flood Planning

A small portion of the north-eastern corner of the site is identified as Low Risk Flood Prone Land, and give the minor extent of the area affected by the hazard, a flood report is therefore not deemed necessary in this instance.

Clause 7.5 – Coastal risk planning

The site is identified on Council's Coastline Hazard Map as being subject to Wave Inundation. Accordingly, a Coastline Risk Management Report prepared by Horton Coastal Engineering, dated 4 January 2020.

The report provides the following conclusion:

"The proposed development would be at an acceptably low risk of damage (over a reasonable 60 year design life) from erosion/recession as it is to be founded on bedrock, and from coastal inundation and wave runup..."

The works will be carried out in accordance with the recommendations contained within the report, together with the advice of the consulting Structural and Geotechnical Engineers. The proposal will therefore satisfy the provisions of this clause.

Clause 7.6 – Biodiversity Protection

The site is identified as Biodiversity on Council's Map.

The objective of this clause is to maintain terrestrial, riparian and aquatic biodiversity by:

- 1. protecting native fauna and flora, and*
- 2. protecting the ecological processes necessary for their continued existence, and*
- 3. encouraging the conservation and recovery of native fauna and flora and their habitats.*

The proposal seeks to remove two trees, including one exempt species, and is therefore accompanied by an Arboricultural Impact Assessment prepared by Growing My Way Tree Consultants, dated

September 2019. Replacement plantings are to be provided, together with tree protection measures, as detailed within the Arboricultural Impact Assessment.

New landscape plantings are provided throughout the site as detailed within the Landscape Plan prepared by Melissa Wilson, dated 20 September 2019.

Clause 7.7 – Geotechnical Hazards

A Geotechnical Investigation has been prepared by Douglas Partners, Project 86970.00, dated January 2020 to address the provisions of this Clause.

Subject to compliance with the recommendations within the report, the proposal will achieve the Acceptable Risk Management Criteria of Council's Geotechnical Risk Policy.

Clause 7.10 – Essential Services

The proposal will see the existing essential services to the site being maintained.

There are no other clauses of the PLEP 2014 that are considered to be relevant to the proposed development.

6.5 Pittwater 21 Development Control Plan

Council's Pittwater 21 DCP and Part D12 Palm Beach Locality Statement provide a range of outcomes and controls which form the primary criteria control for development within the subject locality.

6.5.1 Section A Introduction

A4.12 Palm Beach Locality

Desired Character

The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in 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. Any dual occupancy dwellings will be located on the lowlands and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. 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.

The design, scale and treatment of future development within the commercial centres will reflect a 'seaside-village' character through building design, signage and landscaping, and will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

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.

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.

Palm Beach will remain an important link to the offshore communities.

It is considered that the proposal is consistent with the desired character of the locality by providing for the demolition of existing structures and the construction of a new dwelling with attached garage and associated landscaping.

The proposed design incorporates varied elements including balconies and fenestration which minimises the visual bulk of the dwelling as it presents to the street. The proposal will maintain view opportunities for neighbouring properties.

The development will be compatible with the low density scale of the area and with the recessive colours and finishes will not be visually prominent within the Palm Beach locality.

The proposal will re-vegetate the slope with locally indigenous plants to soften the built form of the new works.

The works will be finished in a range of textures and finishes which will complement the existing surrounding development and the use of earthy tones will harmonise with the landscaped setting of the locality.

6.5.2 Section B General Controls

The General Controls applicable to the proposed development are summarised as:

B1.2 Heritage Conservation – General

The controls seek to achieve the outcomes:

Conservation of the environmental heritage across Pittwater LGA in accordance with the principles contained in the Burra Charter.

Enhancement of the existing heritage values and encouragement of contemporary design that responds appropriately to their context.

Development respectful of environmental heritage undertaken in a manner that is sympathetic to, and does not detract from, any heritage significance.

The site has not been identified as a Heritage Item, nor is it within a Heritage Conservation Area. However, the site is within the vicinity of a Heritage Conservation Area (C6 – Sunrise Hill Heritage Conservation Area).

The proposal provides for a new dwelling which is complementary to existing surrounding development in the locality. Through the use of recessive colours and finishes and with a scale consistent with adjoining development, the proposal is considered to be sensitive to the heritage conservation area.

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 Geotechnical Investigation has been prepared by Douglas Partners, Project 86970.00, dated January 2020, which concludes that the site is stable subject to compliance with the recommendations contained within the report.

The proposal will therefore satisfy the provisions of this clause.

B3.3 Coastline (Beach) 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 site is identified on Council's Coastline Hazard Map as being subject to Wave Inundation. Accordingly, a Coastline Risk Management Report prepared by Horton Coastal Engineering, dated 4 January 2020.

The report provides the following conclusion:

"The proposed development would be at an acceptably low risk of damage (over a reasonable 60 year design life) from erosion/recession as it is to be founded on bedrock, and from coastal inundation and wave runup..."

The works will be carried out in accordance with the recommendations contained within the report, together with the advice of the consulting Structural and Geotechnical Engineers. The proposal will therefore satisfy the provisions of this clause.

B3.11 Flood Prone Land

The controls seek to achieve the outcomes:

Protection of people.

Protection of the natural environment.

Protection of private and public infrastructure and assets.

A small portion of the north-eastern corner of the site is identified as Low Risk Flood Prone Land, however given the minor extent of the area that is affected by the hazard, a flood report is therefore not deemed necessary in this instance.

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 seek the removal of one tree, including one exempt species. The proposal will see managed re-planting of the site with locally occurring species, as detailed in the submitted Landscape Plan.

B5.7 Stormwater Management – On-Site Stormwater Detention

The controls seek to achieve the outcomes:

Rates of stormwater discharged into receiving environment maintained or reduced. (Ec, S)

The proposal is accompanied by Stormwater Management Drainage Plans prepared by NB Consulting Engineers, Job No. 190875, dated September 2019. As the site is located at the bottom of the sub-catchment (fronting to Palm Beach), OSD is not required in this instance.

B5.9 Stormwater Management - Water Quality – Other than 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)

The proposal is accompanied by Stormwater Management Drainage Plans prepared by NB Consulting Engineers, Job No. 190875, dated September 2019. The proposed runoff will be directed to the street gutter via a number of rainwater tanks. The proposed stormwater arrangements are considered to be in keeping with Council's requirements.

B5.13 Development on Waterfront Land

This control seeks to achieve the outcomes:

Protection of waterways and improved riparian health (En)

Stormwater and creek flows are safely managed. (S)

Appropriate setback between waterways and development (En)

The proposal will maintain significant areas of soft landscaping. The site is separated from the beachfront by Ocean Road and as such, no direct impact to the waterfront is anticipated.

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

This control seeks 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 a new paved driveway, which will facilitate safe and convenient access to the proposed under-building garaging.

B6.3 Off-Street Vehicle Parking Requirements

This control seeks to achieve the outcome:

An adequate number of parking and service spaces that meets the demands generated by the development.

Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.

Safe and convenient parking.

The controls require a minimum of 2 parking spaces for each dwelling. The proposal will provide parking for three cars within the proposed garage and therefore readily complies with Council's parking requirements.

B8.1 Construction & Demolition – Excavation and Landfill

The controls seek to achieve the outcomes:

Site disturbance is minimised. (En)

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

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

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

Appropriate soil and sedimentation measures will be implemented during the construction phase.

B8.2 Construction and 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)

This clause requires that erosion and sediment controls are installed on site to prevent the migration of sediment to adjoining properties, roads or waterways.

Appropriate erosion and sediment barriers will be installed prior to the commencement of any works on site.

B8.3 Construction and Demolition – Waste Minimisation

The controls seek to achieve the outcomes:

Reduction management of demolition, excavation and construction works is to be minimised by reuse on-site, recycling, or disposal at an appropriate waste facility. (En)

The proposal will provide for the demolition of existing structures and construction of a new dwelling.

All demolition material will be removed and recycled off site where possible or taken to an approved waste disposal facility.

6.5.3 Section C Development Type Controls for Residential Development

The Development Controls applicable to the proposed dwelling are summarised as:

C1.1 Landscaping

The controls seek to achieve the outcomes:

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 required controls to achieve the outcomes are to ensure that the development will provide for the reasonable retention and protection of the existing significant trees and to provide for locally occurring species within any proposed replanting of the site.

The proposal seeks to remove two trees, including one exempt species, and is therefore accompanied by an Arboricultural Impact Assessment prepared by Growing My Way Tree Consultants, dated September 2019. Replacement plantings are to be provided, together with tree protection measures, as detailed within the Arboricultural Impact Assessment.

New landscape plantings are provided throughout the site as detailed within the Landscape Plan prepared by Melissa Wilson, dated 20 September 2019, which assist with softening and screening the built form of the development.

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 proposed dwelling's entry and primary living areas will allow for casual surveillance of persons entering the site and the street area.

C1.3 View Sharing

The controls seek to achieve the outcomes:

A reasonable sharing of views from public places and living areas. (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 required controls to achieve the outcomes are to ensure that building sight lines and building positioning and height maintain reasonable view sharing for neighbouring properties. The site and the adjacent dwellings enjoy an expansive view to the east.

The proposed new works present an appropriate scale that will not have any adverse impacts on neighbouring properties.

The siting of the proposed dwelling is downhill of the properties on Sunrise Road, and therefore equitable access to the available views and outlook for the neighbouring dwellings is largely maintained.

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.

The proposal is accompanied by shadow diagrams which demonstrate that the subject and neighbouring properties will continue to receive excellent solar access between at 9am and midday on 21 June.

C1.5 Visual Privacy

The controls seek to achieve the outcomes:

Habitable rooms and outdoor living areas of dwellings shall achieve and maintain 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 proposed works are well separated from adjoining development, and given the considered location of habitable room windows and location of the proposed rear terrace at ground level, the works are not considered to result in any significant impacts on the privacy of neighbouring properties.

Additionally, there is landscaping comprising new shrub planting along the southern boundary of the property to assist with visually separating the works from the southern neighbour.

C1.6 Acoustic Privacy

The controls seek to achieve the outcomes:

Noise is substantially contained within each dwelling and noise from any communal or private open space 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 private open space 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, it is suggested that there will not be any significant change to the existing site conditions.

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.

Given the significant slope of the land, the principal outdoor recreation spaces will be provided as terracing within the rear yard. This is not uncommon in this area due to the constraints presented by the sloping terrain.

C 1.12 Waste and Recycling Facilities

The controls seek to achieve the outcomes:

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

Waste and recycling facilities are located such that they do not adversely impact upon amenity of the 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.

The proposal will see existing on-site storage of waste and recyclables retained.

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

The controls seek to achieve the outcomes:

To achieve the desired future character of the Locality.

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 achieve reduction in visual clutter. (En, S)

The appropriate location and design of noise generating equipment.

The proposed lift overrun is contained within the roof form and therefore will not be visible from the public domain.

6.5.4 Section D Locality Specific Development Controls

The **D12 Palm Beach 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 stormwater runoff from the development will be contained and directed to the street gutter in accordance with the existing conditions. There will not be any adverse siltation or water pollution impacts on the general drainage system of the area or to local waterways.
- 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 **D12 Palm Beach Locality** is provided below:

D12.1 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'.

To preserve and enhance district and local views which reinforce and protect the 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 proposed works maintain compatibility with the locality through appropriate design relief including roof forms textures, materials, the arrangement of windows modulation, spatial separation, landscaping etc.

The proposal will provide for the demolition of existing structures and construction of a new

dwelling with attached garage and associated landscaping. The proposal presents a contemporary form, which complements the style and scale of other new development in the area.

The proposed new works are considered to be consistent in terms of bulk and scale to the existing surrounding development and present compliant setbacks.

The proposed form and modulation to the new works is well articulated to provide visual interest and reduce bulk when viewed from the ocean.

Views over and to the side of the new works will be retained for the neighbouring dwellings located uphill of the proposal.

In addition, the existing and new landscaping will ensure that the proposed works will be interspersed with the natural landscape setting.

D12.3 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 and enhances the visual character 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 it is intended to utilise recessive tones and finishes to complement existing surrounding development.

D12.5 Front Building Line

The controls seek to achieve the outcomes:

Achieve the desired future character of the Locality.

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 preserve and enhance the rural and bushland character of the locality. (En, 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 proposed dwelling will present a minimum setback of 3.2m from the Ocean Road boundary, and therefore do not comply with this control.

However, the proposal is in keeping with the prevailing front setback along Ocean Road. Compliance with the front setback control is constrained by the steeply sloping topography, which requires development to be located within the lower portion of the site.

The front façade of the proposed dwelling has been designed to distribute the visual bulk, with articulated wall lines and modulated elements including balconies and varied fenestration. The proposed dwelling will therefore not be overbearing when viewed from Ocean Road, and maintains consistency with the bulk and scale of existing surrounding development.

Notwithstanding the variation to the front setback control, the proposal is in keeping with the desired outcomes of this clause and is worthy of support on merit.

D12.6 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 achieved.

The relevant controls to achieve this outcome are to maintain a minimum setback of 2.5m for one side and minimum 1.0m setback for the other side. A rear setback of 6.5m applies.

The proposal will stand a minimum of 1.8m and 2.5m from the northern and southern side boundaries respectively and therefore complies with the side setback controls.

The new dwelling is set back 20m from the rear boundary, in keeping with Council's 6.5m rear setback requirement.

D12.8 Building Envelope

The controls seek to achieve the outcomes:

To achieve the desired future character of the Locality. (S)

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 neighbouring 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°.

The proposal presents a minor variation to the building envelope control to the north-eastern and south-western extremities of the upper level, as noted on the submitted Cross Sections prepared by Map Architecture + Interiors, dated September 2019.

Compliance with the building envelope control is constrained by the site's sloping topography.

The development where it does not comply with the building envelope control will not result in any adverse impacts for neighbouring properties in terms of solar access, privacy, views or general amenity.

The bulk and scale of the development is in keeping with the extent of existing surrounding development in the locality.

The proposal is in keeping with the desired outcomes of this clause and is worthy of support on merit.

D12.10 Landscaped Area – Environmentally Sensitive

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 ensure that residential development maintains a minimum of 60% of the site as landscaped area.

The site will retain up to 659.6m² or 55% of the site as landscaped area, exclusive of Council's permissible 6% allowance for impervious landscape treatments. With the addition of Council's allowance, the proposal will therefore with this control on merit.

The bulk and scale of the proposed dwelling is in keeping with the extent of existing surrounding development in the locality, with the proposed new plantings to assist with further softening and screening the development.

The proposal will retain suitable solar access, amenity and privacy for neighbouring properties.

The available area of soft landscaping is considered acceptable in this instance.

D12.13 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. All excavated areas to be retained in accordance with the directions of the Structural and Geotechnical Engineer.

D12.14 Scenic Protection Category One Areas

The controls seek to achieve the outcomes:

To achieve the desired future character of the Locality.

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

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

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

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

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

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

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

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

The required controls to achieve the outcomes are to ensure that the development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.

The new works have been sited to minimise any visual impact on the environment and along with their modest bulk and scale will not take away from the surrounding natural environment.

The recessive tones and external finishes that have been selected for their natural weathering will further minimise the visual bulk of the new recreation facility.

The proposed landscaping within the site will assist with screening the new works.

7.0 Matters for Consideration under Section 4.15 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 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Coastal Management) 2018 and the Pittwater Local Environmental Plan 2014 and the relevant supporting Council policies. 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 proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

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 Section B, Section C and Section D of the Pittwater 21 DCP.

It is considered that the proposed design respects the aims and objectives of the DCP however we note that the Environmental Planning and Assessment Amendment Act 2012 No 93 (Amendment Act) which received assent on 21 November 2012 commenced on 1 March 2013.

Key amongst the amendments are requirements to interpret DCPs flexibly and to allow reasonable alternative solutions to achieve the objectives of DCP standards.

The new section 3.42 provides that the 'principal purpose' of DCPs is to 'provide guidance' on:-

- giving effect to the aims of any applicable environmental planning instrument
- facilitating permissible development
- achieving the objectives of the relevant land zones.

The key amendment is the insertion of section 4.15(3A) which:

- prevents the consent authority requiring more onerous standards than a DCP provides,
- requires the consent authority to be 'flexible' and allow 'reasonable alternative solutions' in applying DCP provisions with which a development application does not comply,
- limits the consent authority's consideration of the DCP to the development application (preventing consideration of previous or future applications of the DCP).

We request that Council applies considered flexibility where the application seeks variations to numerical development controls in the DCP as justified in this report. In particular we consider that the variation to the front setback, building envelope and landscaped area controls is a reasonable alternative solution to compliance where the site conditions results in a challenge to designing for new development which fully respects the landscaped area criteria.

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 planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4.

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

7.5 The regulations (to the extent that they prescribe matters for the purposes of this paragraph),

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

7.6 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 the demolition of existing structures and construction of a new dwelling with attached garage and associated landscaping, will not unreasonably impact upon the amenity of adjoining properties or upon the character of the surrounding area.

The proposal is considered to be well designed having regard to the relevant provisions of the Council's PLEP 2014 & the Pittwater 21 DCP and the Palm Beach Locality Statement.

7.7 The suitability of the site for the development

The subject land is currently E4 Environmental Living under the Pittwater Local Environmental Plan 2014 and is considered suitable for the proposed development.

7.8 Submissions made in accordance with this Act or the regulations

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

7.9 The public interest

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

8.0 Conclusion

The principal objective of this development is to provide for the demolition of existing structures and construction of a new dwelling with attached garage and associated landscaping.

It is considered that the proposed works satisfy the stated objectives of Council's Development Controls and reinforce the residential character of the area.

As the proposed development will not have any significant impact on the environment, scenic quality of the area or the amenity of the adjoining allotments, the issue of Development Consent under the delegation of Council is requested.

VAUGHAN MILLIGAN

Town Planner

Grad. Dip. Urban and Regional Planning (UNE)

Appendix: Clause 4.6 Submission – Maximum Building Height

APPENDIX
CLAUSE 4.6 – MAXIMUM BUILDING HEIGHT

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

9 OCEAN ROAD, PALM BEACH

**FOR THE PROPOSED DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A NEW
DWELLING WITH ATTACHED GARAGE AND ASSOCIATED LANDSCAPING**

For: For proposed demolition of existing structures and construction of a new dwelling with attached garage and associated landscaping
At: 9 Ocean Road, Palm Beach
Owner: John Bubb & Christina Neumann-Bubb
Applicant: John Bubb & Christina Neumann-Bubb
C/- Vaughan Milligan Development Consulting

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Pittwater Local Environmental Plan 2014 (LCLEP 2009).

2.0 Background

As the site's slope exceeds 30% (49% within the building footprint), Clause 4.3 restricts the height of a building in this locality to a maximum of 10m. This control is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed new dwelling will provide a height of 10.5m above natural ground level which exceeds Council's maximum building height by 0.5m or 5% and therefore does not comply with this control. The extent of the building's roof which exceeds the 10m height control is detailed in Figure 10 (over page).

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

3.0 Purpose of Clause 4.6

The Pittwater Local Environmental Plan 2014 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been considered in this request for a variation to the development standard.

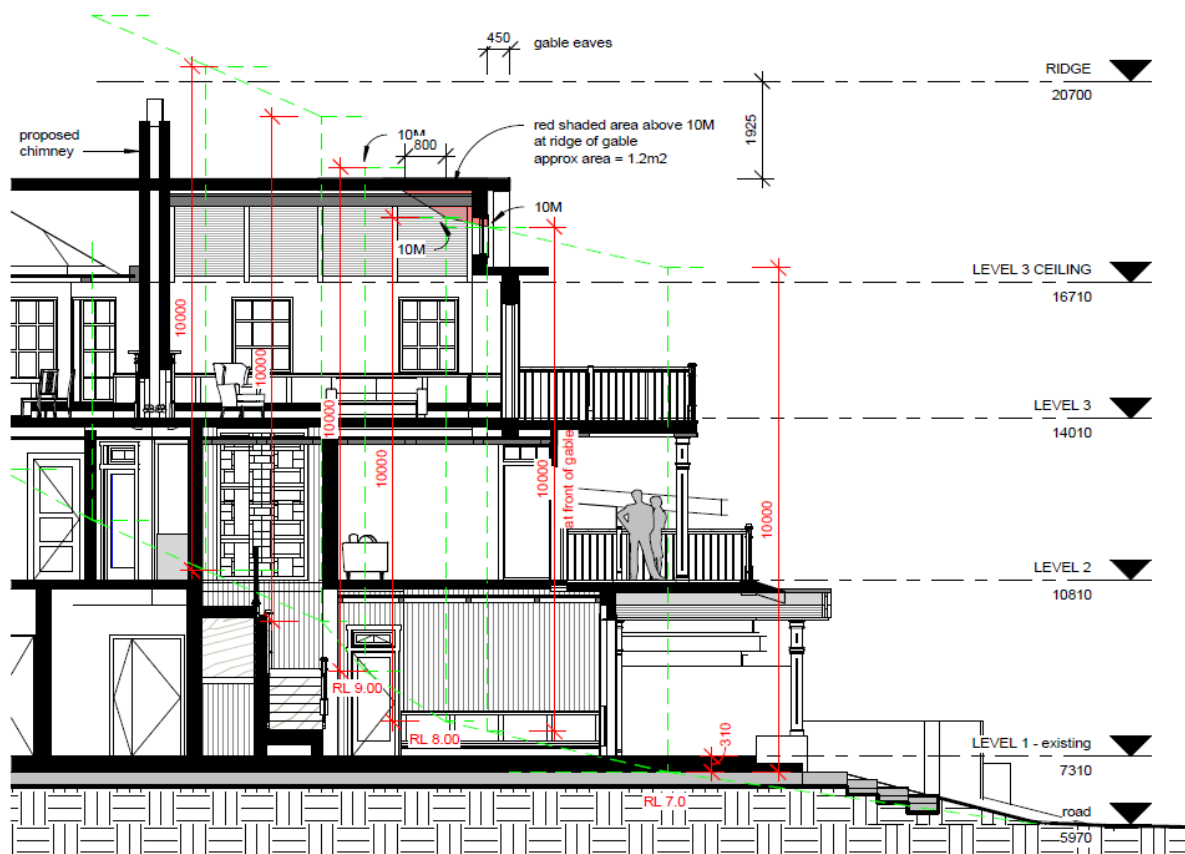


Fig 10: Section extract to indicate area of dwelling roof exceeding the 10m height control

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of a new dwelling, which is consistent with the stated Objectives of the E4 Environmental Living Zone, 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.*

As sought by the zone objectives, the proposal will provide for the demolition of existing structures and construction of a new dwelling with attached garage and landscaping.

The new works provide a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes, in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance of the proposed dwelling with the maximum overall height, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

The siting of the proposed development will mitigate any adverse impacts of overshadowing and loss of views for any neighbouring properties.

5.0 Onus on Applicant

Clause 4.6(3) provides that:

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.*

This written request has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11 Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the Samadi judgement states:

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The site is located in the E4 Environmental Living Zone. The objectives of the E4 zone 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.*

Comments

It is considered that the proposed development will be consistent with the desired future character of the surrounding locality for the following reasons (over):

- The proposal will be consistent with and complement the existing varied style of residential development within the locality.
- The proposed development respects the scale and form of other new development in the vicinity and therefore complements the locality.
- The setbacks are compatible with the existing surrounding development.
- The proposal does not have any impact on long distance views.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.3 are articulated at Clause 4.3(1):

(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.*

Comments

Despite the variation to the building height control which occurs as a result of the sloping topography of the site, the proposed works to the existing dwelling are considered to be in keeping with the desired future character of the locality.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

The proposal is generally consistent with the height and scale of development in the locality.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for the construction of a new dwelling, which is constrained by the sloping topography of the site.

Council's controls in Clause 4.3 provide a maximum building height of 10m above natural ground level.

It is considered that the proposal achieves the Objectives of Clause 4.3 and that the development is justified in this instance for the following reasons:

- The proposed new dwelling provides a suitable bulk and scale which will maintain consistency with other residential development in the area. Furthermore, the works are in keeping with the character of the locality.
- The proposal will appropriately maintain the neighbour's amenity and will not see any unreasonable loss of solar access for the subject site and neighbouring properties.

In the *Wehbe* judgment (*Wehbe v Pittwater Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded, and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment: Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment: It is considered that the purpose of the standard is relevant, but the purpose is satisfied.

3. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

Comment: Not applicable.

5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Comment: The development standard is applicable to and appropriate to the zone.

For the above reasons, it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

Council's controls in Clause 4.3 provide a maximum building height of 10.0m above natural ground level for the subject development.

The proposed new dwelling will provide a height of 10.5m above natural ground level or a 0.5m variation.

The development is justified in this instance for the following reasons:

- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The proposed new works do not present any unreasonable additional impacts in terms of view loss for neighbours, or bulk and scale.
- The proposed development is considered to promote good sustainable design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act which is a suitable environmental planning ground which justifies the flexible application of the development standard.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum building height.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the

circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the *Four2Five* decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does **not** mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

Accordingly, when assessed against the relevant Objects of the Environmental Planning & Assessment Act 1979, (NSW) outlined in s1.3, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The proposed new dwelling is compatible in scale to its surrounding neighbours, which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed new dwelling will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Ocean Road, which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposal is considered to promote good design and amenity to the local built environment as appropriate views, solar access and privacy will be maintained for the neighbouring properties (cl 1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a new dwelling on a challenging and sloping site that improve the residential amenity whilst maintaining the general bulk and scale when viewed from the neighbouring properties and from the public domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that proposal will provide for a better planning outcome than a development which does not provide for adequate amenity for the owner's needs.

7.0 Conclusion

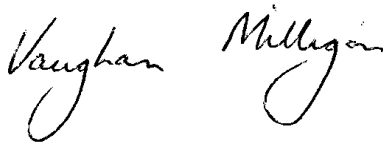
This development proposes a departure from the maximum building height control, with the proposed new dwelling to maintain a maximum building height of 10.5m.

This variation occurs as a result of the sloping topography of the site.

This objection to the maximum building height control specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height would be unreasonable and unnecessary in the circumstances of this case.



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