

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/2075
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<b>Responsible Officer:</b>	Nick England
<b>Land to be developed (Address):</b>	Lot 71 DP 6746, 22 Ocean Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Victor Charles Comino
<b>Applicant:</b>	Andrew Darroch

<b>Application Lodged:</b>	10/11/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	19/11/2021 to 03/12/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	3
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 99,550.00
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### PROPOSED DEVELOPMENT IN DETAIL

The application consists of the alterations and additions to an existing dwelling house. Specifically, the works consist of the replacement of the existing pitched roof and replacement with a skillion roof and additions to the existing walls to accommodate the new roof. Other minor works include new windows on the east and west elevation and minor internal works.

During the course of the assessment, correspondence was sent to the applicant on the following dates:

7 December 2021: It was requested that the applicant erect height poles and verify the exact height of the poles, via survey confirmation, to assist in the assessment of view-sharing to adjoining properties. The applicant provided survey verification on 15 December 2021.

11 January 2021: This second correspondence advised that the application was not supported, based on a failure to meet the requirements of the Pittwater 21 Development Control Plan, in regard to;

view-sharing; side setbacks; and building envelope.

## ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - C1.3 View Sharing

Pittwater 21 Development Control Plan - D12.6 Side and rear building line

Pittwater 21 Development Control Plan - D12.8 Building envelope

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 71 DP 6746 , 22 Ocean Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Ocean Road, Palm Beach.</p> <p>The site is regular in shape with a frontage of 20.115m along Ocean Road and a depth of 60.96m. The site has a surveyed area of 1220m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two-level residence, located towards the rear of the allotment.</p> <p>The site has an easterly aspect with a generally flat topography for the majority of the length of the allotment, rising upwards at rear portion of the land.</p> <p>The site has significant vegetation along the rear (western) boundary.</p> <p>Adjoining and surrounding development is characterised by</p>

dwelling houses to the west, north and south. To the east is Palm Beach and the Tasman Sea beyond.

Map:



## SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning	None applicable.

Section 4.15 Matters for Consideration	Comments
agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters could be addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to view loss; side setbacks; and building envelope of 7 December 2021 and 11 January 2022.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter could be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter could be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and</p>

Section 4.15 Matters for Consideration	Comments
	proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Pittwater 21 Development Control Plan, in regard to: view-sharing; side setbacks; and building envelope. This will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/11/2021 to 03/12/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Mr Richard Anthony Granger	41/18 Bay Street DOUBLE BAY NSW 2028
Mr Gregory Rex Johnson	Po Box 425 SPIT JUNCTION NSW 2088
Boston Blyth Fleming Pty Ltd DCM Bluelake Partners Pty Ltd	1 / 9 Narabang Way BELROSE NSW 2085

During the notification period three (3) submissions were received. The following issues were raised in the submissions and each have been summarised and addressed below:

- The proposed development will have an adverse impact on the existing views enjoyed by the adjoining properties at Nos.66, 70 and 72 Florida Road.*

Comment: A detailed assessment of the potential loss of views is provided elsewhere in this



report. In summary, there is potential for the loss of views to adjoining properties that could be readily alleviated through the use of a more skillful design that mitigate the view loss to the adjoining properties and permits the re-development of the subject land.

- The proposed development will have an adverse impact on the privacy of the adjoining property at No.66 Florida Road.

Comment: The proposed additions on the west elevation are both designed in manner that mitigates the potential for overlooking and is located at a significant distance (approximately 22m) to further reduce any potential adverse impact. This issue is not considered a relevant reason to refuse the proposed development.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application is for alterations and additions to an existing dwelling, to remove the existing hipped roof and replace it with a skillion roof, and install clerestory windows.</p> <p>It is noted that two existing Exempt Species palms exist within the decking area however as Exempt Species no consent is required for management or removal. The modification proposal is contained within the existing approved footprint and there is no impact to existing trees and vegetation beyond the existing footprint.</p> <p>Standard conditions for tree and vegetation protection shall be imposed to ensure protection of the existing Norfolk Island Pine street trees, and trees and vegetation within the property, from any impact from construction activity including deliveries of materials, storage of materials, and construction work.</p>
NECC (Bushland and Biodiversity)	<p>The application seeks approval for alterations and additions to an existing dwelling, including removing the existing hipped roof and replacing it with a skillion roof. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p><b>Biodiversity Conservation Act 2016 (BC Act)</b>  <b>State Environmental Planning Policy (Coastal Management) 2018</b></p> <ul style="list-style-type: none"> <li>• Coastal Environment Area</li> </ul> <p><b>Pittwater Development Control Plan (PDCP)</b></p> <ul style="list-style-type: none"> <li>• B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land</li> </ul> <p>As the proposal is located wholly within the existing footprint, and</p>

Internal Referral Body	Comments
	does not require the removal of prescribed trees or vegetation, nor is it likely to impact on soft open space or nearby biodiversity values, the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.
NECC (Riparian Lands and Creeks)	This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. As this site drains into Palm Beach, the development must not significantly impact on the biophysical, hydrological or ecological integrity of these waters, or on the quantity and quality of surface and ground water flows to the creek or ocean. This application is supported as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Palm Beach.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed DA involves replacing the roof, constructing a new bathroom and adding a new door to the existing laundry. The proposed works generally complies with the flood controls in the LEP and DCP.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. A response was provided on 10 December 2021, it is assumed that no objections are raised and no conditions are recommended.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

## State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A435067 dated 11

October 2021). The BASIX Certificate indicates that the development will achieve the sustainability requirements of the SEPP.

## **SEPP (Infrastructure) 2007**

### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment: The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## **SEPP (Coastal Management) 2018**

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the relevant provisions of the SEPP has been carried out, as follows:

### **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.*

Comment: The proposed development will not result in any adverse impacts on the coastal processes, ecological values or other places of value mentioned in subclause (1).



- (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.*

Comment: The proposed development is not considered to be adverse to the surrounding coastal area.

#### **14 Development on land within the coastal use area**

- (1)
- (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.*

Comment: As stated previously, the development is not considered to be inconsistent with the natural, social and cultural values of the surrounding coastal environment. As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

#### **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 proposed works will not result in any additional risk or coastal hazard on the subject land or on surrounding properties.

## Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.3m	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.10 Essential services	Yes

## Pittwater 21 Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	36.7m	N/A	Yes
Rear building line	6.5m	11.6m	N/A	Yes
Side building line	(North) 1/2.5m	1.6m (no change)	40	No
	(South) 1/2.5m	1.5m (no change)	40	No
Building envelope	(North) 3.5m	Outside of envelope	2.3m	No
	(South) 3.5m	Outside of envelope	1.8m	No
Landscaped area	50%	824m <sup>2</sup> or 68%	N/A	Yes

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.3 Coastline (Beach) Hazard	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	No
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	No	No
D12.8 Building envelope	No	No
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

#### **C1.3 View Sharing**

During the notification period, a total of three (3) submissions were received from adjoining properties, raising issue with potential loss of existing views. These properties were:

- No.66 Florida Road;
- No.70 Florida Road; and
- No.72 Florida Road.

As part of the assessment, height poles were erected on the highest parts of the proposed works on the land subject to the application (No.22 Ocean Road), with the height of the poles being verified by a registered surveyor. The adjoining properties were subsequently inspected, on 21 and 24 December 2021.

The development is therefore considered against the underlying Outcomes of the Control, as follows:

- *A reasonable sharing of views amongst dwellings.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

**1. Nature of the views affected**

*"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".*

Comment to Principle 1:

An examination of the specific views affected for each property has identified the following:

No.66 Florida Road: The significant landmark views currently enjoyed by this property are to the north-east, east and south-east, including: Barrenjoey Headland; extensive views of the shoreline of Palm Beach and the Tasman Sea beyond; the southern end of Palm Beach and part of the ridges to the south. The specific part of the view which is to be affected relates to a stretch of shoreline of Palm Beach to the east of this property, across its rear boundary, which adjoins the subject site at No.22 Ocean Road. These views are significantly obstructed by existing vegetation, both on No.22 Ocean and No.66 Florida Road.

No.70 Florida Road: The significant landmark views currently enjoyed by this property are to the north-east, east and south-east, including: Barrenjoey Headland; extensive views of the shoreline of Palm Beach and the Tasman Sea beyond; the southern end of Palm Beach and part of the ridges to the south. The specific part of the view which is to be affected relates to a stretch of shoreline of Palm Beach to the south-east of this property, where it adjoins the subject site on its south-east corner. These views are enjoyed across both the rear and side boundaries of No.70. These views are significantly obstructed by existing vegetation, both on No.22 Ocean and No.70 Florida Road.

No.72 Florida Road: The significant landmark views currently enjoyed by this property are to the north-east, east and south-east, including: Barrenjoey Headland; extensive views of the shoreline of Palm Beach and the Tasman Sea beyond; the southern end of Palm Beach and part of the ridges to the south. The specific part of the view which is to be affected relates to a stretch of shoreline of Palm Beach to the south-east of this property. These views are enjoyed from across side (south) boundary of No.72. These views are significantly obstructed by existing vegetation, both on No.22 Ocean and No.72 Florida Road.

**2. What part of the affected property are the views obtained**

*“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic”.*

#### Comment to Principle 2:

An examination of where the specific views for each property are obtained is provided below:

No.66 Florida Road: The views described in Principle 1, are obtained across a rear boundary. The specific areas on the dwelling where the view would be apparent are: ground floor deck on east elevation; living room; and master bedroom. All views to the shore line would be apparent from a standing position.

No.70 Florida Road: Views are obtained across a small section of rear boundary and side (south) boundary, from the following areas of the dwelling: ground floor deck on east elevation; living room; and dining room. Views are all both in a standing and seated position, with the exception of the dining room which is only in a standing position.

No.72 Florida Road: Views are obtained across a side boundary, from a ground floor deck on the east elevation. Existing vegetation on this site makes it unclear if these views would be from a seated or standing position.

### **3. Extent of impact**

*“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.*

#### Comment to Principle 3:

A general comment on the extent of the impact on all these properties is that they all relate to a view of the shoreline of Palm Beach to the east. The location of shorelines on sand beaches along the east coast of Australia are ephemeral in nature and hence their location will vary, depending on climatic and tide conditions. Hence, the following assessment is not definitive and can only be made with the information gathered at the time of the inspections and this assessment.

Another factor that limits a definitive determination of the potential view loss is the existing significant vegetation that exists on both the subject site and the adjoining properties.

A determination of the extent of the impact for each property is provided below:

No.66 Florida Road: As stated previously, the vegetation makes it difficult to make a completely accurate determination of the amount of view that is likely to be lost as a result of the proposal. However it is likely that a negligible loss of views of the shoreline will result from the deck on the east elevation of this dwelling, from a standing position, as a result of the increased roofline and



wall extensions on the south-west corner of the proposed works. All other views are considered to be largely unaffected.

No.70 Florida Road: There is likely to be very small loss of some of the view to the shoreline from the north elevation of the proposed works, however this view is already obscured by existing vegetation. This view is obtained from the living room and associated deck in both a standing and seated position, in effect a view corridor to the beach that exists along the boundary of Nos.21 and 22 Ocean Road. This view corridor will be effected by the proposed extensions of the wall on the north elevation of the existing dwelling at No.22 Ocean Road.

No.72 Florida Road: Views of the shoreline enjoyed from this property in the direction of No.22 Ocean Road are largely obscured by existing vegetation. Hence, any determination of view loss to this property is considered to be mostly speculation. Nonetheless, it is likely to result in a negligible loss of the views enjoyed by this property, which are obtained on a rear deck in a standing position.

#### **4. Reasonableness of the proposal that is causing the impact**

*"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."*

##### Comment to Principle 4:

A conclusion on the reasonableness of the impacts of the proposal on the adjoining properties is provided below.

For context, it is determined that the proposal is not compliant with the both the Side Setbacks and Building Envelope controls of the P21 Development Control Plan.

No.66 Florida Road: A negligible loss of views is likely, from view corridors across a rear boundary of this property. As a proportion of the overall loss of their existing views enjoyed by this property, the loss is not considered to be unreasonable.

No.70 Florida Road: A very minor loss of views is likely, from a view corridor between the properties of Nos.21 and 22 Ocean Road, from across a rear boundary of this property. In general terms, the loss may not be considered to be unreasonable. However, in the context of the development not complying with the aforementioned controls, it is considered reasonable that the applicant undertake a re-design to at least ensure compliance with the built form controls as they would apply to the northern boundary, to in turn eliminate any unreasonable potential for impact.

No.72 Florida Road: A very negligible to non-existent loss of views is likely, from view corridors across a side boundary of this property. Existing vegetation on the this property and on adjoining properties, makes determination of the likely loss of views indeterminate. However, this is an existing situation that must be applied in the assessment of the proposal at this current time. As a proportion of the overall loss of views, the loss is not, in general terms, considered unreasonable.

- *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.*

Comment:

The proposed works are not likely to result in any unreasonable loss of view or vistas, when viewed from the adjoining public domain.

- *Canopy trees take priority over views.*

Comment:

Not applicable to the application, as no tree removal is proposed.

To clarify the assessment in terms of the potential impacts on those properties which have raised a submission, the impacts to the properties at No.66 and No.72 Florida Road are not considered unreasonable. However, there is a minor impact to the property at No.70 Florida Road, as a result of non-compliances with built form controls, which could be easily alleviated through an amended design. No other adverse impact is considered likely to other surrounding properties.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

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

### **Description of Non-Compliance**

The proposed additions are located approximately 1.6m from the north and south side setbacks. This is inconsistent with the control which specifies that at least one setback should be at least 2.5m from the side boundary.

### **Consideration of the Outcomes**

A consideration of the relevant outcomes of the control are provided below:

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

Comment: In general terms, the proposal will be consistent with this Outcome.

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

Comment: In general terms, the proposal will be consistent with this Outcome.

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

Comment: Upon consideration of the potential loss of views to adjoining properties (discussed in further detail elsewhere in this report), there is likely to be a loss of the views to the shoreline of Palm Beach enjoyed by the adjoining properties at No.66 and 70 Florida Road. In particular, the non-compliance with the side setback control reduces the potential for existing view corridors along the side boundaries of the site that are enjoyed from these properties, to be maintained. Hence, the proposal fails this

Outcome of the control.

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

Comment: As stated above, there is likely to be a loss of views of the shoreline from adjoining properties to the west, along corridors on the side boundaries. The design of the proposal does not make an adequate response to the amenity of adjacent dwellings and therefore the proposal is not considered to be consistent with this Outcome.

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

Comment: The proposal will not result in an adverse impact in regard to visual privacy or solar access, despite the non-compliance. Hence, the proposal can achieve this Outcome.

*Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)*

Comment: Sufficient landscaping is provided to achieve this Outcome.

*Flexibility in the siting of buildings and access. (En, S)*

Comment: In regard to the identified view loss impacts, a greater level of flexibility in the siting of the upper level additions should be employed by the applicant, to achieve this Outcome.

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

Comment: No removal of vegetation is proposed, hence this Outcome is not applicable.

*To ensure a landscaped buffer between commercial and residential zones is established.*

Comment: Not relevant to the proposed development.

Upon consideration of the Outcomes of the Side Setback control, the likely loss of views currently enjoyed by adjoining properties, in particular No.66 and No.70 Florida Road, is not acceptable. An alternative design should be explored which complies with the side setback control and retains part of these existing views. Therefore, refusal of the application is recommended, with failure to meet the Outcomes of this control, forming part of those reasons.

## **D12.8 Building envelope**

### **Description of Non-Compliance**

The additions on the north and south elevations of the existing dwelling will be outside of the envelope control, estimated at their highest points to be:

North elevation: 1.8m

South elevation: 2.3m

### **Consideration of the Outcomes**

A consideration of the relevant outcomes of the control are provided below:

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

Comment: The non-compliances are not considered to be adverse to 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.*

Comment: The proposal is considered to be consistent with this Outcome.

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

Comment: The proposal is considered to be consistent with this Outcome.

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

Comment: The proposal is considered to be consistent with this Outcome.

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

Comment: As stated elsewhere in this report, there is a likelihood that view loss will be experienced from adjoining properties, specifically No.66 and No.70 Florida Road. This view loss will occur specifically at the parts of the proposal which are inconsistent with the building envelope control. In this context, the equitable preservation of views will not be achieved. Hence, this Outcome is not met by the proposed development.

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

Comment: No adverse amenity (apart from view loss) is likely to result on adjoining properties and the proposal is consistent with this Outcome.

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

Comment: No vegetation is proposed to be removed, hence this Outcome is not relevant.

In summary, the proposed design does not make an adequate effort to ensure the equitable preservation of views. Hence, the Outcomes of the control have not been met and the non-compliance cannot be supported.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2021**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

## CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2021/2075 for the Alterations and additions to a dwelling house on land at Lot 71 DP 6746,22 Ocean Road, PALM BEACH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.3 View Sharing of the Pittwater 21 Development Control Plan.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.6 Side and rear building line of the Pittwater 21 Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.8 Building envelope of



the Pittwater 21 Development Control Plan.

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Nick England, Planner**

The application is determined on 31/01/2022, under the delegated authority of:



**Claire Ryan, Acting Development Assessment Manager**