

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1136
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Responsible Officer:	David Auster
Land to be developed (Address):	Lot 404 DP 19651, 13 Pacific Road PALM BEACH NSW 2108
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	William Warwick Grounds
Applicant:	Jamisa Architects

Application Lodged:	17/09/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	22/03/2021 to 06/04/2021
Advertised:	Not Advertised
Submissions Received:	21
Clause 4.6 Variation:	4.3 Height of buildings: 17.6%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 1,265,000.00
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Executive Summary

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is not suitable and appropriate development for the subject site.

The assessment has found that the proposed height, bulk and scale of the development is excessive, and will have unacceptable impacts. The proposal is non-compliant with the height of buildings development standard, and side boundary envelope control, and overall the proposal will have unreasonable impacts on both public and private views, visual impacts caused by the overall bulk and scale, and will be generally inconsistent with the desired future character as expressed in the locality statement for Palm Beach.

Council received a large number of submissions in relation to the application, primarily concerned with

the height, bulk and scale (and associated impacts) of the proposal. These submissions are generally supported, to the extent discussed within the report.

Given the assessment conclusions, the application is considered to be unsuitable development for the subject site, and not in the public interest.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be refused, for the reasons attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves demolition of the existing structures on site, and construction of a new three storey dwelling. The dwelling will be comprised of the following:

Lower Ground Floor Plan

- Three bedrooms
- Rumpus room
- Two bathrooms
- Rear patio

Ground Floor Plan

- Open plan living/dining/kitchen
- Laundry
- Bathroom
- Front patio
- Rear deck
- Storage area

First Floor Plan

- Master Bedroom
- Bathroom
- Rear deck
- Front entry
- Carport for two cars (parked end to end)

The plans initially provided with the application were assessed to be unacceptable, and the applicant was requested to withdraw the application due to non-compliance with the height of buildings development standard, and inconsistency with clauses A4.12 Palm Beach Locality, C1.3 Views, C1.4 Solar Access, and D12.8 Building Envelope of the Pittwater DCP. The applicant did not withdraw the application, but provided amended plans, which pulled back the development in some places from the eastern (rear) boundary and the southern (side) boundary. These amendments were re-notified to surrounding neighbours. Height poles were also erected at the request of Council to enable accurate

assessment of view loss.

The amended plans are the subject of the assessment in this report.

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 Local Environmental Plan 2014 - Zone E4 Environmental Living

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality

Pittwater 21 Development Control Plan - C1.3 View Sharing

Pittwater 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - D12.5 Front building line

Pittwater 21 Development Control Plan - D12.8 Building envelope

Pittwater 21 Development Control Plan - D12.11 Fences - General

SITE DESCRIPTION

Property Description:	Lot 404 DP 19651 , 13 Pacific Road PALM BEACH NSW 2108
Detailed Site Description:	The site is an irregularly shaped lot, located on the eastern side of Pacific Road. It is legally described as Lot 404, DP19651. The site has an area of 604.8sqm, and slopes steeply down from front to rear, and also has a slight cross fall from north west to south east. The site is located in a natural amphitheatre formed by the sites to the south along Pacific Road and down Norma Road, such that the site is in a visually prominent location from many neighbouring properties. The subject site and surrounding sites all have expansive ocean and headland views to the north, east and south.

There is an existing dwelling with carport situated on the site, with a steep driveway down to the level of the carport. Surrounding development consists of detached dwellings of various heights and styles. The properties to the rear are located well below the subject site, and the properties across the road to the west are well above, due to the steep topography.

The site is well vegetated to the rear, and includes rocky outcrops.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site. No prelodgement meeting was held for the proposal.

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

Section 4.15 Matters for Consideration'	Comments
	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)(iia) – Provisions of any planning agreement	None applicable.
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&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&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&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to height poles being erected. The applicant also submitted amended plans, although these were not requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent if the application is approved.</p> <p><u>Clauses 93 and/or 94</u> of the EP&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&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent if the application is approved.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent if the application is approved.</p> <p><u>Clause 143A</u> of the EP&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 Matters for Consideration'	Comments
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) Environmental Impact 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) Social Impact The proposed development will have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development. The development of the site with a dwelling is appropriate, however, as discussed throughout this report, the proposed scale of the building is considered unacceptable.
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 relevant requirement(s) of the Pittwater LEP and DCP, and 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 22/03/2021 to 06/04/2021 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 21 submission/s from:

Name:	Address:
Vernon Casey Mrs Donna Casey	11 Pacific Road PALM BEACH NSW 2108
Trent Peterson	9 Pacific Road PALM BEACH NSW 2108
Mr Neil William Johnson	61 Holdsworth Street WOOLLAHRA NSW 2025

Name:	Address:
Mr John Douglas Whiteford	15 Rock Bath Road PALM BEACH NSW 2108
Mrs Penelope Ann Mainwaring Davis	324 Whale Beach Road PALM BEACH NSW 2108
Mr Ross Nicholas	30 Pacific Road PALM BEACH NSW 2108
Ms Nicholina Elizabeth Ralston Kuner	77 Market Street RANDWICK NSW 2031
Mr John Paul Liefeld	322 Whale Beach Road PALM BEACH NSW 2108
Oliver Johnson	Address Unknown
Mr James Frederick Waley	17 Pacific Road PALM BEACH NSW 2108
The Palm Beach & Whale Beach Association Inc	PO Box 2 PALM BEACH NSW 2108
Mrs Karen Elizabeth Chapman	14 A Pacific Road PALM BEACH NSW 2108
Karina Chapman	1 Malo Road WHALE BEACH NSW 2107
Mr Gary Clifford Timm	14 A Pacific Road PALM BEACH NSW 2108
Mr Peter McCallum	5 Pacific Road PALM BEACH NSW 2108
Mr Jeffrey Stanley Skebe	23 Norma Road PALM BEACH NSW 2108
Mr Carlton William Lamb	7 Pacific Road PALM BEACH NSW 2108
Mr Storm Seymour Jacklin	7/343 Edgecliff Road EDGECLIFF NSW 2027
Mrs Christine Heather Mackinnon	16 Norma Road PALM BEACH NSW 2108
Mr Robert Donald Mackinnon	16 Norma Road PALM BEACH NSW 2108
Mainstream Group Holdings Limited	Level 1 51-57 Pitt Street SYDNEY NSW 2000

The 21 submissions received originated from 16 different properties in the surrounding area. As a result of the re-notification of the amended plans, two new submissions were received, from people who had previously objected (numbers 5 and 11 Pacific Road). None of the original submissions were withdrawn as a result of the amendments, and as such are considered to be maintained by the objectors.

The following issues were raised in the submissions and each have been addressed below:

- Cost of works
- Non-compliance with built form controls including height of buildings development standard and clause 4.6
- Views
- Solar access
- Visual and acoustic privacy
- Landscaping
- Aims of LEP
- Zone objectives
- Locality statement
- Landslip
- Driveways
- Character, visual dominance
- Fences

- Misleading ground levels on plans
- Stormwater

The matters raised within the submissions are addressed as follows:

- **Cost of works**

Concerns were raised with that the cost of work submitted was inaccurate.

Comment:

The application includes a Cost Summary Report, filled out by a registered architect. This is in accordance with Councils requirements for development applications of this type. The total cost identified of \$1,265,000 is considered acceptable. The submissions are not supported in this regard.

- **Non-compliance with built form controls including height of buildings development standard and clause 4.6**

Concerns were raised with regard to non-compliance with various built form controls, and particularly the overall height of the development.

Comment:

These issues are assessed in detail under the relevant sections of this report. The proposal is significantly non-compliant with the height of buildings development standard under clause 4.3 of the LEP, and the building envelope control under clause D12.3 of the DCP. In summary, the extent of non-compliance proposed is not supported in the circumstances, and non-compliance with these built form controls form are included as recommended reasons for refusal.

- **Views**

Concerns were raised with respect to view loss from numbers 5 and 11 Pacific Road, and more generally from the public domain along Pacific Road.

Comment:

View sharing is assessed in detail under clause C1.3 View Sharing in this report. In summary, the proposal is not considered to maintain a reasonable sharing of views, and this is recommended reason for refusal.

- **Solar access**

Concerns were raised with regard to overshadowing of southern neighbours.

Comment:

This issue has been assessed in detail under clause C1.4 Solar Access in this report. In summary, the proposal is considered to maintain a reasonable level of solar access to the southern neighbours, given the constraints presented by the subdivision pattern and topography.

- **Visual and acoustic privacy**

Concerns were raised with respect to both visual and acoustic privacy.

Comment:

The proposal is not considered to result in any unreasonable privacy impacts. Side facing

windows are generally limited, and where they do occur will not generally create significant impacts. W-06 is north facing and off the main living / dining area on the middle level. However, this window is approximately 1.2m higher than the top of the neighbouring south facing window, and is also offset, such that privacy impacts in that direction would be limited.

The rear facing balconies are generally screened from the southern neighbours by setbacks and by the structure itself. However, the living room rear deck is located at RL84.145, which is only just above the neighbouring south facing bedroom windows at 83.89. If the application is approved, a condition would be recommended requiring a privacy screen on the northern side of this deck.

The northern neighbour also raised concerns regarding the stairwell to be located along the northern boundary. This stairwell / path, while raised in part above the existing ground levels, is considered to be a low use 'service' type path way, as is normal to have down the side of a house, which will not create significant privacy impacts.

Acoustically, the proposal is for a residential dwelling in a residential zone. It is not considered to result in any unreasonable impacts in this regard. If the application is approved, a standard condition limiting all mechanical plant to 5dBa above ambient noise levels would be recommended.

- **Landscaping**

Concerns were raised that the proposal provides inadequate landscaping, and that the proposal does not comply with the minimum requirements.

Comment:

The assessment has found that the proposal does comply with the minimum 60% landscaped area requirement under clause C1.1 of the DCP. Council's Landscape Officer has also assessed the proposal, and is satisfied with the proposed landscaping plan. The proposed landscaping is considered generally adequate in this regard.

- **Aims of LEP**

Concerns were raised that the proposal is inconsistent with the aims of the LEP.

Comment:

As discussed throughout this report, the proposal is not supported for various reasons, including non-compliance with the height of buildings development standard, and inconsistency with the desired character statement for the Palm Beach Locality. As such, the proposal is considered to be inconsistent with the aims of the LEP, and the submissions are supported in this regard.

- **Zone objectives**

Concerns were raised that the proposal is inconsistent with the zone objectives.

Comment:

The zone objectives are discussed in detail under clause 4.6 in this report. In summary, the proposal is considered to be inconsistent with the zone objectives, and this is a recommended reason for refusal.

- **Locality statement**

Concerns were raised that the proposal is inconsistent with the locality statement.

Comment:

This issue is discussed in detail under clause A4.12 Palm Beach Locality of the DCP. In summary, the proposal is considered to be inconsistent with the locality statement in a number of aspects, and this is a recommended reason for refusal.

- **Landslip**

Concerns were raised regarding potential damage to neighbouring properties as a result of vibrations during excavation.

Comment:

The geotechnical report provided with the application identifies vibrations as a hazard, and recommendations are provided within the report to move the risk of the hazard from 'unacceptable' to 'acceptable', including close monitoring during excavation and limits on peak particle velocity, or use of other tools to break rock. Should the application be approved, conditions would be recommended requiring full compliance with the recommendations of this report, and further conditions requiring pre and post construction dilapidation reporting to be carried out. Subject to these conditions, the issue is considered to be adequately addressed.

- **Driveways**

Concerns were raised with regard to the height of the driveway above ground.

Comment:

The driveway proposed has been assessed by Council's Engineers and is acceptable with regard to gradients. A raised driveway and parking structure is considered relatively normal for sites with steep topography, and the proposal is considered generally acceptable in this regard. Other concerns are discussed throughout the report with the overall height of the proposal, however, the height of the driveway is not considered to be unacceptable.

- **Character, visual dominance**

Concerns were raised with regard to the character and visual dominance of the development.

Comment:

These concerns are addressed throughout the report, and generally speaking the submissions are supported in relation to this issue. The height, bulk and scale are considered greater than acceptable, and the extent of non-compliance with the applicable built form controls is considered excessive.

- **Fences**

Concerns were raised with regard to the proposed front fence.

Comment:

This issue has been discussed in detail under clause D12.11 Fences in this report. In summary, the proposed front fence is considered acceptable in the circumstances of the site, and the submissions are not supported in this regard.

- **Misleading ground levels on plans**

Concerns were raised with regard to the ground levels shown on the plans, particularly the elevations.

Comment:

The amended plans provided by the applicant include elevations with the existing ground levels shown along the boundaries. The applicant has also provided the roof plan overlaid on the survey. Further, the applicant has provided height and envelope planes clearly showing the extent of non-compliance proposed with the height and envelope controls. This issue is considered to have been adequately addressed, and no concerns are raised with the plans in this regard.

- **Stormwater**

Concerns were raised from the two neighbouring properties to the rear regarding stormwater run off and sedimentation, both during construction and the long term impacts.

Comment:

Council's Development Engineer has assessed the proposal and is satisfied that the proposal can comply with Council's Stormwater policy. Conditions have been recommended to require the stormwater system to be designed in accordance with the policy. Further conditions will be applied to the consent in relation to silt and sediment barriers during construction, should the development be approved. Subject to these conditions, the concerns are considered to be reasonably satisfied.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application is for additions to an existing dwelling including a driveway and car space, and extended decks to the dwelling. The existing site does not have vehicular access and the proposal requires the removal of two existing trees, and without a design alternative to retain.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 Environmental Living zone, and the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none">• B4.22 Preservation of Trees and Bushland Vegetation• C1.1 Landscaping• D12 Palm Beach Locality <p>The site is located in the E4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees. The existing site contains natural landscape features at the rear of the site including stone outcrops and existing indigenous trees and palms that are proposed for protection. The frontage of the site currently is occupied by an existing dwelling with a small setback distance supporting contains low height vegetation only.</p> <p>The proposed development does not impact upon the natural landscape features and existing trees at the rear of the site. Existing</p>

Internal Referral Body	Comments
	<p>vegetation, exempt species by either height or type, are proposed for removal to accommodate the works. A Landscape Plan is provided that proposes retention and enhancement of the lower slopes of the site retaining the natural attributes typical of the E4 Environmental Living zone outcomes, and additionally provides landscape treatments to the frontage and side boundaries to comply with the requirements of D12.2 Scenic protection - General, where the proposed landscaping does not impact upon the natural environment and waterway when viewed from the street.</p> <p>Landscape Referral raise no objections to the proposal, subject to conditions of consent.</p>
NECC (Development Engineering)	No objections to approval subject to conditions as recommended.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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. 1073809S).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	51

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

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 who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

SEPP (Coastal Management) 2018

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

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:

The site falls within the coastal use area identified on the map. The proposal does not unreasonably impact on any of the matters for consideration in paragraph (a) above, noting that view loss caused by the proposal is not of the 'foreshore'. The proposal is therefore considered to be designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a). However, with regard to paragraph (c), and as assessed throughout this report, the proposal is considered to be of a bulk, scale and size that is inappropriate in its context, in relation to the surrounding built environment.

As such, it is considered that the application does not comply 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 site is situated well away from the coastline, and is not subject to any coastal hazards. The proposal is not likely to cause any increased risks in this regard.

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?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m (10m variation)	9.997m	17.6%(over 8.5m)	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No

Clause	Compliance with Requirements
4.6 Exceptions to development standards	No
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone E4 Environmental Living

See discussion under clause 4.6.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.997m
Percentage variation to requirement:	17.6%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

(1) *The objectives of this clause are as follows:*

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

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 4.3 - Height of Buildings development standard is not expressly excluded from the operation of this clause.

(3) *Development consent must not be granted for development that contravenes a development*

standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

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

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request (attached to this report as an Appendix) has not demonstrated that the objectives of the development standard are achieved.

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- The steepness of the site, and areas of non-compliance with the height limit relating to steeper drops in the landform below.
- The development will appear as two storeys when viewed from the street, with the appearance of full compliance with the height of buildings development standard.
- Non-compliant elements of the proposal are not visible from any public vantage point within 150m-200m from the site. The dwelling is not readily visible from properties to the east due to the topography. The minor non-compliance will not be readily distinguishable to any casual observer.
- The portions of the building that project above the height limit are minor elements that do not create any significant impacts in terms of view loss, overshadowing, or privacy.
- The proposal is consistent with the zone objectives.

Comment

The arguments presented above are not generally concurred with. The site is more than 30% in slope, and therefore could potentially qualify under clause 4.3(2D) for a height limit of up to 10m. However, the proposal is not considered to achieve the other requirements of clause 4.3(2D), in that the portions of the building protruding above the 8.5m limit are not 'minor', the objectives of clause 4.3 are not considered to be achieved (see assessment below), and the building does not adequately step down the slope. As such, the proposal does not qualify for a 10m height limit under clause 4.3(2D).

It is true that the development will appear as two storeys from the street, and that there are no public vantage points within close proximity with views towards the rear of the subject site. However, the site is at the northern end of a natural amphitheatre, and is in a highly visible location from properties to the south along Pacific Road, and further to the south east along Norma Road. The subject site is considered to be in a visually prominent location, and the proposal will be significantly and noticeably higher than existing surrounding development.

As discussed in this report, the proposal will have a significant impact on views from both the public domain on Pacific Road, and from number 5 Pacific Road to the south, which would lose the view of

Barrenjoey Lighthouse, partially as a result of elements above the 8.5m height limit. The proposal is considered to comply with the requirements for solar access and privacy in the DCP, albeit the non-compliance with the height of buildings development standard increases shading across multiple southern neighbours in the afternoons.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

(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,

Comment:

As discussed under clause A4.12 Palm Beach Locality of the DCP in this report, the proposal is considered to be inconsistent with a number of aspects of the locality statement. A significant portion of the proposal is three storeys in height, and the proposal overall is not considered to minimise bulk and scale of development, given the level of proposed non-compliance with the height of buildings development standard, and the building envelope. Nor is it considered to adequately integrate with the landform.

b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment:

The proposal will be significantly higher than its immediate neighbours, and all neighbours in the visual catchment to the south east. This is a result of significant non-compliance with the height of

buildings development standard, and the building envelope control, and is to an extent that the overall development is not considered to be compatible with the height and scale of surrounding and nearby development.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposal complies with the minimum requirements for solar access in the DCP, although the extent of non-compliance with the relevant built form controls does not necessarily minimise overshadowing of neighbouring properties.

d) to allow for the reasonable sharing of views,

Comment:

As discussed under clause C1.3 View Sharing in this report, the proposal is not considered to allow for a reasonable sharing of views. This is partially as a result of the proposed height non-compliance.

e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment:

The proposal includes one major 'step' from the upper level to the middle level, but otherwise the responsiveness to the topography is limited.

f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,

Comment:

The proposal will not significantly impact on any heritage areas or items, nor on the natural environment.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of Clause 4.3 – 'Height of buildings'.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment:

The proposal is not considered to be 'low-impact' given its given its height above surrounding development, and resulting visual impacts.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment:

The proposed height of the development is considered to have significant visual impacts given its height above surrounding development, including unreasonable impacts on views

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment:

As discussed throughout this report, the scale of the development is not considered to be low, and the proposal does not adequately integrate with the landform.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment:

N/A

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the E4 Environmental Living zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard can not be assumed.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	4m (carport roof)	38.4%	Yes (variation permitted)
Rear building line	6.5m	16.836m	N/A	Yes
Side building line	2.5m	S 2.5m	N/A	Yes
	1m	N 1.09m	N/A	Yes
Building envelope	3.5m	S Outside envelope up to	N/A	No

		3.4m		
	3.5m	N Outside envelope up to 3.5m	N/A	No
Landscaped area	60%	60.57%	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	No	No
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	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
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	No
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.11 Fences - General	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

The proposal is not considered to achieve the desired character of the Palm Beach Locality. In particular, the proposal is considered inconsistent with the following aspects of the locality statement:

- *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.*

Comment: The proposed new dwelling is in part three storeys. A large proportion of the upper level, occupied by the proposed master bedroom, ensuite, walk-in-robe, and carport will be three storeys in height. This element of the proposal is non-compliant with the 8.5m height limit (see discussion under clause 4.6 in this report), and is substantially non-compliant with the side boundary envelope control, with the majority of the three storey high portion of the upper level being outside of the envelope. This indicates a development which has not adequately responded to the landform.

- *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.*

Comment: As mentioned above, the proposal is substantially outside the side boundary envelope control, and is also non-compliant with the height of buildings control. Due to the slope of the land, the proposal will remain generally below the tree canopy level. However, the proposal overall will be substantially higher than its immediate neighbours to the north and south, and is not considered to adequately respect the horizontal massing of the existing built form in the vicinity. The site is in a visually prominent location in a natural amphitheatre, and it is considered that the bulk and scale of the development is inconsistent with existing development in the visual catchment.

- *Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance.*

Comment: The proposal is stepped at the upper level, but not at the two lower levels. This results in substantial non-compliances with the height of buildings development standard, and side boundary envelope control. The level of stepping proposed in the development is considered inadequate to sufficiently integrate with the landform.

C1.3 View Sharing

Merit consideration

The development is 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:

The two properties who made specific objections to view loss from their properties are numbers 5 and 11 Pacific Road, both to the south of the subject site. There were other more general view loss objections, including a number objecting to view loss from the public road.

5 Pacific

The view impacted is a highly valuable view including the ocean, headlands, and Barrenjoey Lighthouse to the north. Barrenjoey Lighthouse is considered iconic in the context of these principles. The development will block the view of the lighthouse.

View from number 5 of Barrenjoey Lighthouse (from side facing kitchen/living room window)



11 Pacific

The view impacted from number 11 is also highly valuable, taking in wide headland and ocean views. However, Barrenjoey Lighthouse is not visible from number 11. The development will block a small amount of headland and ocean view to the north.

View from living room deck of number 11



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:

5 Pacific

The views to the lighthouse are obtained across multiple side boundaries, from side (north) facing windows from the open plan kitchen/living area, from a standing position. The lighthouse would also be visible from the rear (east) facing windows, but is obscured by an existing tree on another lot.

11 Pacific

The views affected are obtained from the main living area and attached deck, and the upper level bedroom. They are across the side boundary, from both sitting and standing positions.

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:

5 Pacific

The extent of impact would be considered generally minor, if it were not for the 'iconic' feature of the view being impacted. The wide ocean and headland views will remain mostly unaffected. However, given that the development will block the lighthouse (and part of the headland below) from the main living area, the impact is assessed as 'moderate'.

11 Pacific

The proposal will not have a significant impact on the whole view available from any point in the dwelling. The wide ocean and headland views will remain generally unaffected. As such, the impact is assessed as 'negligible'.

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:

The proposal includes significant non-compliances with the height of buildings development standard, and the side boundary envelope control in the DCP. These issues do not significantly impact on views from number 11, which is impacted more by the rear setback of the proposal. The height of the building does however impact on the view from number 5. The part of the

proposal that impacts on the view of the light house is the rear of the middle and upper levels. This includes the rear south eastern corner of the kitchen, and balustrade above (on the master bedroom deck) which are above the 8.5m height limit, and significantly outside the building envelope. It is acknowledged that there is a steep slope on the site, however, as discussed under clause 4.6 of the LEP in this report, the proposal is not considered to meet the requirements to allow for a variation of up to 10m, partly as a result of the impacts on views. The upper level of the proposal is generally above the side boundary envelope. Given these factors, and the iconic nature of the view impacted, the proposal is not considered to maintain a reasonable sharing of views amongst dwellings.

- *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 proposal will block a significant amount of ocean views from Pacific Road. The proposed carport is open, and will allow some ocean views to be maintained through that area of the development. However, the rest of the upper level, which is partly above both the 8.5m height limit, and generally significantly above the side boundary envelope, will still block a significant ocean view. The applicant has argued that there is no footpath along Pacific Road, and that therefore the impact on views from the public domain is limited. However, as evidenced by the number of submissions that raised this as an issue, it is considered that there is significant community concern in this regard. As such, the proposal is not considered to achieve this objective.

- *Canopy trees take priority over views.*

Comment:

No canopy trees are proposed for removal to gain views.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant objectives of PLEP 2014 / 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.

C1.4 Solar Access

The control requires that *"The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st"*.

The proposal partially complies with the control, in that the southern part of the main private open space of the immediate southern neighbour (number 11), achieves 3 hours of sunlight to their main private open space (being their rear deck off the main living room). The northern part of this deck is shaded by 12pm. This deck is also self shaded by a privacy / shade awning on the dwelling at number 11, so that by 12pm the deck will largely be in shadow, and therefore not generally receive the full 3 hours of sunlight required by the control.

The rear yard area, which although not the main private open space, and not highly useable due to the slope and lack of direct access from living areas of the dwelling, does receive the required amount of solar access up to 12pm.

Given these considerations, a merit assessment against the objectives is carried out below.

Merit consideration

With regard to the consideration for a variation, the proposed development is considered against the underlying outcomes of the control as follows:

- *Residential development is sited and designed to maximise solar access during mid-winter.*

Comment:

The proposal is non-compliant with the height and building envelope controls, as discussed throughout this report. Due to the topography and east/west orientation of the site and neighbours, the southern neighbour is highly vulnerable to overshadowing. The proposed development, although significantly breaching the boundary envelope and 8.5m height limit on the southern side, is setback between 2.5m - 5.64m. These are significant side setbacks on a site that is 15m wide. Given that the development maintains partially compliant solar access to the southern neighbour, despite the high vulnerability and topographical difficulties, the proposal is considered on balance to maintain a reasonable level of solar access.

- *A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development.*

Comment:

As discussed above, the proposal is considered to maintain a reasonable level of solar access to the southern neighbour, given the vulnerability of the neighbour due to the subdivision pattern and topography, and despite the proposed non-compliance to the height of buildings development standard, and side boundary envelope control.

- *Reduce usage and/dependence for artificial lighting.*

Comment:

The proposal is unlikely to cause significantly greater usage or dependence on artificial lighting.

Given the above considerations, the proposal is considered to maintain a reasonable level of solar access to the south, and this is not a recommended reason for refusal.

D12.5 Front building line

The minimum front building line is 6.5m for the site. The proposed dwelling is generally compliant with this requirement. However, the carport roof will be 4m from the front boundary. The control states that *"Where carparking is to be provided on steeply sloping sites, reduced or nil setbacks for carparking structures and spaces may be considered, however all other structures on the site must satisfy or exceed the minimum building line applicable"*. Given the steepness of the site, the proposal satisfies this variation, and the proposal is considered to be compliant with the control as a result.

D12.8 Building envelope

The application proposes major non-compliances with the side boundary envelope on both sides, being

up to 3.4m outside the envelope on the southern side, and 3.5m on the northern side.

Clause D12.8 of P21 DCP states that the building envelope may be varied when the slope of the exceeds 30%. This variation is applicable in relation to the subject site, and a merit assessment against the outcomes of the clause is carried out below.

Merit consideration

- *To achieve the desired future character of the Locality.*

Comment:

This matter has been discussed within section A4.12 of this report. In summary, the proposal is not considered to achieve the desired future character of the locality, due to the overall bulk and scale of the development. A substantial portion of the new dwelling is three storeys in height (rather than the two required by the locality statement). The proposed non-compliances with the building envelope control, and height of buildings development standard, are considered excessive, and will cause the development to be unreasonably larger in scale than existing development in the area. Further, the proposal does provide adequate stepping to sufficiently integrate with the landscape. As such, the proposal is not considered to achieve this outcome.

- *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 will have a significant impact on views from Pacific Road, and will take away a substantial amount of ocean views from the public domain. This view loss is caused by the proposed upper level, which is largely above the building envelope on both sides, and also substantially higher than the 8.5m height limit. Given the view loss caused by significantly non-compliant elements, the proposal is not supported in relation to this outcome.

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

Comment:

The proposal is located in a natural amphitheatre created by the topography mainly to the south and south east, and as a result is in a visually prominent location. It will be significantly larger in bulk, scale and height than surrounding neighbouring buildings, and the amount of stepping proposed does not adequately respond to the steep topography, to minimise non-compliance with the building envelope control.

- *The bulk and scale of the built form is minimised.*

Comment:

As discussed above, the bulk and scale of the development is considered excessive, and the extent of non-compliance with the building envelope is a symptom of this. The majority of the upper level master bedroom is outside the building envelope, and the extent of non-compliance proposed is not supported. The dwelling will be substantially larger in scale than existing surrounding development, and located as it is in a visually prominent area, will appear out of place compared to the scale of neighbouring buildings.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

This matter has been addressed in more detail within the report (refer to Clause C1.3 View Sharing under P21DCP). In summary, the proposal will cause a significant loss of the existing available views and vistas from the public road, and will also impact on the views of neighbours. Given the extent of non-compliance proposed with the building envelope, this view loss is not considered reasonable in the circumstances.

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

Comment:

The proposed development will not result in any unreasonable privacy impacts. As discussed under clause C1.4 Solar Access in this report, the proposal is considered, on balance, to maintain a reasonable level of solar access despite the proposed non-compliance.

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment:

No concerns are raised in relation to this outcome. Council's Landscape officer has assessed the proposal and is satisfied with the vegetation to be retained, and the proposed landscape plan.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of P21 DCP 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.

D12.11 Fences - General

Description of non-compliance

The proposed front fence is up to 1.7m high at the front boundary, and up to 2.1m high adjacent to the driveway just behind the front boundary (at the top of the stair). The control requires a maximum height of 1m for front fences.

Merit consideration

- *To achieve the desired future character of the Locality.*

Comment:

As discussed in this report, the proposal is considered inconsistent with the desired future character as expressed in the locality statement. However, this is not as a result of the proposed front fencing. The proposed front fence, while higher than the maximum 1m allowed by the control, will be of a generally low height compared to the street level, due to the steep slope of the land. The top of the fence, at approximate RL87.69, will generally be marginally lower than the RLs at the southern edge of the bitumen at the front of the site (between RL88.14 and RL87.49). It will not have any significant adverse impacts on the public domain or streetscape in this regard.

- *To ensure fences compliment and conserve the visual character of the street and neighbourhood*

Comment:

As discussed above, the fence will be low compared to the height of the road, and will have no significant negative impacts on the visual character of the street or neighbourhood.

- *To define the boundaries and edges between public and private land and between areas of different function.*

Comment:

The fence achieves this outcome.

- *To contribute positively to the public domain.*

Comment:

The fence is generally lower than the level of the road, and will not have any significant negative impacts on the public domain. The materials chosen are

- *An open streetscape that allows casual surveillance of the street.*

Comment:

The height of the fence will enable casual surveillance of the street frontage, due to the slope of the land.

- *Fences, where provided, are suitably screened from view from a public place.*

Comment:

The topography means that the fence will be located significantly lower than the public road, and will have no significant impacts in this regard.

- *Safe sight distances and clear view of the street (including to and from driveways) for motorists and pedestrians.*

Comment:

The proposed fence will not impact on sight distances for vehicles exiting the driveway.

- *To ensure heritage significance is protected and enhanced.*

Comment:

No heritage items will be impacted upon by the fence.

- *To ensure an open view to and from the waterway is maintained.*

Comment:

The fence will not affect views to the ocean.

- *An area of private open space is provided for properties that front the Pittwater Waterway.*

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$12,650 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,265,000.

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

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case;
and

b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2020/1136 for the Demolition works and construction of a dwelling house on land at Lot 404 DP 19651,13 Pacific 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)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone E4 Environmental Living of the Pittwater Local Environmental Plan 2014.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of buildings of the Pittwater Local Environmental Plan 2014.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to development standards of the Pittwater Local Environmental Plan 2014.
6. 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 A4.12 Palm Beach Locality of the Pittwater 21 Development Control Plan.
7. 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.
8. 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.