

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1532
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 2 DP 412086, 15 Ocean Road PALM BEACH NSW 2108
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Kalloghlian Investments Pty Ltd
Applicant:	Barry Babikian

Application Lodged:	31/10/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	15/04/2024 to 29/04/2024
Advertised:	Not Advertised
Submissions Received:	23
Clause 4.6 Variation:	4.3 Height of buildings: 56.5%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 4,019,400.00
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EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a new 4 storey dwelling house, including a swimming pool and basement car parking.

The application is reported to the Northern Beaches Local Planning Panel (NBLPP) for determination as Council's notification attracted more than 10 unique submissions in objection to the development.

The concerns raised in the 23 objections received broadly relate to:

- Building height, bulk and scale
- Character and heritage impacts
- Amenity and natural environment impacts
- Inconsistency with the objectives of the C4 Environmental Living zone and the public interest

This assessment generally concurs with the issues raised in the submissions and these matters are included within the reasons for refusal.

Following a preliminary assessment of the application, Council requested the applicant consider amendments of the proposal to address various concerns in relation to built form non-compliances, character and heritage, landscaping and amenity impacts. Amended plans were subsequently submitted, but on review were found not to sufficiently address the concerns raised.

The critical assessment issues resulting in a recommendation of refusal are summarised as follows:

- The proposed building height is excessive and is not adequately justified by the submitted Clause 4.6 variation request;
- The bulk and scale caused by the building height variation are exacerbated by significant building envelope breaches at the northern and southern elevations and by the deficient landscaped area;
- The combination of the height, envelope and landscaped area breaches are indicative of a development that is too bulky, occupies an excessive proportion of the site and will adversely impact the amenity of surrounding properties;
- The proposed four-storey built form and excavation volume do not respond appropriately to the topography of the site and are inconsistent with the character of the surrounding locality; and

The proposal seeks a variation of **56.5%** to the height of buildings development standard. The Applicant's Clause 4.6 variation request does not adequately demonstrate that the proposal achieves the relevant objectives of the development standard, or that there are sufficient environmental planning grounds to justify the extent of the variation sought. The variation would result in undue visual bulk and scale that would be inconsistent with the objectives of the standard, the zone and the desired future character of the Palm Beach locality. It is noted that the previous excavation of the site somewhat contributes to the extent of the height variation, however the primary cause is the proposed four-storey built form over moderately sloping land. It is also noted that the application seeks to rely, in part, upon previous approvals issued by Council within the locality to justify the acceptability of the building height breach on the subject site and the associated character impacts. For the reasons discussed in this report, particularly under Section A4.12 (Palm Beach Locality Statement), the justifications are not accepted as reasonable or sufficient.

Based on the detailed assessment contained in this report, the application is **not supported** and it is recommended that the Panel **REFUSE** the application for the reasons provided.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition works and the construction of a dwelling-house as follows:

Lower Ground Floor

- Carparking for 5 vehicles
- Cinema, gym, laundry and bathroom

- Pool equipment room
- Stair and lift access

Upper Ground Floor

- Entry foyer, living and dining room
- Kitchenm butler's kitchen, pantry and cool room
- Bathroom
- Store and wine cellar
- Front terrace and swimming pool

First Floor

- Bedrooms 1-5 with ensuites
- Laundry
- Front and rear terraces

Second Floor

- Master Bedroom with ensuite, robe and terrace

External

- New driveway and pedestrian access path/stair
- Landscaping works including tree removal and planting
- New front fence

Amendment of Application

Following lodgement, the application was amended to make the following changes to the proposal:

- Reconfigure garage, bathroom, laundry and gym, delete plant/storage and reduce overall excavation
- Reconfigure foyer and delete north-western external stair, replace with landscaping
- Delete paving adjacent to southern and western external walls
- Increase first floor southern side setback to Bedroom 3, ensuite and hall by 2.1m, reconfigure internal layout
- Delete side boundary-facing windows to Bedrooms 1, 3 and 4
- Increase second floor southern side setback to ensuite and terrace by 3.225m and bath by 1.6m
- Increase second floor front setback to terrace by 2.5m and wall by 2m-3m
- Reconfigure master suite internal layout
- Reduce roof over second floor front terrace and reconfigure skylight and solar panel locations
- Reduce upper ground floor level by 200mm, first floor level by 400mm, second floor level by 800mm and roof level by 1.2m
- Minor changes to landscaping

The amended application was re-notified to nearby property owners and residents that lodged

submissions in relation to the original proposal.

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 C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation
Pittwater Local Environmental Plan 2014 - 5.21 Flood planning
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill
Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy
Pittwater 21 Development Control Plan - D12.8 Building envelope
Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land
Pittwater 21 Development Control Plan - D12.12 Fences - Flora and Fauna Conservation Areas

SITE DESCRIPTION

Property Description:	Lot 2 DP 412086 , 15 Ocean Road PALM BEACH NSW 2108
Detailed Site Description:	The subject site consists of one allotment located on the western side of Ocean Road. The site is irregular in shape with a frontage of

21.64m along Ocean Road and a depth of 43.28m. The site has a surveyed area of 911.9m².

The site is located within the C4 Environmental Living zone and accommodates a two-storey dwelling house.

The rear of the site slopes steeply from west to east with a fall of approximately 13m between the rear boundary and the existing rear building line. The front portion of the site from the eastern boundary to the existing rear building line has been historically excavated and is generally flat.

The sloping rear portion of the site is densely vegetated and includes a number of significant trees and large palms. Existing vegetation within the front and side setback areas is limited to one palm and various bushes and hedges.

Detailed Description of Adjoining/Surrounding Development

Adjoining and nearby development is characterised by detached dwellings generally ranging from one to three storeys in height. The heritage listed Ocean Beach Reserve located across Ocean Road to the east of the site. The dwelling at 2 Palm Beach Road to the south-west of the site is also heritage listed.

Map:



SITE HISTORY

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

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

DA2023/1532 - Current Application

- No pre-lodgement meeting was held in relation to the proposed development.
- The DA was lodged on the Portal on 31 October 2023.
- On 24 January 2024, Council issued an RFI letter and amendments were suggested to address concerns generally relating to:
 - Building height and envelope breaches;
 - Character and heritage impacts; and
 - Building bulk and amenity impacts.
- In response to Council's concerns, the Applicant submitted amended architectural plans on 15 March 2024 and amended landscape plans on 4 April 2024.
- The amended scheme was re-notified.

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	There are no current draft environmental planning instruments.
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 agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters would be addressed via a condition of consent were the application recommended for approval..</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 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 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in the form of amended plans to address numerous concerns raised</p>

Section 4.15 Matters for Consideration	Comments
	<p>by Council including building height and built form non-compliances, character and amenity impacts and extent of excavation.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. These matters would be addressed via a condition of consent were the application recommended for approval.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. These matters would be addressed via a condition of consent were the application recommended for approval.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). These matters would be addressed via a condition of consent were the application recommended for approval..</p>
<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>	<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 not 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>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered unsuitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>This assessment has found that the proposal is contrary to numerous requirements of the applicable planning controls and would result in a development that causes unreasonable visual and amenity impacts to surrounding properties and the public domain. The extent of these impacts would undermine the desired future character of the locality and be contrary to the expectations of the community.</p>

Section 4.15 Matters for Consideration	Comments
	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 application has been publicly exhibited from 15/04/2024 to 29/04/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 23 submission/s from:

Name:	Address:
Mr Randolph Clinton	74 Florida Road PALM BEACH NSW 2108
Mr Bruce Robert Butler	12 Ramsay Street COLLAROY NSW 2097
Mr Jeremy Colin Alpe	8 Sunrise Road PALM BEACH NSW 2108
Ms Gail Elizabeth Marshall	Edgewater 3 Wolseley Crescent POINT PIPER NSW 2027
Mr Robert Scott King	9 Ralston Road PALM BEACH NSW 2108
Mr Bruce Crosby Forster Mrs Janece Helene Blythe Forster	PO Box 1460 DOUBLE BAY NSW 1360
Nick Frazer	55 Tasman Road AVALON BEACH NSW 2107
Mrs Beverly Cecile Gibson	107 Florida Road PALM BEACH NSW 2108
Mr David Richard Ravenscroft	100 Binburra Avenue AVALON BEACH NSW 2107
Bruce Goold	Address Unknown
Mr Philip Frederick Liney	5 Iluka Road PALM BEACH NSW 2108
Mr Michael William Molloy	PO Box 111 CHURCH POINT NSW 2105
Mr Philip Foster Begg	7 Waratah Road PALM BEACH NSW 2108
The Palm Beach & Whale Beach Association Inc	PO Box 2 PALM BEACH NSW 2108
Mr Rodney Douglas Hampton	57 Elvina Avenue AVALON BEACH NSW 2107
Mr Michael Phillip Netterfield	105 Florida Road PALM BEACH NSW 2108
Mr Peter Lindsay Weir Mrs Wendy Margaret Pamela Weir	56 Sunrise Road PALM BEACH NSW 2108

Name:	Address:
Boston Blyth Fleming Pty Ltd Mr David Lane Elfick	1 / 9 Narabang Way BELROSE NSW 2085
Lynne Crookes	1 Palm Beach Road PALM BEACH NSW 2108
Dr Jeni Thornley Dr Stephen Philip Ginsborg	71 Whale Beach Road AVALON BEACH NSW 2107
BBF Town Planners Asia Digital Investments Pty Ltd	1 / 9 Narabang Way BELROSE NSW 2085
Mrs Anne Lee Winstock	20 Ralston Road PALM BEACH NSW 2108
Debra Maddock	27 / 31 Gladstone Street NEWPORT NSW 2106

The issues raised in the submissions are addressed as follows:

- **Building height, bulk and scale**

The submissions raised concerns that the proposed dwelling is excessive in height, bulk and scale and includes insufficient landscaped area and landscaping. The submissions also raised concerns that the proposal is an overdevelopment of the site that is incompatible with the character of the locality.

Comment:

This report includes a detailed assessment of the development against the PLEP 2014 and P21 DCP built form controls. In summary, the extensive variations to the building height, building envelope and landscaped area controls are such that the proposal is found to represent an overdevelopment of the site that is incompatible with the surrounding character. Accordingly, the proposal is recommended for refusal for the reasons detailed in this report.

- **Unique character and heritage value**

The submissions raised concerns that demolition of the existing dwelling and construction of the proposed dwelling will impact upon the beach front character and heritage values of the site, immediate surrounds and the broader locality.

Comment:

The application was referred to Council's Heritage Section for assessment, with no objection being raised to the amended proposal in relation to heritage impacts. Notwithstanding, the proposal is considered to adversely impact the character of the locality and this is included as a reason for refusal.

- **Amenity impacts**

The submissions raised concerns that the proposal will result in adverse impacts upon surrounding properties in relation to views, solar access, privacy and general amenity.

Comment:

The detailed assessment of view sharing undertaken in this report concludes that the proposal will not unreasonably impact views from surrounding properties. However, the proposed development will cause adverse impacts in relation to overshadowing, privacy and visual bulk impacts and so these matters are included as reasons for refusal.

- **Natural environment impacts**

The submissions raised concerns that the proposed excavation, construction and tree removal will cause adverse impacts upon the natural environment and biodiversity.

Comment:

The application was referred to Council's Biodiversity and Coastal Sections for assessment, with no objection being raised to the proposal in relation to impacts upon the natural environment or biodiversity values. However, it is considered that the extent and volume of the proposed excavation is excessive and does not adequately respond to the topography of the land, and so this is included as a reason for refusal.

- **C4 Environmental Living zone objectives**

The submissions raised concerns that the proposed development is inconsistent with the objectives of the C4 zone and is not in the public interest.

Comment:

The proposal is assessed as being inconsistent with the objectives of the C4 zone as a result of the dwelling's adverse visual impacts and inadequate integration with the natural landform and landscape. It is agreed that the proposed development is contrary to the public interest due to the adverse impacts upon the amenity of surrounding properties and the visual quality and character of the locality, and so these matters are included as reasons for refusal.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Supported with conditions.</p> <p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to):</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 C4 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, to satisfy the landscape objectives of the C4 Environmental</p>

Internal Referral Body	Comments
	<p>Living zone.</p> <p>The palms shown to be removed are exempt by species and as such can be managed or removed at the discretion of the applicant without consent. Existing prescribed trees in the rear setback are located at a much higher RL than the area of excavation; however, a Tree Protection Plan must be submitted prior to issuing a Construction Certificate. A Project Arborist will need to be engaged to supervise the works, including but not limited to demolition, excavation and construction.</p> <p>The landscape planting proposal is generally supported and all proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent. The architectural sections do not show sufficient soil depth for the on slab landscape works; all on slab landscape planters must meet Council's minimum soil depth requirements.</p>
NECC (Bushland and Biodiversity)	<p>Supported with conditions.</p> <p>Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable biodiversity related provisions:</p> <ul style="list-style-type: none"> • Pittwater 21 DCP cl. B4.3 Flora and Fauna Habitat Enhancement Category 2 Land <p>The Flora and Fauna Assessment Report (Narla Environmental, September 2023) submitted with the application assessed potential impacts associated with the proposed development on terrestrial ecology within the subject lot. The FFA determined that approximately 0.008ha of exotic dominated vegetation will require removal, including the removal of 9 x Kentia palms. It is noted that Kentia palms are considered exempt as per Northern Beaches Councils exempt species list and as such do not require Council approval prior to removal. A test of significance (5-part test) was conducted by the Ecologist for Grey-headed Flying-fox which concluded that the proposed development would not result in a significant impact on the species such that a local viable population or occurrence of any of the threatened species aforementioned will be placed at risk of extinction. Recommendations prescribed by the Ecologist are to be adhered to and will be conditioned appropriately.</p> <p>The Landscape Plan (Conzept Landscape Architects, September 2023) is noted and supported.</p> <p>The application is considered to be compliant with the above listed provisions and as such there are no objections in relation to biodiversity, subject to conditions.</p>
NECC (Coast and Catchments)	<p>Supported with conditions.</p>

Internal Referral Body	Comments
	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience and Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Use Area' map under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p><u>Comment:</u></p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BMA Urban Pty. Ltd. dated 20 October 2023 and also as assessed in the submitted Coastal Risk Management Report prepared by Horton Coastal engineering Pty. Ltd. dated 19 October 2023, the DA satisfies requirements under clauses 2.11 and 2.12 of the SEPP R&H.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Wave Inundation & Beach Hazard Management</p> <p>The property is located within a “Wave inundation” hazard area designated on the Coastal Risk Planning Map that is referenced in Pittwater Local Environmental Plan 2014. The subject property is also mapped as being land identified under Coastline Beach Hazard Area on the Pittwater 21 Development Control Plan (DCP) Map MDCP016. As such, the Coastal Risk Management Policy for Development in Pittwater (Appendix 6, Pittwater 21 DCP) and the relevant B3.3 Coastline (Beach) Hazard controls in P21 DCP will apply to new development of the site.</p> <p><u>Comment:</u></p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BMA Urban Pty. Ltd. dated 20 October 2023 and also as assessed in the submitted</p>

Internal Referral Body	Comments
	<p>Coastal Risk Management Report prepared by Horton Coastal engineering Pty. Ltd. dated 19 October 2023, The Coastline Planning Level has been assessed as 5.67mAHD which is 0.5m above the garage floor. The following report further recommended measures that should be adopted to further reduce the risk of inundation impacting on the dwelling.</p> <p>As such the DA satisfies requirements, subject to conditions, of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>
NECC (Development Engineering)	<p>Supported with conditions.</p> <p>In accordance with Council's GEOTECHNICAL RISK MANAGEMENT POLICY FOR PITTWATER, the amended submission needs to include Form 1 and Form 1(a) - Declaration and Certification made by Geotechnical Engineer or Engineering Geologist and Coastal Engineer (where applicable) in relation to the DA Geotechnical Report.</p> <p>Engineering Comments 10.04.24</p> <p>Form 1 and Form 1(a) has been provided with the amended submission. Development engineering raises no further objections to the proposed development, subject to conditions.</p>
Strategic and Place Planning (Heritage Officer)	<p>Supported without conditions.</p> <p>HERITAGE COMMENTS</p> <p>Discussion of reason for referral</p> <p>The proposal has been referred to Heritage as the subject site is within the vicinity of a heritage item:</p> <p>Item I270064 - House - 2 Palm Beach Road, Palm Beach</p> <p>Details of heritage items affected</p> <p>Details of the item, as contained within the Pittwater Heritage Inventory is as follows:</p> <p>Item I270064 - House</p> <p><u>Statement of Significance:</u></p> <p>The House at 2 Palm Beach Road in Palm Beach, built c1920s as a holiday house, has historic and aesthetic significance as a holiday house typical of the early Pittwater subdivisions. The architectural heritage of the area is characterised by this house form which, in Pittwater, evolved as a structure subordinate to the landscape and which utilised natural materials to harmonise with the surroundings and lessen their visual impact.</p> <p>The dwelling is representative of the popularity of cottage retreats in Pittwater built of local natural materials to simple designs with traditional construction techniques.</p> <p>The house is associated with the development of the northern beaches as a holiday destination. The listing includes the interiors</p>

Internal Referral Body	Comments	
	<p>of the house; however detailed analysis and assessment should be undertaken at the time of any future changes to the interior in order to ascertain the relative heritage significance.</p> <p><u>Physical Description:</u> This house is located on an elevated site block. It is a symmetrical two-storey stone house with central faceted bay, stone basement and weatherboard upper level.</p>	
	<p>Other relevant heritage listings</p>	
	SEPP (Biodiversity and Conservation) 2021	No
	Australian Heritage Register	No
	NSW State Heritage Register	No
	National Trust of Aust (NSW) Register	No
	RAIA Register of 20th Century Buildings of Significance	No
	Other	N/A
	<p>Consideration of Application</p>	
	<p>The proposal seeks consent for the demolition of the existing dwelling and the construction of a four storey residence. The heritage item is located to the south of the subject site. The adjacent property at 16 Ocean Road is not a heritage item, however it is considered to have heritage values as it dates back to 1920s and retains its original bulk and scale, which is considered to represent part of the history and character of Palm Beach. Therefore, the design approach of the new works should also consider to be sympathetic to this building in scale, form, character and proportions. The proposed four storey building is well above the permissible height limits and the side setbacks for the area. Heritage require to be complied with the side setback controls of Pittwater DCP 2014 as this will allow a complimentary design to the adjacent building and the heritage item in the vicinity. The proposed top level, which contains the master bedroom must be further set back from the front boundary, similar to the approved DA for the neighbouring site at 14 Ocean Road, to allow for a low level development presentation to the streetscape. The front facade should also involve some articulations, as the proposed facade as presented is considered to be out of proportions, bulk and scale and therefore out of character within the local area. Front fence should be compatible with the style and characteristics of the fencing exists in the locality. The height should not be above the existing fence on site and the materiality should be provided. New buildings within the vicinity of a heritage item should respect the architectural character of the heritage item and should be designed in a similar scale and proportion, so as to be sympathetic</p>	

Internal Referral Body	Comments
	<p>to the heritage item or character of the area and to ensure that new buildings do not dominate or overwhelm the item/s of importance. The proposal should address the requirements of <i>Clause B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites of Pittwater DCP 2014.</i></p> <p>Revised comments - 27 March 2024</p> <p>Amended drawings have resolved some heritage concerns by providing an increased setback from both the southern boundary and the street frontage on the top level, and a reduction to the overall height of the proposed building. The proposed change of colour scheme from white to a darker and recessive colour scheme at the top level is supported.</p> <p>Given the improved bulk and scale of the amended development, and the physical separation between the proposed works and the heritage item, the impact of the proposal upon the significance of the heritage item is considered tolerable.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of Pittwater LEP 2014.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No - Must be addressed in SEE</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	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 would be included as a condition of consent were the application recommended for approval.
Aboriginal Heritage Office	<p>Supported with conditions.</p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p>

External Referral Body	Comments
	Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.
Roads and Maritime Service - Roads Act 1993, s138 (Non-integrated)	<p>Supported with conditions.</p> <p>was referred to Transport for NSW (TfNSW) for concurrence under Section 138 of the Roads Act 1993.</p> <p>TfNSW has reviewed the submission and provides concurrence to the civil works on Ocean Road under section 138 of the Roads Act 1993 subject to the following conditions being incorporated in any consent issued by Council.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All, Environmental Planning Instruments (SEPPs 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 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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1414046S dated 26 September 2023).

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 raised no objections, subject to conditions which would be included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Division 5 General

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

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

Comment:

The proposal is unlikely to cause increased risk of coastal hazards on the site or surrounding land.

As such, it is considered that the application **does not comply** with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

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	13.3m (existing ground)	56.5%	No
		12m (natural ground)	41.2%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	No
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	No
7.5 Coastal risk planning	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The underlying objectives of the C4 Environmental Living zone are:

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

Comment:

The excessive bulk of the proposed dwelling and the extent of excavation required does not constitute *low-impact* residential development. As assessed against the desired future character provisions under A4.12 in this report, the proposal is found to be contrary to the desired character of the of the Palm Beach locality and would detract from the aesthetic values of the area.

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

Comment:

As discussed above, the bulk and scale of the proposed development would have an adverse impact on the aesthetic values of the area.

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

Comment:

As assessed against the desired future character provisions under A4.12, the proposal is not considered to be of low density and scale or to integrate appropriately with the landform and landscape.

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

Comment:

The proposal is not considered to adversely impact riparian and foreshore vegetation or wildlife corridors.

Conclusion

For the reasons detailed above, the proposal is assessed as **inconsistent** with the objectives of the C4 Environmental Living zone.

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	13.3m
Percentage variation to requirement:	56.5%

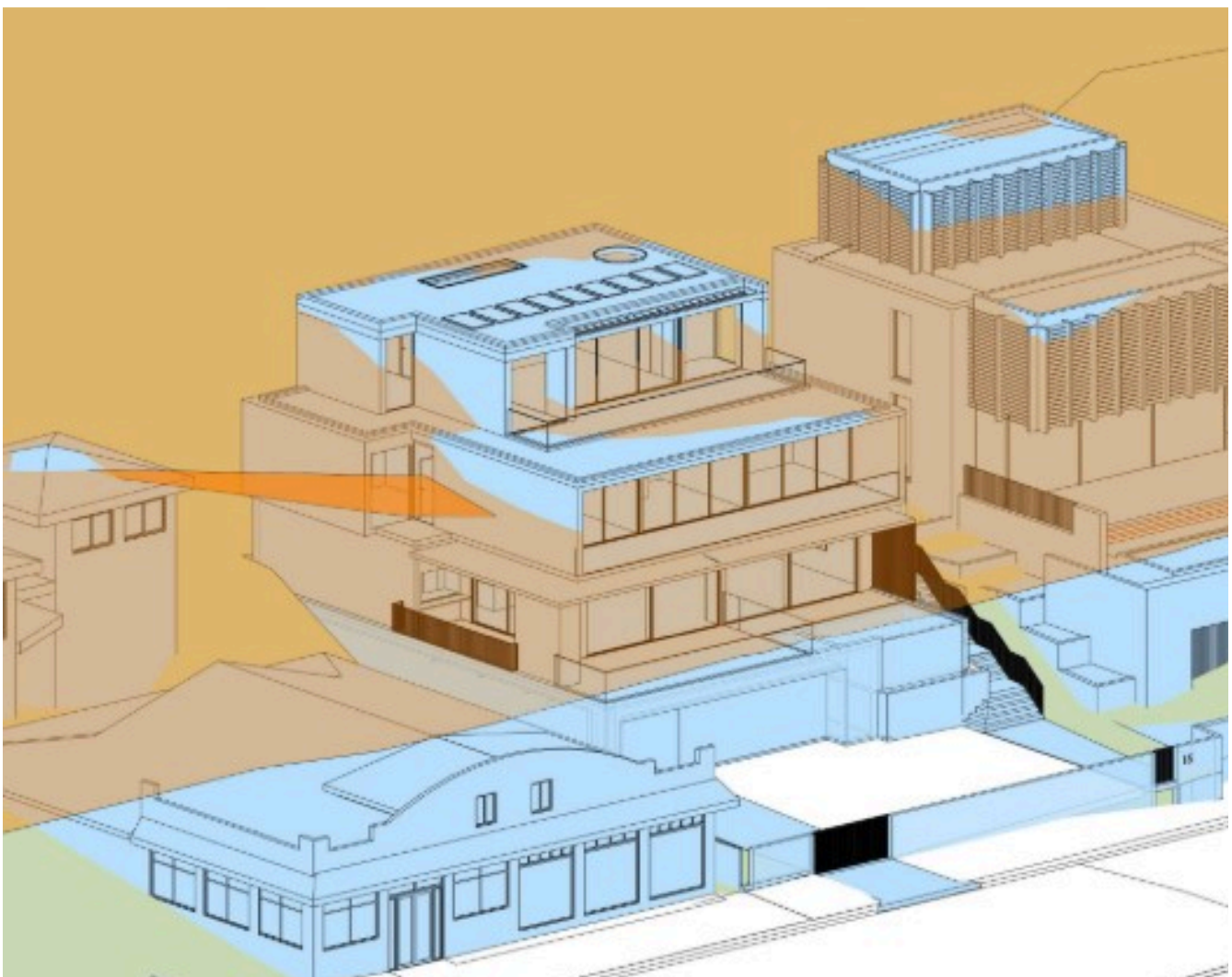


Figure 1. Applicant's illustration of the proposed building height breach as measured from the natural ground levels (subject dwelling is in the middle)

The above height plane diagram is not certified and indicates the proposed building height variation as measured from the assumed natural ground levels of the site. On that basis, the diagram is included for illustrative purposes only. Figures 2 and 3 included below indicate Council's calculation of the proposed building height breach at Sections 01 and 04, based on existing ground levels taken from the survey plan. It is noted that the assumed natural ground levels indicated on the architectural plans appear to be inaccurate in various areas, notably within the southern side setback area on Section 04, where the natural ground levels shown are well below the level of the existing retaining wall surveyed at RL7.78. These inaccuracies do not affect the calculation of the maximum building height as measured from the existing ground levels, but do bring into question the veracity of the assumed natural ground levels which are relied upon in the Clause 4.6 variation request.

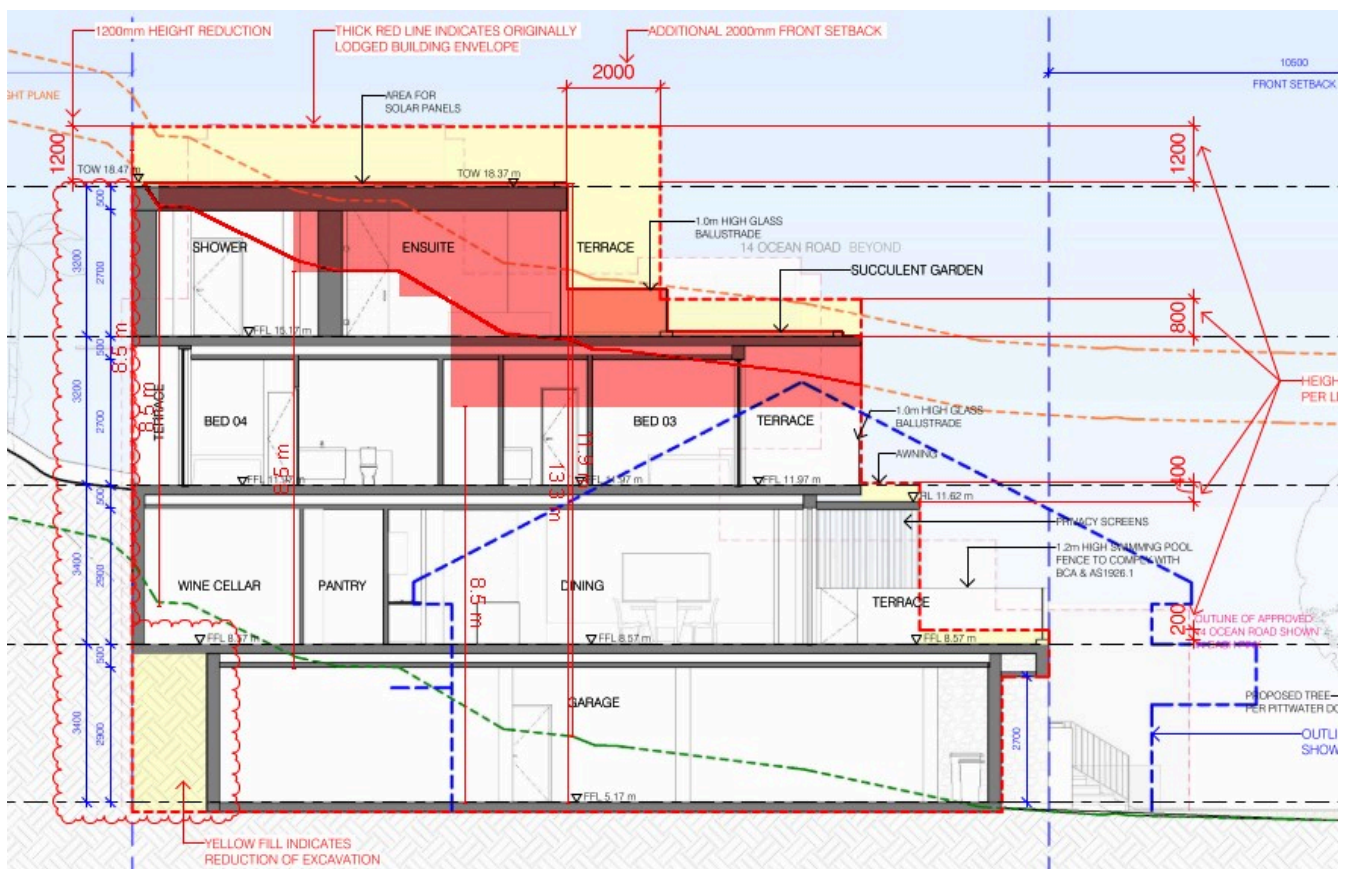


Figure 2. Section 01 extract with building height variation shaded red (existing ground levels) and outlined in red (Applicant's assumed natural ground levels)

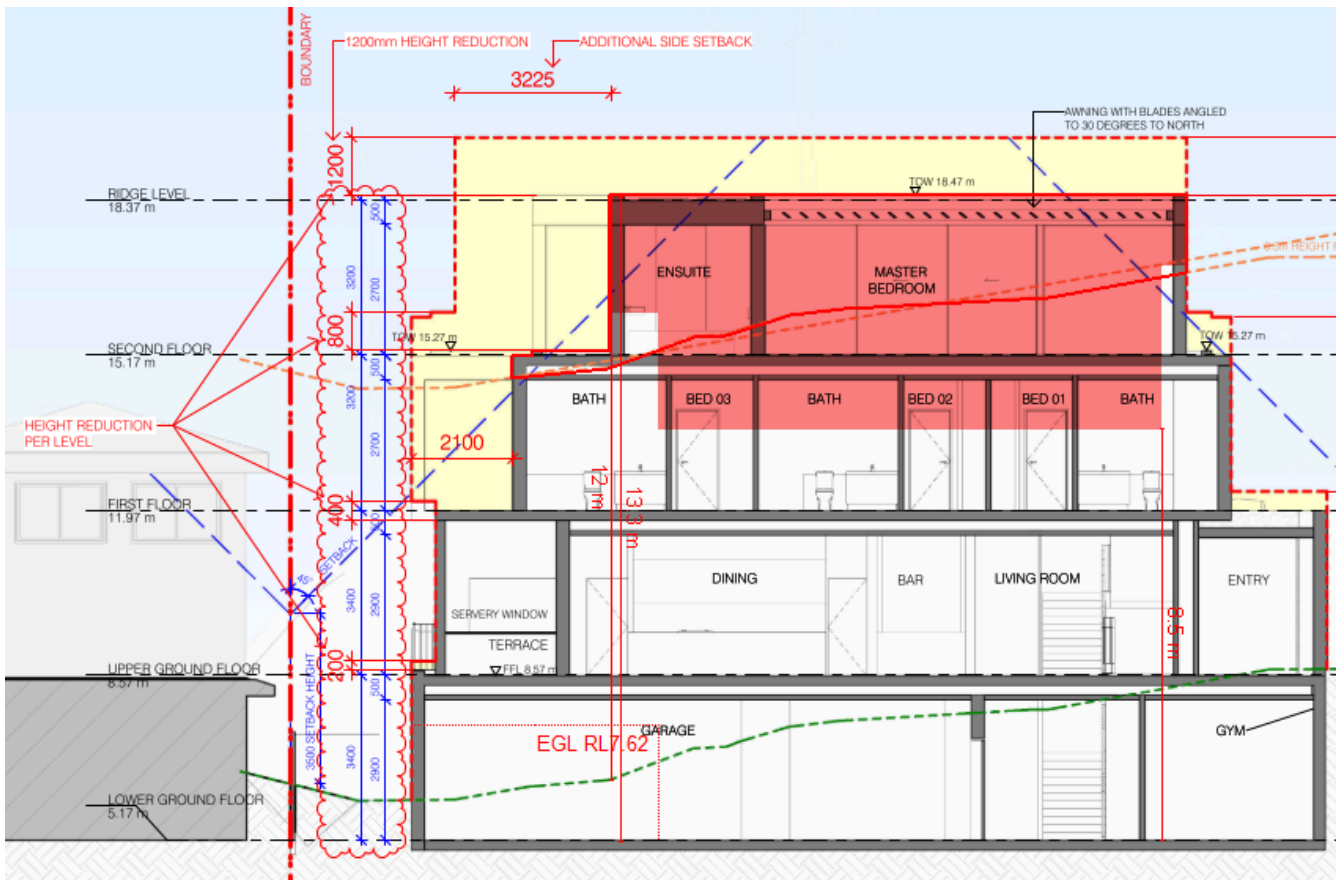


Figure 3. Section 04 extract with building height variation shaded red (existing ground levels) and outlined in red (Applicant's assumed natural ground levels)

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:

The 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 has **not demonstrated** that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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.*

Applicants Written Request

The applicants written request argues, in part:

1. *The proposal is consistent with the objectives of the development standard and the objectives for development in the Environmental Living Zone.*

Comment:

The consent authority must be satisfied that the proposed development will be consistent with the objectives of the standard and the zone, pursuant to Clauses 4.6 (4)(a)(i) and 4.6(4)(a)(ii), as a prerequisite to the granting of consent. Notwithstanding that the proposal is assessed as inconsistent with the objectives of the building height standard and the C4 zone, such consistency is not identified as an environmental planning ground.

2. *The proposed variation to the height is deemed a necessary outcome to allow for a well resolved and functional floor plate arrangement offering high levels of residential amenity. The height breach will result in no adverse impacts on adjoining properties in terms of visual bulk, views, privacy or overshadowing.*

Comment:

It is not agreed that the proposed variation is necessary in order to allow for a practical dwelling design or a high level of residential amenity. The proposed dwelling has a gross floor area of 496m², including 81m² at the non-compliant second storey. It is considered that a rationalisation of the proposed floor plates would enable a greater level of compliance with the building height (and building envelope and landscaped area) control while maintaining sufficient amenity for occupants. By way of comparison, the dwelling approved at 16 Ocean Road (DA2021/2262) has a gross floor area of 278m², with only 36m² at its uppermost level. The height variation occurs primarily as a result of the dwelling being excessively sized in relation to the site area and characteristics. Further, a lack of adverse impact in relation to visual bulk, views, privacy and overshadowing may demonstrate consistency with the objectives of the standard (and therefore that compliance is unreasonable or unnecessary), but is not identified as an environmental planning ground. Regardless, the proposal is considered

to cause adverse impacts in relation to visual bulk, privacy and overshadowing for the reasons discussed in this report.

3. *The location and design of the height breaching elements have been organised to ensure that they do not present as visually jarring to the streetscape and in addition, do not result in any adverse level of amenity impact on neighbouring properties.*

Comment:

As stated above, a lack of adverse impact may demonstrate consistency with the objectives of the standard, but is not identified as an environmental planning ground. Regardless, the proposal is found to be incompatible with the character of surrounding developments and would result in adverse amenity impacts upon surrounding properties.

4. *The elements which breach the height do so largely as a result of the sites topography which as observed, displays a significant slope from the rear towards the street.*

Comment:

While topography is a commonly accepted environmental planning ground, it is not agreed that the slope of the site presents such a significant constraint to require a variation of the extent sought. Rather, it is the proposed four-storey built form and lack of response to the sloping topography that are considered to be the primary cause of the height variation. As such, this is not found to be an acceptable environmental planning ground in this case.

5. *Prior excavation of the site and the consequent distortion of the height of buildings plane over the site, when compared to the topography, is an environmental planning ground sufficient to justify contravening the development standard. The site's topography and unusual characteristics distinguish this case from the more generic development for which a numeric standard of this kind inevitably must anticipate.*

Comment:

It is acknowledged that the site has been subject to prior excavation and that this does contribute in part to the extent of the height variation sought. However, as demonstrated in Figures 2 and 3 above, a large proportion of the dwelling still significantly exceeds 8.5m, as measured from the assumed natural levels of the site, up to a maximum height of 11.9m. Rather than the previous excavation of the site, the primary factor contributing to the building height variation is the desired four-storey built form. Therefore, while properly identified as an environmental planning ground, the prior excavation of the site is not a sufficient justification for the variation sought.

6. *The proposed development, notwithstanding non-compliance with the height development standard not only is an orderly and economic use and development of the land, but also promotes good design and amenity of the built environment.*

Comment:

The proposal, by virtue of the number and extent of built form non-compliances, is not found to represent an orderly development of the land or good design.

7. *There is no planning purpose to be served by limiting the height strictly to the maximum height allowable given the site constraints and absence of unreasonable levels of amenity related impacts.*

Comment:

The purpose of the applicable planning controls, including the building height standard, is to ensure a suitable intensity of development and level of impact. The proposed development does not seek to respond appropriately to the applicable controls, the topography of the site or the character of the surrounding locality, but rather represents an overdevelopment of the site.

While grounds (4) and (5) are identified as environmental planning grounds, they are not accepted as sufficient to justify the proposed building height variation in this case. It is considered that the proposed height variation does not serve any purpose in achieving the aims of the EP&A Act.

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 C4 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:

The height and scale of the dwelling are such that the proposal is inconsistent with the desired character of the locality, as discussed in detail under section A4.12 of this report. The excessive height and bulk of the proposal is evidenced by the significant non-compliances with the building height, building envelope controls and landscaped area controls.

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

Comment:

The proposal is not compatible with the height and scale of surrounding developments, as discussed in detail under section A4.12 of this report.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The submitted shadow diagrams indicate that there will be significant overshadowing of the principal private open space area of No. 16 Ocean Road. Given that this impact arises primarily as a result of the height-breaching elements of the proposed dwelling, it cannot be said that the proposal minimises overshadowing of neighbouring properties.

d) to allow for the reasonable sharing of views,

Comment:

The proposal is considered to allow for the reasonable sharing of views, as assessed in detail under section C1.3 of this report.

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

Comment:

The proposed building height variation is significant and the dwelling does not '*step down*' the slope of the site. Additionally, the development involves substantial excavation of the site to accommodate surplus carparking and habitable rooms within the lower ground floor level. As such, the proposal does not respond sensitively to the topography.

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

Comment:

The proposal is considered to cause an unacceptable level of visual impact on the character and scenic quality of the locality as a result of the dwelling's height, proportions and inadequate landscaping.

Zone Objectives

The underlying objectives of the C4 Environmental Living zone are:

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

Comment:

As assessed earlier in this report, the proposed development is found to be inconsistent with the objectives of the zone and the proposed building height variation contributes to this inconsistency.

Conclusion:

For the reasons detailed above, the proposal is considered to be **inconsistent** with the objectives of the C4 Environmental Living zone.

Exception to Development Standards Conclusion

The exception to the development standard is **not well founded** and the proposed variation is **not supported**.

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 PS20-002 dated 5 May 2020, 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 **cannot be assumed**.

5.10 Heritage conservation

The proposal was referred to the Aboriginal Heritage Office and Council's Heritage Section.

The AHO commented that there are no known Aboriginal sites within the vicinity of the property and that the likelihood of surviving unrecorded sites is minimal given the previous disturbance of the land. No objection was raised subject to the recommended condition of consent.

Council's Heritage referral concludes that the amended proposal is acceptable with regard to impacts upon nearby heritage items and raised no objection to the development.

5.21 Flood planning

Limited portions of the site adjacent to the southern boundary are mapped as low flood risk. As such, no referral to Council's Flood section is required.

7.1 Acid sulfate soils

The submitted geotechnical report advises that the site is unlikely to be affected by acid sulfate soils. The report includes recommendations relating to monitoring of excavation and construction activities to ensure that acid sulfate soils are not encountered during works.

7.7 Geotechnical hazards

The submitted geotechnical report includes detailed recommendations relating to design, excavation and construction works. The recommendations of the report would be incorporated into the conditions of consent, were the application recommended for approval or the Panel decide to approve the application.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m or EBL	10.0m	N/A	Yes
Rear building line	6.5m	10.2m	N/A	Yes
Side building line	S: 2.5m	L1, L2: 2.5m	N/A	Yes
		L3: 2.5m-4.6m	N/A	Yes
		L4: 5.0m-6.6m	N/A	Yes
	N: 1m	L1, L2: 1.0m-2.5m	N/A	Yes
		L3: 2.8m-4.1m	N/A	Yes
		L4: 2.5m-4.3m	N/A	Yes
Building envelope	S: 3.5m	Two breaches: L3: Length 13.7m, up to 2.3m L4: Length 9.3m, up to 2.8m	Max. 38.3%	No
	N: 3.5m	Three breaches: L3: Length 2.8m, up to 70mm L3: Length 2.0m, up to 190mm L4: Length 9.3m, up to 2.6m	Max. 36.1%	No
Landscaped area	60% 547.14m ²	54.8% (500.2m ²) 5% (47.2m ²) impervious Total: 60% (547.4m ²)	5.1%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.12 Palm Beach Locality	No	No
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
B3.1 Landslip Hazard	Yes	Yes
B3.3 Coastline (Beach) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B5.13 Development on Waterfront Land	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	No	No
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	No
C1.5 Visual Privacy	No	No
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
C1.17 Swimming Pool Safety	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	No	No
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	No
D12.10 Landscaped Area - Environmentally Sensitive Land	No	No
D12.12 Fences - Flora and Fauna Conservation Areas	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	No	No

Detailed Assessment

A4.12 Palm Beach Locality

The Desired Future Character (DFC) of the locality is detailed within Clause A4.12 Palm Beach Locality. The below extracts are applicable to the proposed development, with the bold emphasis added to the most relevant sections.

- The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.*** Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on the lowlands and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the

community.

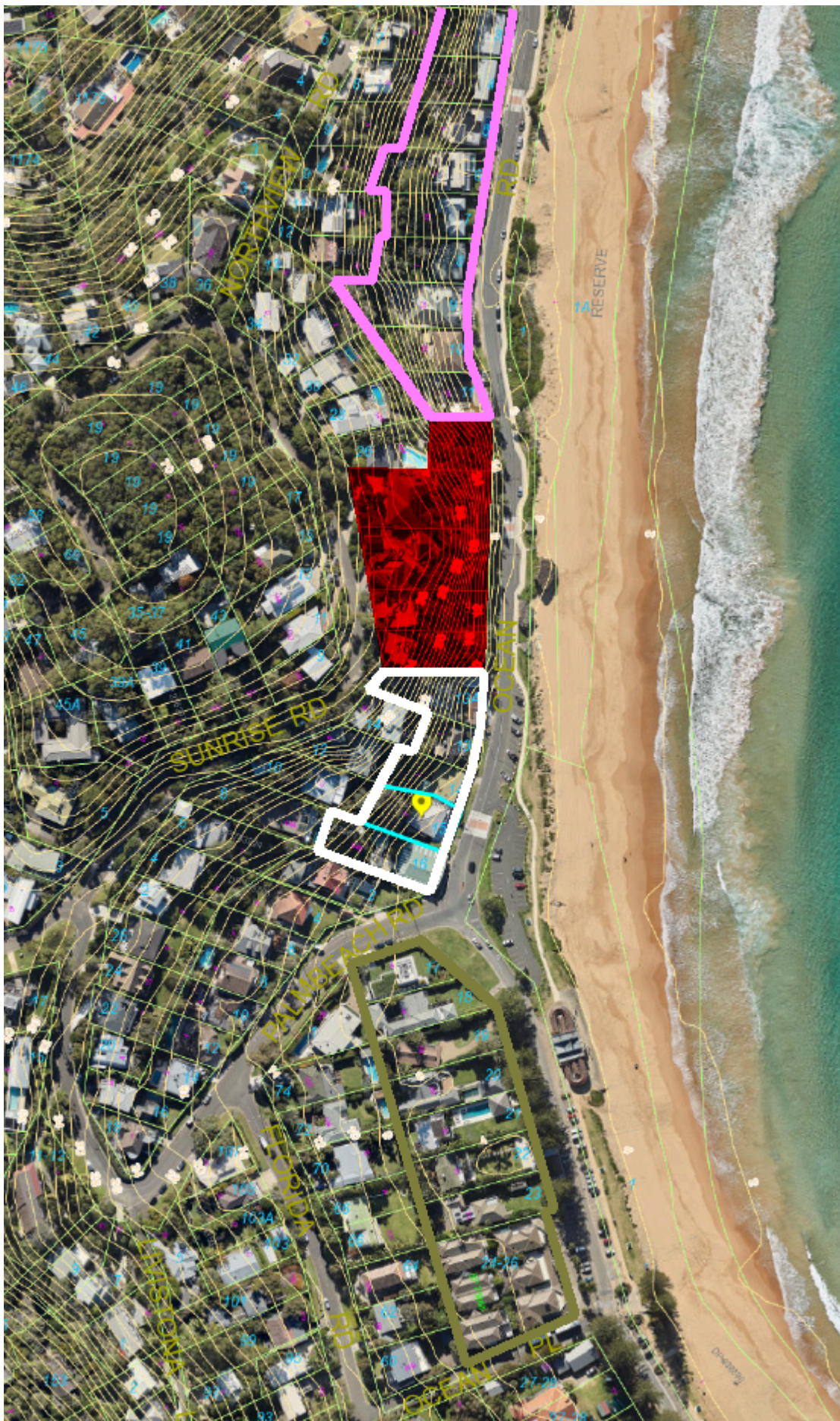
- **Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.**
- **A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.**

Existing Character

Development fronting Ocean Road between Beach Road in the north and Ocean Place in the south consists of several identifiable areas with varying natural and built form characteristics. While the DFC states that dwellings are a maximum of two storeys in any one place, there are variations in the identified character of existing development as described below:

- At the northern extent of Ocean Road, from Nos. 2 to 11, the topography rises steeply from the street frontage towards the west and dwellings are predominantly two to three storeys in appearance. Nos. 6 and 11 Ocean Road are, in part, four storeys in height. This area is outlined in pink in Figure 4 and depicted in Photo 1.
- The land between No. 11 and 13A comprises a steep escarpment that is heavily vegetated and undeveloped at the Ocean Road frontage. This area is shaded red in Figure 4.
- The subject site is located along the central portion of Ocean Road, from Nos. 13A to 16, between the escarpment to the north and Palm Beach Road to the south. The topography is more extreme at the northern end of this section across Nos. 13A and 13 and gradually becomes less steep at the southern end, such that the front setback areas of Nos. 14, 15 and 16 are effectively flat and the land only begins to slope upward at/behind the front building lines. This area is outlined in white in Figure 4 and depicted in Photo 2.
- The southern portion of Ocean Road, from Nos. 17 to 26, slopes gradually upward from east to west. Existing developments on these properties are a maximum of two storeys. This area is outlined in green in Figure 4 and depicted in Photo 3.
- While exhibiting a different site context (i.e. not beach-front), the properties further up the slope to the west on Palm Beach Road and Florida Road generally maintain the two-storey character of the developments on Ocean Road, as depicted in Photo 4.

Figure 4 also includes contours demonstrating the variation in the topography of land fronting Ocean Road, whereby the slope gradually reduces from the escarpment towards the intersection of Ocean Road and Palm Beach Road.



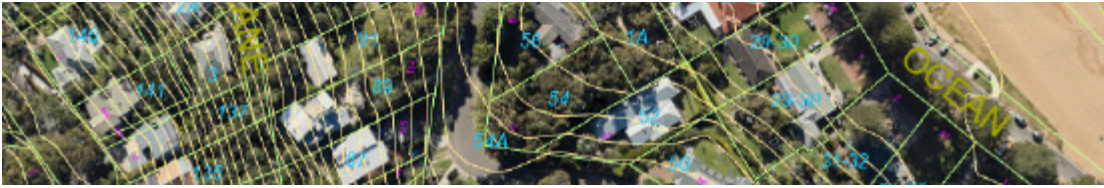


Figure 4. Aerial photograph depicting the variations in the topography of land in the vicinity of the subject site



Photo 1. Existing character of the northern portion of Ocean Road



Photo 2. Existing character of the central portion of Ocean Road, including the subject site



Photo 3. Existing character of the southern portion of Ocean Road



Photo 4. Existing character of development to the west of the subject site on Palm Beach Road and Florida Road

Proposed Development

The proposed dwelling is three (3) and four (4) storeys across in height. As discussed above, the majority of three and four-storey dwellings are located towards the northern end of Ocean Road where the topography is steeper and the height of the dwellings step with the slope to a greater extent. In the immediate vicinity of the subject site (outlined white in Figure 4), Nos. 13, 13A and 14 to the north contain two-storey dwellings - although No. 14 holds a development consent for a two and three-storey dwelling - and No. 16 to the south contains a one and two-storey dwelling with the two-storey component situated towards the rear of the block. It is considered that these five properties form a transition between the predominantly three-storey character to the north of the escarpment and the two-storey character to the south of Palm Beach Road. The siting, height and bulk of the proposed dwelling are such that it is inconsistent with both the DFC as stated in Section A4.12 and the identified existing character of the surrounding properties and the broader locality.

The proposal includes a non-compliant landscaped area and the excavation below ground and building bulk above ground prevent the development from successfully integrating with the landform and landscape. While the proposed dwelling is generally situated below the tree canopy, there are no existing or proposed canopy trees to the front of the dwelling in order to maximise views from the

property; this results in the substantial built form being the dominant feature of the site and landscaping being secondary.

The proposed dwelling design does not sufficiently step with the topography and involves excessive excavation to accommodate surplus car parking that does not minimise site disturbance. The extent of excavation proposed, along with the bulk and scale of the dwelling, do not achieve an appropriate balance between the natural features of the site and the development of the land.

Conclusion

Based on the above assessment, the proposed development is found to be **inconsistent** with the existing and desired future character of the Palm Beach locality.

B8.1 Construction and Demolition - Excavation and Landfill

The listed Outcomes of Clause B8.1 Construction and Demolition - Excavation and Landfill are as follows:

- *Site disturbance is minimised.*
- *Excavation, landfill and construction not to have an adverse impact.*
- *Excavation and landfill operations not to cause damage on the development or adjoining property.*

Comment:

This proposal seeks to excavate to depths of up to **6.5m** (as per the architectural plans) at the rear of the proposed building footprint. The submitted waste management plan estimates a total excavation volume of 410m³, equivalent to approximately 10 standard (40kL) swimming pools.

The proposed excavation is considered to be **excessive** as it is intended to accommodate surplus car parking and habitable rooms below ground, which does not *minimise the* disturbance of the site.

As such, the proposal is found to be **inconsistent** with the Outcomes of the control.

B8.6 Construction and Demolition - Traffic Management Plan

The proposal involves the removal of approximately 410m³ of excavated material.

If the application were recommended for approval or the Panel decide to approve the application, a condition would be included requiring the approval of a Construction Traffic Management Plan.

C1.3 View Sharing

Merit Consideration

Submissions raising view loss concerns were received from the following properties:

- 14 Ocean Road
- 16 Ocean Road
- 1 Palm Beach Road

- 74 Florida Road
- 105 Florida Road
- 107 Florida Road

As part of the assessment, inspections of Nos. 14 and 16 Ocean Road, 74 Sunrise Road and 105 and 107 Florida Road were undertaken. No. 1 Palm Beach Road was not inspected, however it is expected that the available views and level of impact would be generally consistent with those experienced from 74 Sunrise Road immediately to the south.

14 & 16 Ocean Road

Based on the inspection of Nos. 14 and 16 Ocean Road and an analysis of the proposed plans, it is expected that the proposed development would not adversely impact the views presently available from the dwellings and rear private open space areas of those properties, as shown in Photos 5 and 6 below. It is expected that the available views from Nos. 14 and 16 would be improved through the front portion of the subject site based on the increased front setbacks proposed relative to the existing dwelling, as demonstrated in Figure 5 below. Easterly views from the front of the dwellings would also be unaffected.



Photo 5. Available views from the rear terrace of 14 Ocean Road



Photo 6. Available views from the rear terrace of 16 Ocean Road

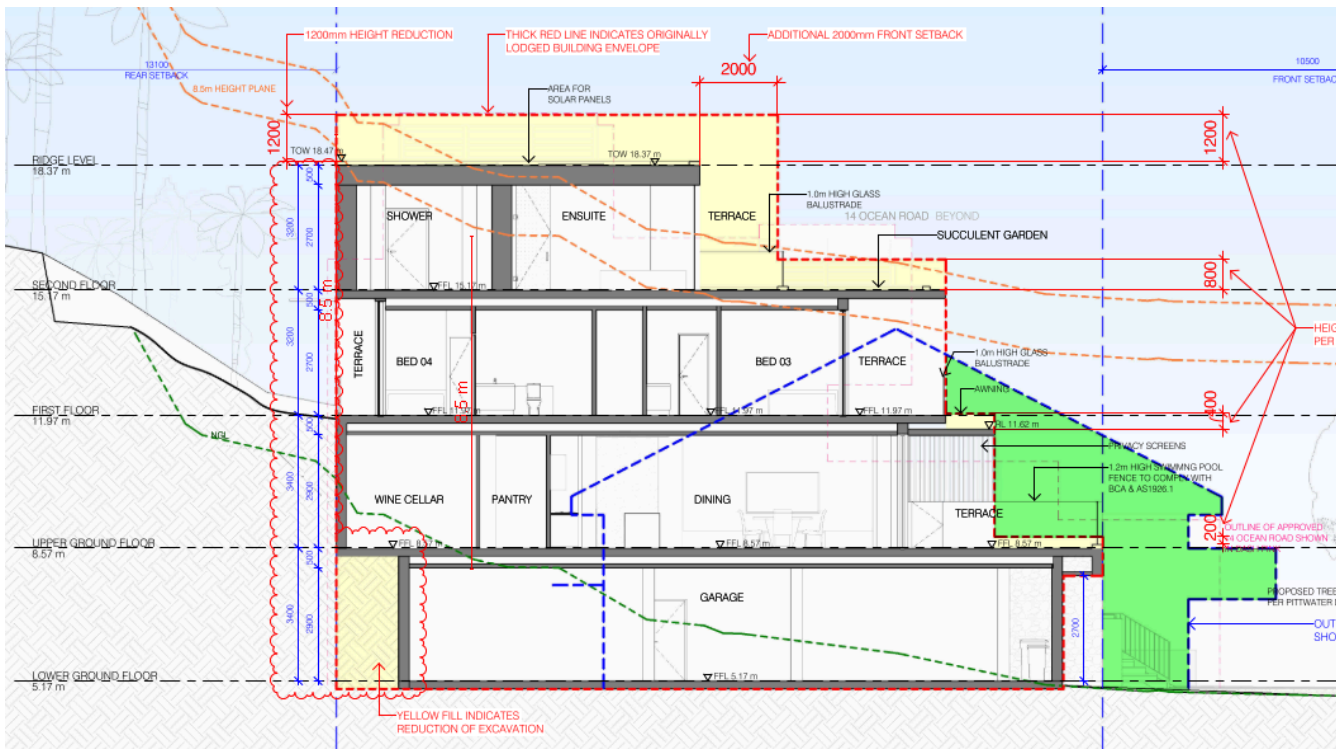


Figure 5. Overlay of the existing and proposed dwellings at Section 01, with the additional view corridor created at the front of the site shaded green

A further assessment of the remaining properties listed above is undertaken against the view loss planning principle.

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 views available from surrounding properties comprise ocean views of Palm Beach and Barrenjoey Headland. The views include land-water interface and are generally whole views, with some interruption caused by existing dwellings, trees and palms.



Photo 7. Available views from the rear terrace of 74 Florida Road. The pitched roof of the existing dwelling on the subject site is visible forward of the two-storey brick dwelling (13 Ocean Road) in the background (**Note:** This image is zoomed to improve the visibility of the subject dwelling)



Photo 8. Available views from the front terrace of 105 Florida Road. The pitched roof of the existing dwelling on the subject site is partially visible behind the palm in the foreground (**Note:** This image is zoomed to improve the visibility of the subject dwelling)



Photo 9. Available views from the front terrace of 107 Florida Road. The pitched roof of the existing dwelling on the subject site is partially visible in the centre of the image (**Note:** This image is zoomed to improve the visibility of the subject dwelling)

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:

The views are obtained from living areas, adjoining private open spaces and other habitable rooms within the dwellings and are generally available from sitting and standing positions. The views are obtained across multiple front and side property boundaries.

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:

74 Florida Road

Based on the position of the existing two-storey dwelling at No. 13 Ocean Road, to the north of the subject site, the proposal will not cause any loss of water views or material impact to headland views available. The extent of impact is assessed as **negligible**.

105 Florida Road

As above, the proposal is not expected to cause any material view loss due to the position of the dwelling at No. 13 Ocean Road to the north. The extent of impact is assessed as **negligible**.

107 Florida Road

The forward (easterly) projection of the proposed first floor beyond the existing roof ridge will cause the obstruction of a small portion of the available water views and land-water interface. Considering the extent and value of the views affected relative to those retained, the extent of impact is assessed as **minor**.

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 measurable view loss caused by the proposal is limited to that described above in relation to No. 107 Florida Road. This impact is caused by the front portion of the proposed first floor, which is non-compliant with the building height and building envelope controls. The angle of the affected views is approximately perpendicular to the side boundary of the subject site and an increased side setback (to comply with the building envelope) would not reduce the extent of the view impact. A reduction in the height of this portion of the building would lessen the extent of the impact, however given the minimal proportion of the available view that is affected, such a reduction is not considered warranted in this case. Notwithstanding the acceptability of the view impacts of the proposal, the proposed height variation is not supported for the reasons discussed in this report and forms a reason for the refusal of the application.

- *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 would not unreasonably impact views from the public domain.

- *Canopy trees take priority over views.*

Comment:

The proposal does not seek to remove any existing canopy trees.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control and is satisfactory in relation to view sharing.

C1.4 Solar Access

Description of Non-compliance

Controls

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.

Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).

Comment:

The main private open space of 16 Ocean Road is located immediately to the rear of the dwelling. The proposed dwelling will block the majority of the existing sunlight access to this area, with only a small amount of sunlight retained between 9am-10am and 12pm-1pm. The extent of sunlight retained is less than 3 hours and does not comply with the control.

The primary living room windows of the dwelling at 16 Ocean Road are orientated to the east and south. As such, the proposal will not reduce the existing level of solar access to living room windows.

Merit Consideration

With regard to the consideration for a variation, the development is assessed against the underlying Outcomes of the Control as follows:

- *Residential development is sited and designed to maximise solar access during mid-winter.*
- *A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development.*
- *Reduce usage and/dependence for artificial lighting.*

Comment:

Given that the overshadowing of the private open space area of the adjoining property is a result of the first and second storeys, which are significantly non-compliant with the building height and envelope controls, the proposal is not sited and designed to maximise solar access and does not maintain a reasonable level of solar access. As such, the proposal **does not achieve** the objectives of the control.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

C1.5 Visual Privacy

Merit Consideration

The development is assessed against the underlying Outcomes of the Control as follows:

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*
- *A sense of territory and safety is provided for residents.*

Comment:

The amendments made to the proposal include the removal of large side boundary-facing windows at the northern and southern elevations. The remaining north and south-facing windows service the first floor hall and second floor stair landing, and would not cause unreasonable privacy impacts.

The upper ground floor terrace adjacent to the southern boundary is not optimally located for privacy and does not include any screening to minimise view lines towards the adjoining property. If the application were recommended for approval, this matter could be addressed by a condition of consent requiring the provision of a privacy screen with a minimum height of 1.7m.

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

Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

C1.6 Acoustic Privacy

The use of the development as a dwelling house is not anticipated to unreasonably disturb the acoustic amenity of surrounding properties. Were the application recommended for approval, a condition would be included to limit the noise generated by mechanical plant equipment including the swimming pool motor.

D12.8 Building envelope

Description of Non-compliance

The proposed additions result in several breaches the building envelope control shown shaded red on the below plan extracts.

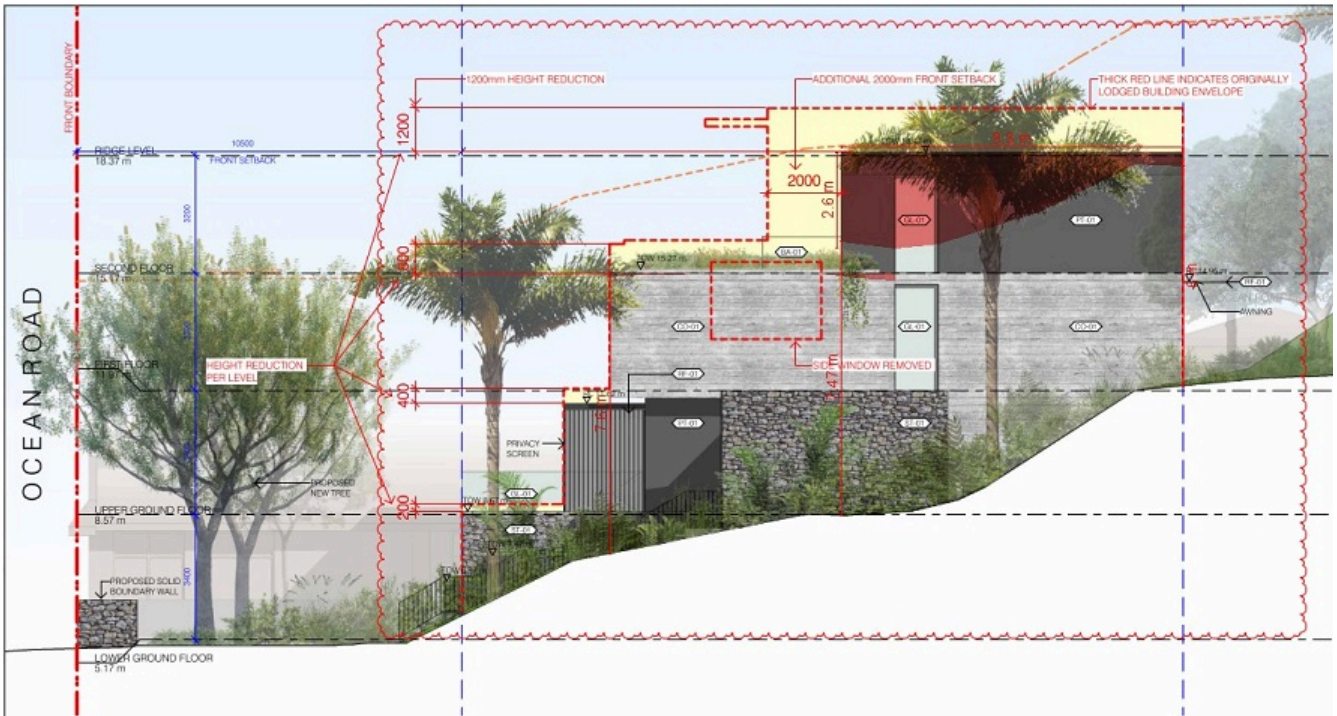


Figure 6. Northern elevation building envelope breaches

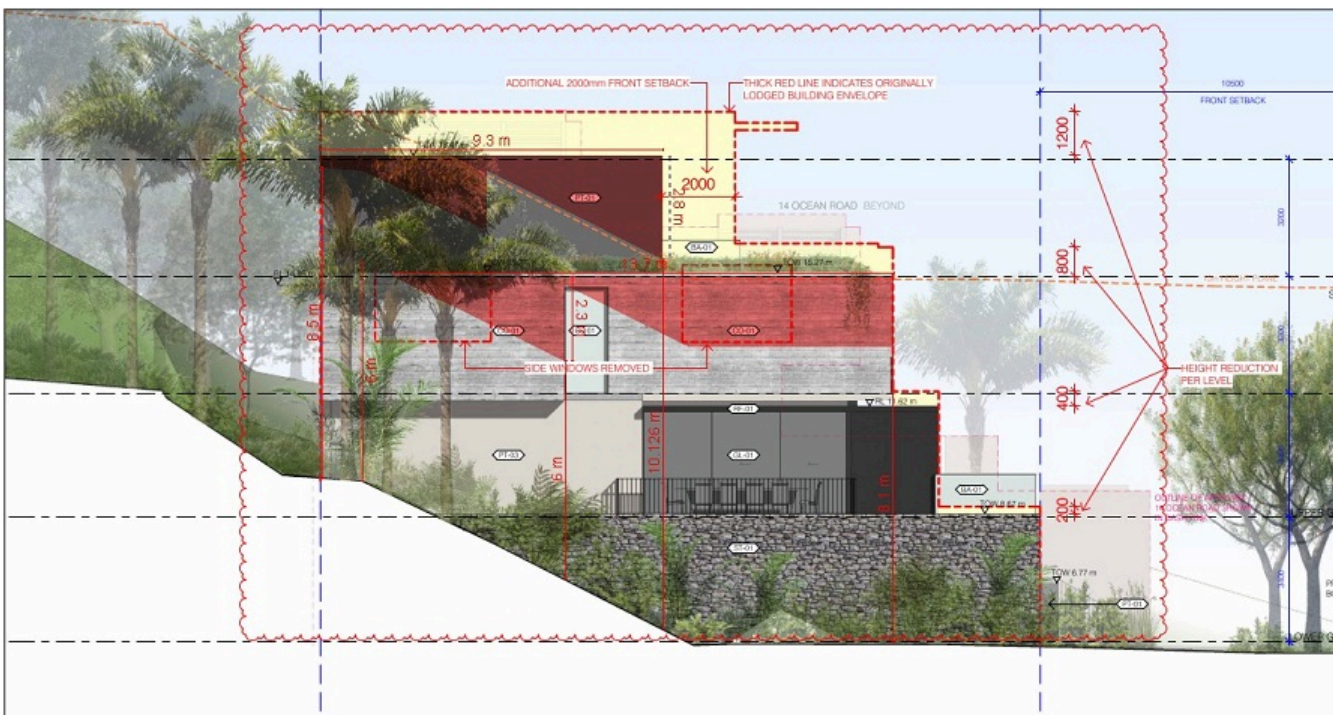


Figure 7. Southern elevation building envelope breaches

Merit Consideration

With regard to the consideration for a variation, the development is assessed against the underlying Outcomes of the Control as follows:

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

Comment:

The proposed building envelope breaches contribute to the proposal's excessive bulk and scale and inconsistency with the existing and desired character of the Palm Beach 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 does not enhance the existing streetscape or result in a scale that is below or secondary to the tree canopy. The proposed dwelling envelope is excessive in relation to the site area and is unable to be sufficiently mitigated through landscaping.

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

Comment:

The number and extent of envelope encroachments are not reflective of a design that responds to the topography of the site, with substantial variations to the control on the first and second floors of the dwelling. The extent of excavation proposed, which is not evident on the above drawing, also fails to respond to the topography of the site.

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

Comment:

As evidenced by the building height and envelope breaches discussed in this report, the proposed dwelling is too large in relation to the site area and context. Given the significance of these breaches, it cannot be said that the bulk and scale of the built form has been minimised.

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

Comment:

The proposed building envelope breaches do not result in any unreasonable impacts upon views from surrounding properties.

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

Comment:

The amended proposal does cause unreasonable privacy impacts due to the location and design of the upper ground floor terrace adjacent to the southern side boundary, however this element is within the allowable building envelope. The proposed dwelling will adversely impact the solar access and general amenity of adjoining properties by virtue of its height and bulk.

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

Comment:

No significant vegetation is proposed for removal. However, the bulk and scale of the proposed dwelling is such that it cannot be overcome through the retention or provision of landscaping.

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

Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

D12.10 Landscaped Area - Environmentally Sensitive Land

Compliance with Control

The proposal includes a deep soil landscaped area of **54.8%**, which constitutes a shortfall of 46.94m² from the 60% requirement.

The variations to the control permit up to 6% of the site area to be provided as impervious pathways or recreational areas, *provided that the outcomes of the control are met*. The proposal includes 47.2m² (5.17%) of impervious areas that meet the criteria for the variations. However due to the proposal's inconsistency with the outcomes of the control, the variations cannot be applied in this case.

Merit Consideration

The development is assessed against the underlying Outcomes of the Control as follows:

- *Achieve the desired future character of the Locality.*

Comment:

The proposal is found to be inconsistent with the DFC of the Palm Beach locality, as assessed in this report.

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

Comment:

Given the proposed shortfall in landscaped area the building height and envelope breaches, the bulk and scale of the built form has not been minimised.

- *A reasonable level of amenity and solar access is provided and maintained.*

Comment:

Although not a direct result of the proposed landscaped area, the proposal overall does not maintain a reasonable level of amenity or solar access to adjoining properties.

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

Comment:

No significant vegetation is proposed for removal. However, the bulk and scale of the proposed dwelling is such that it cannot be sufficiently reduced through the retention or provision of landscaping.

- *Conservation of natural vegetation and biodiversity.*

Comment:

No significant vegetation is proposed for removal and Council's Natural Environment sections raised no objections to the proposal.

- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*

Comment:

Adequate provision has been made for stormwater disposal and the proposed landscaped area is anticipated to be sufficient with regard to runoff, erosion and natural drainage channels.

- *To preserve and enhance the rural and bushland character of the area.*

Comment:

The proposed built form is considered to dominate the site and does not preserve or enhance the bushland character of the area.

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

Comment:

The proposed landscaped area is anticipated to be sufficient with regard to water infiltration, runoff and stormwater management.

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

Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

D12.12 Fences - Flora and Fauna Conservation Areas

The proposed front fence is generally consistent with the height and design of surrounding properties and is acceptable.

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 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$40,194 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,019,400.

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 2021;
- 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.

PLANNING CONCLUSION

The detailed assessment in this report finds that the proposal is an overdevelopment of the site and is inconsistent with the desired future character envisaged by the applicable planning controls.

The proposal in the form presented is an inappropriate and unsuitable development for the site. The building is excessive in size and scale above ground and excavation below ground. The proposal involves an excessive number and extent of variations to the critical planning controls which are intended to ensure a suitable intensity of development and level of impact.

The building is not responsive to the topography or surrounding character and will result in significant amenity impacts to neighbouring properties.

Despite the amendments made to the proposal in response to Council's RFI letter, the revised design does not sufficiently satisfy the objectives and requirements of the PLEP 2014 or P21 DCP.

The Applicant's Clause 4.6 variation request is inadequate in justifying the variation sought to the height standard and this matter is included as a reason for refusal.

For the reasons set out in this report, it is recommended that the application be **REFUSED**.

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 DA2023/1532 for the Demolition works and construction of a dwelling house including swimming pool on land at Lot 2 DP 412086,15 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)(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. **Desired Future Character and C4 Environmental Living Zone**
Pursuant to Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of the C4 Environmental Living zone under PLEP 2014, Clause A4.12 Palm Beach Locality Locality of the Pittwater 21 Development Control Plan and Chapter 2 Coastal Management of SEPP (Resilience and Hazards) 2021. .

Specifically, the proposal, due to its excessive bulk, its impact on the amenity of adjoining properties and users of the public domain, its poor relationship with the subject property and the surrounding environment is inconsistent with the objectives of the C4 Environmental Living Zone, the Desired Future Character provisions of the Palm Beach Locality and the visual amenity provisions of Chapter 2 of SEPP (Resilience and Hazards).

4. **Clause 4.6 Height of Buildings Variation**
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.

Specifically, the proposal is inconsistent with the underlying objectives of PLEP 2014, Clause 4.3 Height of Buildings. Further, the applicant's variation request under Clause 4.6 of PLEP 2014 has not adequately demonstrated that compliance with the standards is unreasonable or unnecessary, that there are sufficient environmental planning grounds to justify the contravention or that the proposed development will be in the public interest.

5. **Excavation and Groundworks**
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 B8.1 Construction and Demolition - Excavation and Landfill of the Pittwater 21 Development Control Plan.

Specifically, the proposed volume and depth of excavation to accommodate the proposed building are excessive and do not respond to the topography of the site.

6. **Amenity**
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 Clauses C1.4 Solar Access and C1.5 Visual Privacy of the Pittwater 21 Development Control Plan.

Specifically, the proposed building height, bulk, siting and design result in unacceptable

overshadowing, privacy and visual impacts upon adjoining properties.

7. Building Envelope

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.

Specifically, the proposed breaches of the building envelope control contribute the excessive bulk and scale of the dwelling that would result in adverse amenity impacts upon adjoining properties and diminish the character of the surrounding locality.

8. Landscaping

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 D12.10 Landscaped Area - Environmentally Sensitive Land of the Pittwater 21 Development Control Plan.

Specifically, the proposed landscaped area is insufficient in relation to the site area and the scale of the proposed dwelling. The shortfall in landscaped area is reflective of the excessive building footprint and inconsistency with the landscape character of the locality.