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**From:** William Fleming  
**Sent:** 18/12/2023 9:55:45 AM  
**To:** Council Northernbeaches Mailbox  
**Subject:** TRIMMED Submission re 15 Ocean Road, Palm Beach DA2023/1532  
**Attachments:** 14 Ocean Road, PALM BEACH - Submission.pdf;

Please find a submission from 14 Ocean Road with regard to DA2023/1532.

Kind regards,  
Will

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**William Fleming**

Planner



**Town Planners**

[Redacted]  
Email: [Redacted]

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15 December 2023

The General Manager  
Northern Beaches Council

**Attention: Adam Croft**

**RE: DEVELOPMENT APPLICATION DA (DA2023/1532)  
PROPOSED NEW DWELLING WITH SWIMMING POOL  
15 OCEAN ROAD, PALM BEACH**

**1.0 INTRODUCTION**

I write in response to the development application lodged for 15 Ocean Road on behalf of the owners of 14 Ocean Road. My client's property is to the north of the subject site.

**2.0 NOTIFICATION SIGN**

I attended site on the 17<sup>th</sup> of November and there was no notification sign erected at the front of 15 Ocean Road. It is a requirement that the applicants have the notification displayed at the front of the site during the notification period which has not been adhered to. The application is required to be re-notified to ensure that the public are aware an application has been made and have an opportunity to lodge a submission if they choose to do so.

**3.0 CLAUSE 4.6 REQUEST TO VARY THE HEIGHT DEVELOPMENT STANDARD**

The clause 4.6 request to vary the height of building development standard proposed a 60% variation. A dwelling of 13.6m is proposed. This level of variation is completely unrealistic for this site and clear indication of the dwellings excessive bulk and scale.

Drawing A1014 and A1015 provides a misleading comparative analysis of other developments within the vicinity, including No. 14. None of the recent applications mentioned subject to Pittwater LEP 2014 relied on clause 4.6 variations with regard to height. No. 9, 11 and 14 Ocean Road were compliant in height with No. 11 and 14 having a 10m control due to the steep topography pursuant to clause 4.3(2D). The slope of the land within the footprint of the dwelling on the subject site does not meet the requirement for a 10m control being applicable.

The application is for a new dwelling and there is a greater expectation that it can be designed with regard to controls applicable. The applicants seem to have designed the dwelling with regard to what was achieved on other sites that have different topographical constraints. The topography of the sites are clearly different.

The clause 4.6 request has not demonstrated that strict compliance with the development standard is unreasonable or unnecessary in this instance nor have sufficient environmental planning grounds been established to warrant a variation. This application should be refused on this issue alone.

This submission will outline further the resultant amenity impacts of the height breach.

The elevation drawings also indicate the height line being 10m which is not accurate.

### **3.0 EARTHWORKS; EXCAVATION**

The development will require excessive amounts of excavation to accommodate a 5 car garage with cinema and gym at the 'lower ground floor' and also excavation to the 'upper ground floor' level above.

The level of excavation required is unnecessary and reflective of the overdevelopment of the site. Dwellings should be designed to step down the slope to minimise excavation which is not achieved in this instance. A wholly 4 storey dwelling that is cut into the slope is not reasonably anticipated in this area and nor is it reflective of the Palm Beach locality or sensitive to the environment value of the conservation zone.

### **4.0 PALM BEACH LOCALITY**

The desired future character of Palm Beach states that:

*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.*

The proposal is 4 storeys and will present as entirely 4 storeys when viewed from the street.

*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.*

A 13m+ dwelling does not achieve consistency with this locality statement. An 8.5m height limit applies in part to ensure that dwellings sit below the tree canopy. There are only so many trees than can mature to be greater than 13m+ provided that the conditions are acceptable to grow trees to maturity.

The site is located in a conservation zone which places greater emphasis on the landscape taking precedence over the built form. The proposed dwelling does not reflect the desired future character of Palm Beach nor the C4 conservation zone.

## 5.0 BUILDING ENVELOPE

The significant variation to the building height will also require a significant variation to the building envelope control within the DCP. The dwelling is egregiously non-compliant with clause D12.8 of the DCP which reflects the overdevelopment and unreasonableness of the proposal. As mentioned, this is a new dwelling and a high level of compliance is expected. This proposal has no regard for the controls which apply to the site.

The visual impact when viewed from my client's property and the public domain will be highly unreasonable. It will dominate the streetscape and take precedence over the landscape character of the area. When viewed from No. 14 my client will be looking at a northern façade reaching approximately 11m in wall height. It would be completely overbearing on no. 14 and not consistent within a low density residential area.

The resultant amenity impacts with regard to the solar access, privacy and view loss will be discussed further.

While clause D12.8 provides that a steeply sloping site will be considered on a merit basis for sloping sites, the topography within the footprint is not greater than 30% to warrant a merit consideration.

## 6.0 LANDSCAPE AREA

The landscape area calculation is misleading and not consistent with how the DCP calculates landscape area. Again, with a new dwelling a high level of compliance should be achieved and again this application fails.

Drawing A1401 claims compliance with the 60% control. The landscape area calculation identifies 488.9m<sup>2</sup> of soft landscaping which equates to a landscape area of 53.6%. They have then included 58.1m<sup>2</sup> of impervious area which is 6.3% of the site area. The control within clause D12.10 states:

*for single dwellings on land zoned R2 Low Density Residential or E4 Environmental Living, up to 6% of the total site area may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only (e.g. roofed or unroofed pergolas, paved private open space, patios, pathways and uncovered decks no higher than 1 metre above ground level (existing)).*

Not only have they included more than 6% of the site area as impervious to the landscape area calculation, they have included the driveway and pedestrian entry pathway as impervious areas which are not used for outdoor recreational purposes.

The proposal does not comply with landscape area requirements.

## 7.0 VIEW SHARING

We request that height poles be erected to accurately determine the impacts to existing view corridors from No. 14 and also to give an indication of the bulk and scale.

The proposal is grossly non-compliant with height, building envelope and number of storeys that it could not possibly be reasonable for my client to lose highly valuable water views as a direct result of these non-compliances.

These highly valuable and expansive views will be directly impacted by significant non-compliances which is unreasonable. Until height poles are erected the full extent of the impact cannot be understood however I refer to step 4 of the view sharing planning principle which states:

*“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”*

The proposal has several significant non-compliances that impact on views which speak to its unreasonableness. The overdevelopment will directly impact on view corridors to the south across the subject site. The main habitable area of No. 14 is located at the ground level (RL9.75) and opens out to a terrace and pool area. The panoramic water views enjoyed from this space towards the south will be severely impacted by the proposal. The upper level master bedroom with terrace at No. 14, which is at RL16.51, will have its southern aspect views obliterated by the proposed dwelling that reaches a height of RL19.67. The obliteration of the views from the upper level are entirely a result of the building height non-compliance and unreasonable.

Once height poles are erected a thorough examination of the view loss can be conducted.

## 8.0 PRIVACY

The non-compliances with height and building envelope contribute to unreasonable impacts to privacy for No. 14. The 4<sup>h</sup> storey terrace is above the 8.5m height limit and will facilitate overlooking opportunities into my clients property. The northern elevation also includes large windows on the 3<sup>rd</sup> storey level which will also overlook into No.14.

## 9.0 CONCLUSION

It is my client's submission that proposed new dwelling is an overdevelopment of the site and not consistent with the desired future character of Palm Beach.

The proposal includes significant non-compliances with both the LEP and DCP controls. The development requires excessive excavation coupled with the non-compliances to building height, building envelope, landscape area and number of storeys speak to the unreasonableness of the new dwelling. A high level of compliance is anticipated for a new dwelling which has not be achieved.

Given the fundamental issues with this application it should be withdrawn and redesigned to have a greater relationship with the controls that apply and minimise the amenity impacts to surrounding properties. If not withdrawn, the application should be refused.

Should amended plans be submitted we reserve the right to make further submissions in response.

Please don't hesitate to contact me should you have any questions.

Yours sincerely



**William Fleming**  
**BOSTON BLYTH FLEMING**  
BS, MPLAN