



Development Application
Statement of Environmental Effects

15 Ocean Road, Palm Beach



Submitted to: Northern Beaches Council
On behalf of: BJB Architects
Date: October, 2023

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1. INTRODUCTION

This Statement of Environmental Effects (SEE) has been prepared for BJB Architects (**the applicant**) in support of a Detailed Development Application (DA) to Northern Beaches Council, prepared in accordance with Section 4.12 of the Environmental Planning and Assessment Act, 1979 and Clause 50 of the Environmental Planning and Assessment Regulation, 2021.

The proposed seeks consent for the *'demolition of the existing dwelling and construction of a new multi-level dwelling'* at 15 Ocean Road, Palm Beach being the subject property.

1.1 Report Structure

This SEE is structured in the following manner:

- **Section 1** – Introduction;
- **Section 2** - Analysis of site and surrounding context;
- **Section 3** - Background to the project;
- **Section 4** - A description of the proposed development;
- **Section 5** - Assessment of the proposal's compliance with relevant planning instruments and policies;
- **Section 6** - Impact assessment and consideration of key planning issues as required by Section 4.15 of the EP&A Act; and
- **Section 7** – Conclusion.

1.2 Supporting Documentation

The technical and design documents that have been prepared to accompany this DA are identified in **Table 1** and are as follows;

Document:	Prepared by:	Dated:
Architectural Plans	BJB Architects	29 September 2023
Stormwater Plan	Ae Consulting Engineers	22 September 2023
Coastal Management Report	Horton Coastal	19 October 2023
Flora and Fauna	Narla Environmental	September 2023
Geotechnical Investigation	GCA	6 September 2023
Survey	TSS	8 March 2023
Civil driveway gradient plans	Ae Consulting Engineers	14 August 2023
Basix	Integreco Consulting Pty Ltd	26 September 2023
Landscape Plan	Conzept	September 2023

Table 1: Technical and design documentation

2. SITE DESCRIPTION

2.1 The Site

The subject site is identified as 15 Ocean Road, Palm Beach. The site observes a frontage width of 21.64m to Ocean Road, respective northern and southern boundary lengths of 40.775m and 43.28m and rear boundary width of 19.705m. The site yields a total land area of 911.9m² and presents an identifiable slope from the rear of the site down towards the street edge along Ocean Road of approximately 12.5m.

Figures 1 and 2 below provides a clearer appreciation of the location of the site within its immediate context.

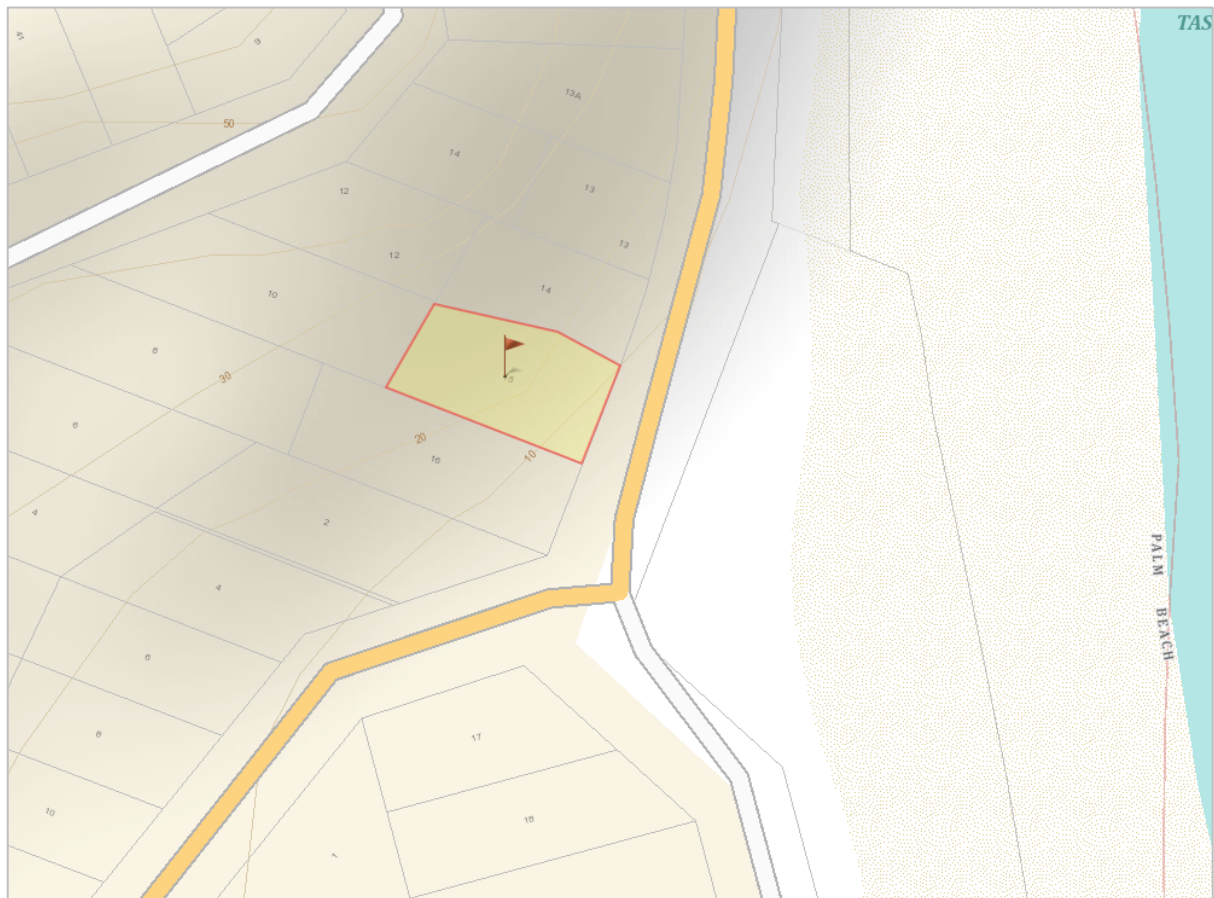


Figure 1: Base Map Plan

Source: Six Maps


Subject site 



Figure 2: Location Plan

Source: Six Maps

Subject site



2.2. Existing Built Form and Landscaping

The current site improvements consist of a two-storey timber, stone and brick residence with tiled roof. Vegetation is generally limited to western side of the site where the land is traversed by a number of stone retaining walls. Vehicular access is provided from the crossover located within the south-eastern corner of the site into the two (2) car garage. **Figures 3-6** below offer to provide an appreciation of the existing built features across the site.



Figure 3: The existing dwelling as it presents from the public domain



Figure 5: Southern side deck periphery along the existing dwelling façade



Figure 4: Viewed from existing eastern elevated deck towards the foreshore



Figure 6: As previous

2.3 Surrounding Context

Dwelling houses that adjoin the site to the north, generally step up the slope in response to the fall of the land consistent with that of the site characteristics. The adjoining building to the south is sited on relatively level land which is reflected in the dwelling design. More generally, surrounding and nearby dwelling houses are typically multi-storey in height, are of varying age and character, and are oriented towards available views to Palm Beach, Barrenjoey Headland and the ocean.

3. THE PROPOSAL

3.1 Description

The proposed seeks consent for the 'demolition of the extending dwelling and construction of a new multi-level dwelling' at 15 Ocean Road, Palm Beach being the subject property.

The proposed development is further described as follows:

Lower Ground Floor

- Provision of a new driveway that will enable access into the five (5) car garage;
- Cinema room, gym, laundry, bath and plant/storage;
- Lift and stair access; and
- Site landscaping.

An extract of the proposed lower ground floor plan is reproduced below for reference:

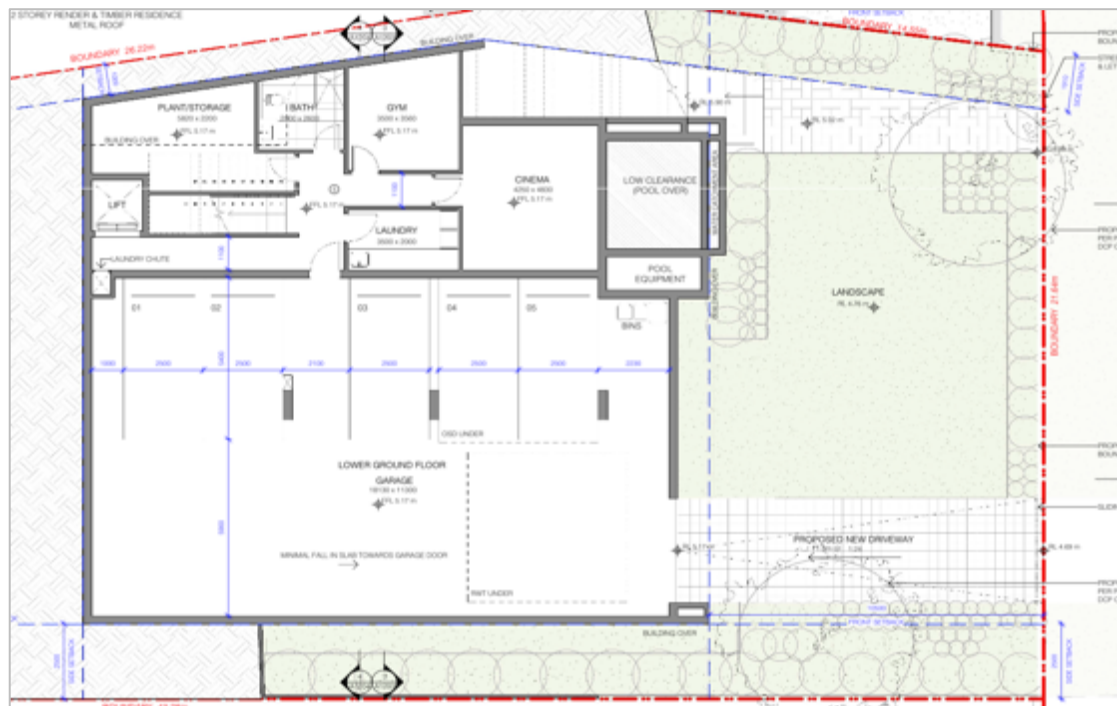


Figure 7: Lower ground floor plan

Source: BJB Architects

Upper Ground Floor Plan

- Open plan kitchen, living room and dining;
- Butlers kitchen, wine cellar and bath/store;
- Terrace areas and swimming pool; and
- Lift and stair access.

An extract of the proposed upper ground floor plan is reproduced below for reference.

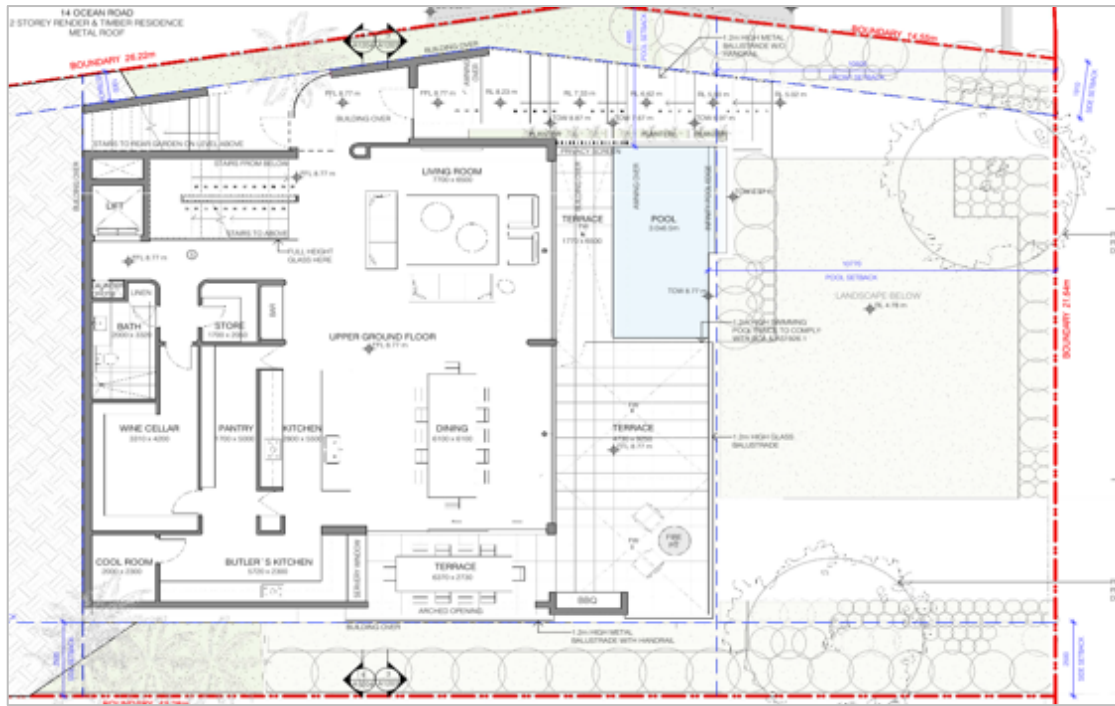


Figure 8: Upper ground floor plan

Source: BJB Architects

First Floor Plan

- The provision of five (5) bedrooms all of which are provided with independent bath facilities;
- Terraces off all nominated bedrooms; and
- Lift and stair access

An extract of the proposed first floor level is reproduced below.

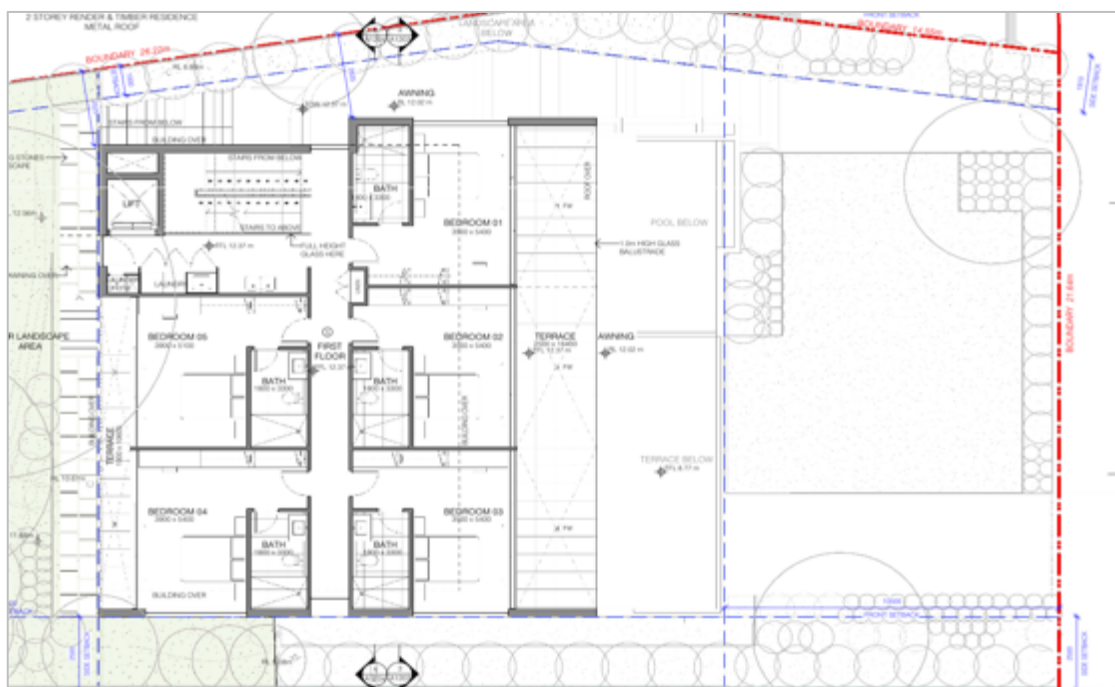


Figure 9: First floor plan

Source: BJB Architects

Second Floor Plan

- The provision of a master bedroom provided with WIR and ensuite facilities;
- Terrace located off the eastern bedroom periphery; and
- Lift and stair access.

An extract of the proposed second floor level is reproduced below.

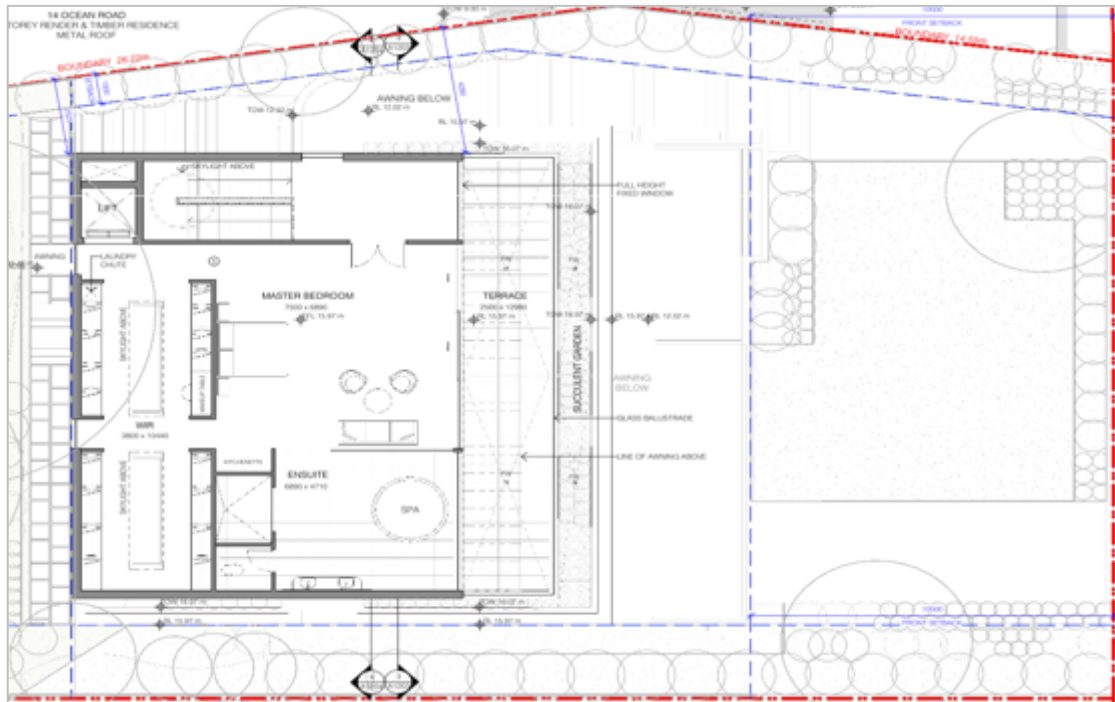


Figure 10: Second Floor plan

Source: BJB Architects

4. NUMERICAL OVERVIEW

The key numerical aspects of the proposed development are outlined in **Table 2** and described in further detail in the following sections.

Parameter	Proposal
Site Area	911.9m ²
Building Height (Maximum)	13.6m
Landscaping	547.2m ² or 60%

Table 2: Numeric Overview of the proposed development

4.1 Building Design

The building façades have been designed in a manner whereby they serve to modulate the building volume while variations in materiality seek to further define the layers of the development in a manner that also facilitates the provision of a greater level of visual interest. Furthermore, appropriate window positioning and proportions serve to articulate the building elevations and help to avoid unadorned expanses of cladding. **Figure 11** below is a perspective of the development that demonstrates the ensuing visual relationship as it will present from the foreshore.



Figure 11: Foreshore Perspective
Source: BJB Architects

4.1.1 Materials and Finishes

The proposed development includes building exteriors that provide visual articulation across the façades. A number of conventional treatments have been incorporated into the development which maximise daylight and external views whilst providing protection against glare. The design also seeks to utilise a number of conventional and more distinctive materials that serve to accentuate the contrasting elements of the building. An extract of the proposed materials schedule prepared by BJB Architects is provided as **Figure 12** below.

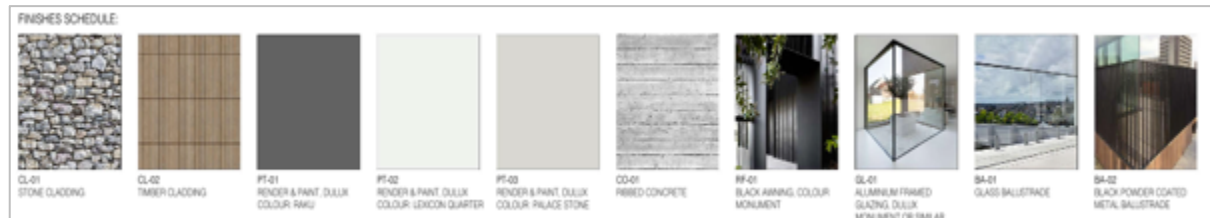


Figure 12: Material Schedule

Source: BJB Architects

5. STATUTORY PLANNING CONSIDERATIONS

5.1 Overview

The relevant statutory framework considered in the preparation of this report comprises:

- Environmental Planning and Assessment Act, 1979;
- Environmental Planning and Assessment Regulation 2021;
- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- Pittwater Local Environmental Plan 2014; and
- Pittwater 21 Development Control Plan.

The relevant provisions and controls of the above Instruments and Plans are summarised in the following sections of this SEE.

5.2 Environmental Planning and Assessment Act 1979

5.2.1 Section 1.3 – Objects

The Environmental Planning and Assessment Act, 1979 (the Act) is the principle planning and development legislation in New South Wales. In accordance with Section 1.3, the objectives of the Act are:

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

The proposed development is considered to be consistent with the objects of the EP&A Act for the following reasons:

- It promotes the orderly and economic use and development of the land by proposing a residential built form that is consistent with the zoning and character of the site and surrounding locality;
- It protects the environment by incorporating suitable sediment control and stormwater management measures and ensuring the retention of a number of contributory trees across the site; and
- It promotes good design and amenity by providing for an appropriately designed built form that responds to the characteristics of the site and locality, whilst ensuring that the amenity of the built environment in the immediate vicinity remains uncompromised.

5.3 Environmental Planning and Assessment Regulations 2021

5.3.1 Section 69 – Compliance with the BCA

The proposed development has been designed in a manner whereby the requirements of the BCA are capable of being satisfied.

5.4 State Environmental Planning Policies

5.4.1 State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 Coastal Management

The subject site is identified as being within the coastal environment area on the Coastal Environment Area Map and within the coastal use area on the Coastal Use Area Map and therefore the provisions of Chapter 2 of SEPP (Resilience and Hazards) are applicable to the proposed development.

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

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

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

- a) to protect and enhance natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem integrity and resilience,*
- and*
- b) to support the social and cultural values of the coastal zone and maintain public access, amenity, use and safety, and*
- c) to acknowledge Aboriginal peoples' spiritual, social, customary and economic use of the coastal zone, and*
- d) to recognise the coastal zone as a vital economic zone and to support sustainable coastal economies, and*
- e) to facilitate ecologically sustainable development in the coastal zone and promote sustainable land use planning decision-making, and*
- f) to mitigate current and future risks from coastal hazards, taking into account the effects of climate change, and*
- g) to recognise that the local and regional scale effects of coastal processes, and the inherently ambulatory and dynamic nature of the shoreline, may result in the loss of coastal land to the sea (including estuaries and other arms of the sea), and to manage coastal use and development accordingly, and*
- h) to promote integrated and co-ordinated coastal planning, management and reporting, and*
- i) to encourage and promote plans and strategies to improve the resilience of coastal assets to the impacts of an uncertain climate future including impacts of extreme storm events, and*
- t*
- j) to ensure co-ordination of the policies and activities of government and public authorities relating to the coastal zone and to facilitate the proper integration of their management activities, and*
- k) to support public participation in coastal management and planning and greater public awareness, education and understanding of coastal processes and management actions, and*
- l) to facilitate the identification of land in the coastal zone for acquisition by public or local authorities in order to promote the protection, enhancement, maintenance and restoration of the environment of the coastal zone, and*

m) to support the objects of the Marine Estate Management Act 2016.

It is submitted that the proposal, as considered in this Statement of Environmental Effects, is consistent with the objects of the SEPP (Resilience and Hazards), as set out in Clause 3 of the Coastal Management Act 2016.

The relevant provisions of this Chapter are addressed as follows:

2.10 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(f) Aboriginal cultural heritage, practices and places, (g) the use of the surf zone.

(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

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

Comment: The proposed works do require manipulation of the site; however, these works are not deemed unreasonable noting the characteristics of the site and the setting and more importantly, are not deemed to increase the risk of coastal hazards for the subject property or adjoining land. The application is supported by a Preliminary Geotechnical Investigation prepared by GCA, Project G23285-1, dated 6 September 2023 and Coastline Risk Management Report dated 19 October 2023.

The site is not known to contain any items of aboriginal significance and will not result in any loss of public access to the waterway.

The proposal does not require the removal of any significant vegetation, with an enhancement of landscaping proposed across the site and will supplement the extent of tree preservation proposed.

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 foreshores,

(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,

(iv) Aboriginal cultural heritage, practices and places,

(v) cultural and built environment heritage, and

(b) is satisfied that—

(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or

(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The bulk and scale of the built form is commensurate with the established built environment within the vicinity of the site. The proposed works are not considered to increase the risk of coastal hazards for the subject property or adjoining land.

Furthermore, the proposal will not result in the loss of public access to the water while all works relevant to the application will be carried out in accordance with the recommendations of the consulting Geotechnical and Structural Engineers, and stormwater runoff from the site will be suitably managed.

A generous area of soft landscaping alongside significant levels of tree retention. This retention will be supplemented by the extent of new planting proposed as part of this application.

The proposal will reasonably maintain existing views to and from the foreshore area. The proposal will not result in any overshadowing of the foreshore area.

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 application is supported by a Geotechnical Report by GCA and a Coastal Engineering assessment prepared by Horton Coastal Engineering to address the coastal hazards associated with the proposed works. The proposed new works are not considered to increase the risk of coastal hazards for the subject property or adjoining land.

Chapter 4 – Remediation of Land

Chapter 4 of this state policy applies to the whole of the State. The object of this chapter is to provide for a Statewide planning approach to the remediation of contaminated land. In accordance with the provisions of clause 4.6(1) of this state policy, Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

Clause 4.6(1)(a) of this policy requires the consent authority to consider whether land is contaminated. The existing site has been used for residential purposes for an extended period of time, with no known prior land uses. The site is not identified on the public register of contaminated sites and is not located in the vicinity of any. Council can be reasonably satisfied that there is no contamination risk, subject to the imposition of suitable conditions relating to demolition.

Overall, the proposed development is consistent with the relevant provisions of SEPP (Resilience and Hazards).

5.4.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in non-rural areas

The provisions of Chapter 2 of this policy are applicable to all non-rural land across the state and aim to protect the biodiversity values of trees and other vegetation in non-rural areas and to preserve the amenity of non-rural areas through the preservation of trees and other vegetation.

The application seeks the removal of fifteen (15) palm trees to accommodate the proposed development, as identified in the accompanying landscape plan prepared by Conzept. The proposal also nominates the retention of a number of trees across the site.

The proposed tree removal will be appropriately offset by replacement plantings, with a significant enhancement to the quality and quantity of landscaping across the site, as demonstrated on the Landscape Plan by Conzept.

The proposed development is consistent with the requirements and objectives of SEPP (Biodiversity and Conservation).

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

In accordance with the provisions of the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, a BASIX Certificate has been provided. The proposed development satisfies the requirements of the BASIX Certificate in terms of water conservation, energy efficiency and thermal comfort.

5.5 Local Environmental Plans

5.5.1 Pittwater Local Environmental Plan 2014

The Pittwater Local Environmental Plan 2014 (PLEP 2014) applies to the subject site which is identified as being within Zone C4 – Environmental Living Zone. The proposed development is defined as a ‘**dwelling house**’ being a permissible form of development in the zone.

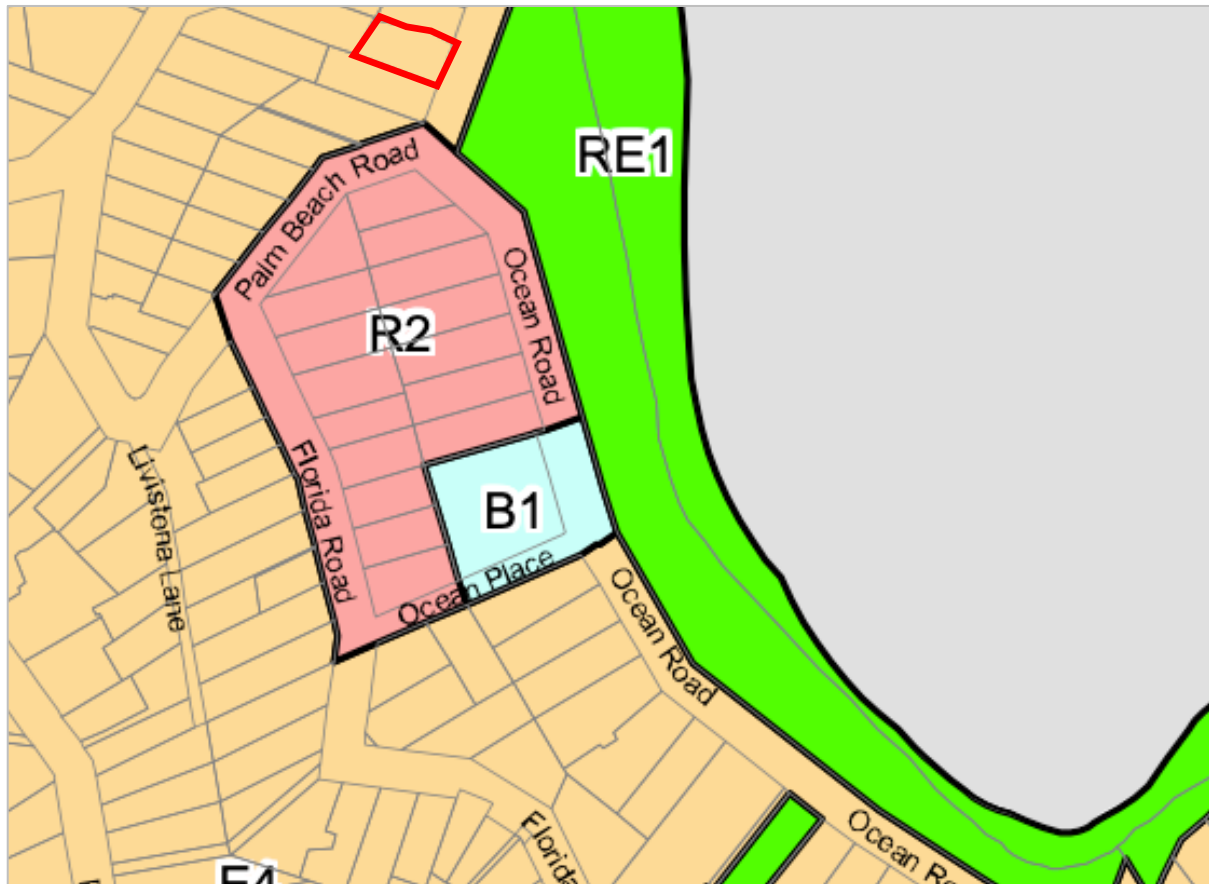



Figure 13: Zoning Map
Source: PLEP 2014


Subject site 

The objectives of the C4 – Environmental Living Zone are as follows:

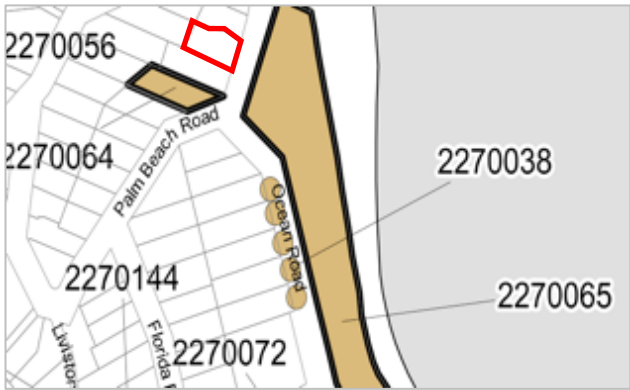
- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To provide for residential development of a low density and scale integrated with the landform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

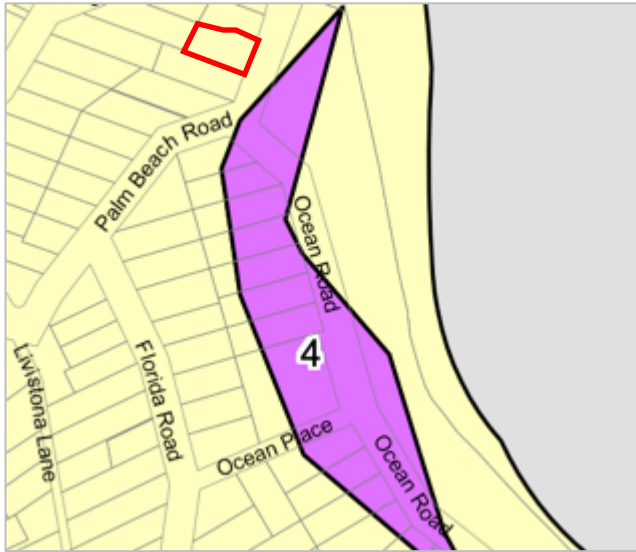
The proposed development remains consistent with the relevant objectives of the zone in that it has been designed in response to the special ecological, scientific, and aesthetic values of the site. The proposed development is of an acceptable density and scale that is consistent with the landform, landscape, and character of the area. Furthermore, the proposed development will not adversely impact upon the riparian and foreshore vegetation, or wildlife corridors.

A summary of our assessment of the proposed development against the remaining provisions of the Pittwater LEP is detailed as follows.

Pittwater Local Environmental Plan 2014			
CL	Requirement	Proposed	✓ /x
Part 2 - Permitted or Prohibited development			
2.3	Zoning and Objectives	The proposal aligns with the zone objectives.	✓
2.7	Demolition requires development consent	This application proposes demolition of the existing building and ancillary site structures.	✓
Part 4 – Principal Development Standards			
4.3	Height of Building's The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. An 8.5m maximum height applies to the land.	 <p>Figure 14: Height of Buildings Map Source: PLEP 2014</p> <p>The dwelling will comprise of a maximum height of 13.6m failing to comply with the standard. Refer to the Clause 4.6 Variation request (Annexure A).</p>	Merit

Part 5 – Miscellaneous Provisions

<p>5.10</p>	<p>Heritage</p> <p>The objectives of this clause are as follows—</p> <p>(a) to conserve the environmental heritage of Pittwater,</p> <p>(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</p> <p>(c) to conserve archaeological sites,</p> <p>(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.</p>	<p>The subject site and existing building are not heritage listed nor is located within a conservation area. The land is located in proximity to two (2) items of significance identified as follows:</p> <ul style="list-style-type: none"> · 'House' located at 2 Palm Beach Road · Norfolk Island Pines (<i>Araucaria heterophylla</i>) located within the road reserve along Ocean Road  <p>Figure 15: Heritage Map Source: PLEP 2014</p> <p>In relation to any potential impact/s, the proposed building on the subject land will have no apparent direct visual association with the aforementioned items of heritage. Specifically, the primary view to the heritage listed dwelling at 2 Palm Beach Road is from along Palm Beach Road itself. Therefore, any future built form on the subject site will in no way hinder views to, from and across this item of relevance from along this vantage point.</p> <p>With respect to the Norfolk Island Pines, these are well separated from the subject site and proposed dwelling and have no direct association with the proposal.</p> <p>We are therefore satisfied that the proposed development satisfies the relevant provisions of this clause.</p>	<p>✓</p>
<p>5.21</p>	<p>Flood Planning</p> <p>The objectives of this clause are as follows—</p> <p>(a) to minimise the flood risk to life and property associated with the use of land,</p> <p>(b) to allow development on land that is compatible with</p>	<p>The site is partially located within the Low Risk Flood Precinct on the Flood Hazard Map of P21 DCP. The application is supported by Coastal Engineering Advice prepared by Horton Coastal Engineering that confirms that the proposed dwelling and basement have been designed to consider the coastal processes in the vicinity of the site.</p>	<p>✓</p>

	<p>the flood function and behaviour on the land, taking into account projected changes as a result of climate change,</p> <p>(c) to avoid adverse or cumulative impacts on flood behaviour and the environment,</p> <p>(d) to enable the safe occupation and efficient evacuation of people in the event of a flood.</p>		
Part 7: Additional Local Provisions			
6.1	<p>Acid Sulfate Soils</p> <p>The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils.</p>	<p>The subject land is identified as Class 5 on the ASS Planning Maps as identified in Figure 14 below.</p>  <p>Figure 16: ASS Map Source: PLEP 2014</p> <p>A preliminary ASS Assessment was carried out by GCA. This assessment concluded that as a result of the field screening and Chromium Suite results outlined in the report, it is considered the site is not affected by ASS.</p> <p>The investigation also suggest that should signs of ASS be observed during future works, the material should be stockpiled separately and assessed by a suitably qualified environmental consultant.</p>	✓

7.2	<p>Earthworks</p> <p>Before granting development consent for earthworks, the consent authority must consider the following matters—</p> <p>(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,</p> <p>(b) the effect of the proposed development on the likely future use or redevelopment of the land,</p> <p>(c) the quality of the fill or the soil to be excavated, or both,</p> <p>(d) the effect of the proposed development on the existing and likely amenity of adjoining properties,</p> <p>(e) the source of any fill material and the destination of any excavated material,</p> <p>(f) the likelihood of disturbing relics,</p> <p>(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</p>	<p>The proposal will involve excavation works for the propose of facilitating the subject development.</p> <p>Where proposed excavation works occur within or close to the zone of influence of structures, specific excavation and earth retention methods will be implemented to ensure structural integrity of adjacent buildings is not compromised. This is detailed at more length within the preliminary geotechnical assessment prepared by GCA.</p> <p>There will be temporary amenity impacts associated with site preparation works, including land modification works, however these will be managed by limiting the hours of the day site preparation works can occur.</p> <p>It is considered unlikely that the site, which for the most part has been relatively undisturbed, contains relics or any items of historic significance. Should any such item be encountered during site preparation works, excavation will cease immediately and the appropriate government authority notified. It is anticipated that a standard condition of consent will be imposed in this regard.</p> <p>Sediment and erosion controls will be installed and maintained for the duration of site preparation and construction phases to ensure there is no risk of sediment laden water leaving the site and entering council's drainage infrastructure.</p>	✓
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7.5

Coastal Risk Planning

This clause applies to land identified on the Coastal Risk Planning Map as—

- (a) Wave Inundation, or
- (b) Coastal Erosion/Wave Inundation, or
- (c) Bluff/Cliff Instability.

The subject site is located on the coastal risk planning map as being subject to potential wave inundation. This is indicated in Figure 15 below.

✓




Figure 17: Coastal Risk Map
Source: PLEP 2014

Subject site

The application is supported by a Geotechnical Report by GCA, inclusive of a Coastal Report by Horton Coastal Engineering, that addresses the matters prescribed by 7.5(3) of PLEP 2014.

Council can be satisfied of the matters prescribed by clause 7.5(3) of PLEP 2014 in that the development –

1. is not likely to cause detrimental increases in coastal risks to other development or properties, and
2. is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and
3. incorporates appropriate measures to manage risk to life from coastal risks, and
4. is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and
5. provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards, and
6. has regard to the impacts of sea level rise, and
7. will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

<p>7.7</p>	<p>Geotechnical Hazard Map</p> <p>This clause applies to land identified as “Geotechnical Hazard H1” and “Geotechnical Hazard H2” on the Geotechnical Hazard Map.</p>	<p>The subject site is identified on the geotechnical hazard map as Hazard H1, referenced in Figure 16 below.</p>  <p>Figure 18: Geotechnical Risk Map Source: PLEP 2014</p> <p>The application is supported by a Geotechnical Report by GCA that addresses the matters prescribed by clause 7.7(3) of PLEP 2014. Further, the application is supported by Stormwater Management Plans by ae Consulting Engineers that confirm that a suitable stormwater management solution can be achieved.</p> <p>Council can be satisfied that the development will appropriately manage wastewater, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and that the development is designed, sited and will be managed to avoid any geotechnical risk or significant adverse impact on the development and the land surrounding the development, consistent with the provisions of clause 7.7(4) of PLEP 2014.</p>	<p>✓</p>
<p>7.10</p>	<p>Essential Services</p> <p>Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—</p> <ul style="list-style-type: none"> (a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage, (d) stormwater drainage or on-site conservation, 	<p>These services are currently provided and service the existing dwelling on the site.</p>	<p>✓</p>

	(e) suitable access.	vehicular		
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Table 3: Pittwater Local Environmental Plan 2014 Compliance Table

5.6 The Provisions of any exhibited Draft Environmental Planning Instruments

5.6.1 Draft Environment SEPP

The planning provisions for waterways, catchments, world heritage and urban bushland are currently contained in seven State Environmental Planning Policies (SEPPs), the Standard Instrument – Principal Local Environmental Plan (Standard Instrument), and in Ministerial Directions for plan making issued under the Environmental Planning and Assessment Act 1979. An Explanation of Intended Effect for the SEPP (Environment) was publicly notified between 31 October 2017 to 31 January 2018. The SEPP (Environment) will integrate provisions from seven existing SEPPs relating to catchments, waterways, urban bushland and world heritage, and to reduce the complexity and streamline the planning system.

The proposed SEPP (Environment) will:

- *Encourage the proper management, development and conservation of natural resources and the protection of the environment, in line with the objectives of the Act*
- *Enable growth that maintains and enhances the health and integrity of our natural and cultural heritage for the benefit and enjoyment of the present community and for future generations*
- *Streamline development assessment by identifying and considering environmental values and constraints at the earliest possible stage in the development decision making process, using evidenced based planning methods*
- *Promote ecologically sustainable development that supports a balanced approach to the use of land and natural resources, and provides for long term environmental, economic and social wellbeing*
- *Adopt a risk based approach to minimise cumulative negative impacts of development on both the immediate site and on a surrounding area or region*
- *The proposed SEPP fits within a range of plans and strategies including A Plan for Growing Sydney, draft District Plans, Regional Plans, local environmental plans, Ministerial Directions, and development control plans*

Based on the information of the Explanation of Intended Effect of the SEPP (Environment), it is considered that the proposal is consistent with the draft planning instrument being, the proposed SEPP (Environment).

5.7 Development Control Plans

5.7.1 Pittwater 21 Development Control Plan

The proposal is subject to the provisions of the Pittwater 21 DCP. The relevant provisions are discussed where relevant across the table below. Where certain matters were addressed through either the preceding or succeeding sections of this SEE, they will not again be repeated across the DCP table.

Pittwater 21 Development Control Plan

Design Solution	Requirements	Proposed	✓/X
Section A4 – Localities (Palm Beach Locality)			
<p>The site is located within the Palm Beach locality, as identified on the Palm Beach Locality Map of P21 DCP. The proposed dwelling house is consistent with the desired future character identified for the Palm Beach Locality, as follows:</p> <ul style="list-style-type: none"> • The dwelling house contributes to the existing low-density residential area. • The dwelling house presents a scale not at odds with the transitioning local character. The built form elements of the dwelling have been appropriately integrated with the natural landform characteristics alongside existing contributory landscaping which will be generally maintained and supplemented as part of this development. • The form of the dwelling house reflects and respects the massing of existing development noting that both the subject land and those lands to the immediate north, observe a significant site slope and therefore, necessitate the provision of a built form that corresponds to the unique land characteristics. • The height of the dwelling house will remain below the height of the existing contributory tree canopy to its rear. • The design of the dwelling house is a considered and sensitive response to the attributes and constraints of the site. • The proposed development contains a strong level of built form modulation and articulation and incorporates a level of built form materiality. • The proposed materiality of the dwelling house will harmonise with the natural environment, specifically the established tree canopy, • The proposed development has been designed to be safe from hazards that affect the site, specifically, geotechnical and coastal inundation matters. 			
Section B – General Controls			
B4- Controls Relating to the Natural Environment			
B4.1-B4.6 and B4.22	<p>This proposal is accompanied by a Flora and Fauna Assessment report prepared by Narla.</p> <p>This report concludes the following:</p> <p><i>“This assessment indicates that the relevant provisions of the BC Act 2016 and the EPBC Act 1979 have been satisfied and that the proposed development has been appropriately located within the area identified as having the least ecological impact.</i></p> <p><i>In total approximately 0.019ha of exotic dominated vegetation will be removed/managed in order to facilitate the proposed development.</i></p> <p><i>The proposed development is considered unlikely to result in any significant impacts to</i></p>		✓

Pittwater 21 Development Control Plan

Design Solution	Requirements	Proposed	✓/X
		<p><i>adjoining land or to any threatened species within the Subject Property. It is anticipated that any direct or indirect impacts to threatened fauna will be minimal.</i></p> <p><i>If the appropriate recommendations in this report are followed the proposed development should have minimal ecological impact"</i></p>	
B5- Water Management			
B5.15 Stormwater			
<p>Stormwater runoff must not cause downstream flooding and must have minimal environmental impact on any receiving stormwater infrastructure, watercourse, stream, lagoon, lake and waterway or the like.</p> <p>The stormwater drainage systems for all developments are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.</p>		<p>The application is supported by Stormwater Management Plans prepared by ae Design, which demonstrate consistency with Council's Water Management Policy.</p>	✓
B6 Access and Parking			
B6.2 Internal Driveways			
<p>An Internal Driveway must be provided for in:</p> <ul style="list-style-type: none"> any new development; development where additional car parking spaces and/or garages are required by Council's plans or policies; any alterations and additions where the sum of the additional Gross Floor Area (GFA) of the dwelling exceeds 30 m² ; and development where additional car parking spaces and/or garages are proposed. 		<p>We have been informed that the internal driveway has been designed in accord with the relevant standards while vehicular access into and out from the site can be carried out in a forward direction.</p> <p>This is further affirmed upon review of the civil driveway drawing prepared by ae consulting accompanying this application.</p>	✓
B6.3 Off Street Parking			
<p>The minimum number of vehicle parking spaces to be provided for off-street parking is as follows for dual occupancies, dwelling houses, secondary dwellings, exhibition homes, rural workers' dwellings and tourist and visitor accommodation:</p>		<p>The proposal makes provision for up to five (5) off-street parking spaces within the basement, exceeding the minimum requirement for 2 spaces prescribed by this control. The proposed parking spaces and</p>	✓

Pittwater 21 Development Control Plan			
Design Solution	Requirements	Proposed	✓/X
Given the proposed dwelling will be > 2 bedrooms, 2 spaces are required.		turning area within the basement level are designed in accordance with AS2890.1.	
B8- Site Works Management			
B8.1 Construction and Demolition – Excavation and Landfill			
<p>The controls seek to achieve the below outcomes:</p> <p><i>Site disturbance is minimised. (En)</i></p> <p><i>Excavation, landfill and construction not to have an adverse impact. (En)</i></p> <p><i>Excavation and landfill operations not to cause damage on the development or adjoining property. (S)</i></p>		<p>The proposal will require excavation in order to accommodate the proposed basement level.</p> <p>The application is supported by a Geotechnical Investigation prepared by GCA. The report confirms that the proposed development has acceptable level of risk, in accordance with the provisions of the Geotechnical Risk Management Policy for Development.</p> <p>The proposed works will be supervised by appropriately qualified Structural and Geotechnical Engineers.</p>	✓
B8.3 Construction and Demolition – Waste Minimisation			
<p>The controls seek to achieve the below outcome:</p> <p><i>Reduction management of demolition, excavation and construction works is to be minimised by reuse on-site, recycling, or disposal at an appropriate waste facility. (En)</i></p>		<p>Any demolition material will be removed and recycled off site where possible or taken to an approved waste disposal facility.</p>	✓

Section C – Development Type Controls

C1 - Design Criteria for Residential Development

C1.1 Landscaping

All canopy trees, and a majority (more than 50%) of other vegetation, shall be locally native species. Species selection and area of landscape to be locally native species is determined by extent of existing native vegetation and presence of an Endangered Ecological Community. Note if the land is within an Endangered Ecological Community there will be a Development Control specifically covering the requirements for Landscaping in an Endangered Ecological Community.

The accompanying landscape plan prepared by Concept details the proposed planting schedule.

With respect to any established ecological community, reference is made to the accompanying Flora and Fauna Assessment report prepared by Narla.

This report affirms the following:

"In total approximately 0.019ha of exotic dominated vegetation will be removed/managed in order to facilitate the proposed development.

The proposed development is considered unlikely to result in any significant impacts to adjoining land or to any threatened species within the Subject Property. It is anticipated that any direct or indirect impacts to threatened fauna will be minimal'.

The proposed development therefore satisfies the relevant provisions of this control.

✓

C1.2 Safety and Security

The controls seek to achieve the outcomes:

On-going safety and security of the Pittwater community. (S)

Opportunities for vandalism are minimised. (S, Ec)

Inform applicants of Council's requirements for crime and safety management for new development. (S)

Improve community awareness in relation to Crime Prevention through Environmental Design (CPTED), its principle strategies and legislative requirements (S)

Identify crime and safety priority areas in Pittwater LGA (S, Ec)

Improve community safety and reduce the fear of crime in the Pittwater LGA (S)

Develop and sustain partnerships with key stakeholders in the local area who are involved in community safety. (S)

The subject development contains a number of features that will promote the ability for causal surveillance to take place over and across the public domain/s.









✓

<p>C1.3 View Sharing</p> <p>The controls seek to achieve the outcomes:</p> <p><i>A reasonable sharing of views from public places and living areas. (S)</i></p> <p><i>Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced. (S)</i></p> <p><i>Canopy trees take priority over views (En, S)</i></p>	<p>Given the siting of the development, characteristics of the land and any ensuing spatial relationship/s between the subject and neighbouring properties, potential view impacts are deemed to remain at acceptable levels.</p> <p>Directly adjoining properties to the north and south will retain their current and expansive level of view towards the beach, Barrenjoey headland and the broader coastline. The upslope properties given their elevated position, will continue to retain their level of view over the proposed dwelling.</p> <p>The proposal therefore satisfies the provisions of this control whereby the reasonable sharing of views will be maintained.</p>	<p>✓</p>
<p>C1.4 Solar Access</p> <p>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.</p> <p>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).</p> <p>Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am and 4.00pm during mid winter.</p> <p>Developments should maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.</p>	<p>The proposal will facilitate the provision of acceptable levels of solar access across key areas of the dwelling. Neighbouring properties will continue to receive contemplated levels of solar access year round.</p>	<p>✓</p>

<p>C1.5 Visual Privacy</p> <p>Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).</p> <p>Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.</p> <p>Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.</p>	<p>The development given the nature of the setting, orientates the majority of any large expanses of glazing and balcony areas towards the east noting that along this building interface is from where views are attained and occupant amenity levels increased.</p> <p>Windows along the northern and southern side elevations have as far as practical, offset from any adjoining fenestration while the terrace areas proposed across the building while expansive in size and number, contain generous side setbacks, northern/southern periphery solid elements or privacy screening devices.</p> <p>It must be conceded that complete privacy protection across a beachside setting such as this is not a realistic outcome. Given the siting, scale, spatial relationships across built forms and natural topographical characteristics of the setting, some level of conflict with respect to privacy will undoubtedly always arise.</p> <p>Irrespective of the above statement, the subject proposal will achieve a reasonable outcome with respect to privacy.</p>	<p>✓</p>
<p>C1.6 Acoustic Privacy</p> <p>Noise-sensitive rooms, such as bedrooms, should be located away from noise sources, including main roads, parking areas, living areas and communal and private open space areas and the like.</p> <p>Walls and/or ceilings of dwellings that are attached to another dwelling/s shall have a noise transmission rating in accordance with Part F(5) of the <i>Building Code of Australia</i>. (Walls and ceilings of attached dwellings must also comply with the fire rating provisions of the <i>Building Code of Australia</i>).</p> <p>Noise generating plants including pool/spa motors, air conditioning units and the like shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.</p> <p>Developments must comply in all respects with the <i>Protection of the Environment Operations Act 1997</i>, and other relevant legislation.</p>	<p>Noise generators such as plant and machinery including air conditioning units and pool pumps are sited away from windows or other openings. Where required, noise generating equipment can be screened to further reduce noise emissions. This can be formalised by way of a consent condition.</p>	<p>✓</p>

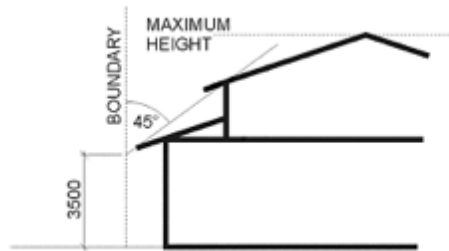
<p>C1.7 Private Open Space</p> <p>Minimum 80m² of private open space per dwelling at ground level, with no dimension less than 3 metres. No more than 75% of this private open space is to be provided in the front yard.</p> <p>Within the private open space area, a minimum principal area of 16m² with a minimum dimension of 4m and grade no steeper than 1 in 20 (5%).</p> <p>Dwellings are to be designed so that private open space is directly accessible from living areas enabling it to function as an extension of internal living areas.</p> <p>Private open space areas are to have good solar orientation (i.e. orientated to the north-east or north-west where possible). Where site or slope constraints limit optimisation of orientation, the private open space area must have access to some direct sunlight throughout the year (see Solar Access).</p> <p>Private open space should be located to the rear of the dwelling to maximise privacy for occupants.</p>	<p>The required controls seek to achieve the outcomes are to ensure that dwellings are provided suitable private open space with an area and at a grade which will facilitate outdoor private recreation.</p> <p>The proposed development provides ample area of private open space, with a variety of spaces proposed around the perimeter of the dwelling.</p>	<p>✓</p>
<p>C1.12 Waste and Recycling Facilities</p> <p>All development that is, or includes, demolition and/or construction, must comply with the appropriate sections of the Waste Management Guidelines and all relevant Development Applications must be accompanied by a Waste Management Plan.</p>	<p>The application is accompanied by a Waste Management Plan demonstrating consistency with Council's Waste Management Guidelines.</p>	<p>✓</p>
<p>C1.17 Swimming Pool Safety</p> <p>Swimming pool fencing and warning notices (resuscitation chart) shall be manufactured, designed, constructed, located and maintained in accordance with the <i>Swimming Pools Act 1992 and regulations</i>. The fencing and warning notices (resuscitation chart) shall be permanent structures.</p>	<p>We have been informed that the proposed swimming pool has been designed in accordance with the Swimming Pools Act and Regulation.</p> <p>With respect to signage, this can be formalised by way of a consent condition.</p>	<p>✓</p>
<p>Section D – Locality Specific Development Controls (Palm Beach Locality)</p>		
<p>D12.1 Character as viewed from a public place</p> <p>Buildings which front the street must have a street presence and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality.</p>	<p>The dwelling has a symmetrical appearance, reinforced by its staggered floor plate arrangement. The development presents with a contemporary built form and architecture, in keeping with more recent dwelling house construction in the locality. The facades are articulated coinciding with</p>	<p>✓</p>

<p>Walls without articulation shall not have a length greater than 8 metres to any street frontage.</p> <p>Any building facade to a public place must incorporate at least two of the following design features:</p> <ul style="list-style-type: none"> i. entry feature or portico; ii. awnings or other features over windows; iii. verandahs, balconies or window box treatment to any first floor element; iv. recessing or projecting architectural elements; v. open, deep verandahs; or vi. verandahs, pergolas or similar features above garage doors. <p>The bulk and scale of buildings must be minimised.</p> <p>Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place. Parking structures should be located behind the front building line, preferably set back further than the primary building, and be no greater in width than 50% of the lot frontage, or 7.5 metres, whichever is the lesser.</p> <p>Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.</p>	<p>the provision of strong building recesses and an array of materiality.</p> <p>The scale and volume of the development is not at odds with that observed across the setting more specifically, the approved but yet to be constructed dwellings at No's 11 and 14 Ocean Road.</p> <p>Existing contributory landscaped features are being retained and further supplemented by this development.</p>	
<p>D12.2 Scenic Protection - General</p> <p>Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.</p>	<p>As described in address of the preceding control, the subject development contains a number of design features and resolutions that will serve to mitigate any ensuing visual impact as viewed from a public place.</p>	<p>✓</p>

<p>D12.3 Building Colours and Materials</p> <p>External colours and materials shall be dark and earthy tones as shown below:</p> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;">  Black ✓ </div> <div style="width: 33%;">  Dark grey ✓ </div> <div style="width: 33%;">  Dark green ✓ </div> <div style="width: 33%;">  Dark brown ✓ </div> <div style="width: 33%;">  Mid grey ✓ </div> <div style="width: 33%;">  Green ✓ </div> <div style="width: 33%;">  Brown ✓ </div> <div style="width: 33%;">  Dark blue ✓ </div> </div> <p>White, light coloured, red or orange roofs and walls are not permitted:</p> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;">  White ✗ </div> <div style="width: 33%;">  Light blue ✗ </div> <div style="width: 33%;">  Red ✗ </div> <div style="width: 33%;">  Orange ✗ </div> <div style="width: 33%;">  Light grey ✗ </div> <div style="width: 33%;">  Beige ✗ </div> </div>	<p>The proposal adopts a colour scheme that is generally consistent with the intent of this control.</p> <p>The materiality and finishes of the proposed development comprise natural tones, consistent with those of surrounding and nearby dwellings.</p> <p>The external colours and finishes of the development are best demonstrated on the Schedule of Finishes prepared by BJB Architects accompanying the architectural plan detail set.</p>	<p>✓</p>
<p>D12.5 Front Building Line</p> <p>The controls relevant to the subject site require the provision of a 6.5m setback or the predominant established line whichever is greater.</p>	<p>The proposal seeks the provision of a front setback that is on balance, not inconsistent with the approved but yet to be constructed dwelling at No. 14 Ocean Road. The front setback as incorporated will enable the provision of private outdoor space to the proposed dwelling that is of a much higher utility noting the significant slope from the rear down towards the street edge. Furthermore, the proposed setback will serve to promote the ability for solar increased levels of solar penetration into the northern facing windows of the neighbouring dwelling at No. 16 Ocean Road.</p>	<p>Merit</p>
<p>D12.6 Side and Rear Building Line</p> <ul style="list-style-type: none"> 2.5m to at least one side; 1.0 for other side 6.5m (rear) unless Foreshore Building Line applies 	<p>The building observes a side setback along the northern side that ranges between 1m and 4.28m. To the south, a setback range between dwelling to the north at No. 14 Ocean Road. 2.5m and 3.4m is observed. The identified setback either comply with or outperform the base DCP requirements.</p> <p>A rear setback that ranges between 10.161m and 13.1m is observed that outperforms the minimum DCP base requirement.</p>	<p>✓</p>

D12.8 Building Envelope

Buildings are to be sited within the following envelope:



The proposed built form extends outside of the prescribe building envelope.

Merit

The areas of non-compliance do not result in an unreasonable adverse impact upon the amenity of adjoining properties with respect to solar access, visual privacy or views. Further, the general height and scale of the development is consistent with that of surrounding properties both existing and evolving noting that existing vegetation will be maintained below the height of the succeeding upslope tree canopy.

The proposed development is reasonably articulated, with varied setbacks that will provide for a high degree of spatial separation between the subject and neighbouring dwellings.

Vegetation is reasonably retained and enhanced across the site to ensure that the visual impact of the development is mitigated through an appropriate balance between built form and vegetated surfaces.

The proposed departure is therefore deemed acceptable on merit grounds.

D12.10 Landscaped Area – Environmentally Sensitive Land

The total landscaped area on land zoned R2 Low Density Residential or E4 Environmental Living shall be 60% of the site area.

The use of porous materials and finishes is encouraged where appropriate.

Any alterations or additions to an existing dwelling shall provide a minimum 60% of the site area as landscaped area.

The development results in the provision of a landscaped area of 547.2m² or 60% of the sites area.

✓

<p>D12.11 Fences – General</p> <p>Front fences and side fences (within the front building setback) shall:</p> <ul style="list-style-type: none"> • not exceed a maximum height of 1 metre above existing ground level, • be compatible with the streetscape character, and • not obstruct views available from the road. <p>Properties fronting Ocean Road (south of Palm Beach Road) may be permitted to construct a front fence consistent with adjoining properties, to a maximum height of 1.8 metres and to be constructed of brushwood or natural timber.</p>	<p>The proposal results in the provision of a front fence that ranges in height from 1.3m to 1.5m. The fence will be constructed from stacked stone which is not inconsistent with the fencing typologies observed across the setting both existing and evolving.</p>	<p>Merit</p>
<p>D12.14 Scenic Protection Category One Areas</p> <p>Screen planting shall be located between structures and boundaries facing waterways.</p> <p>Canopy trees are required between dwellings and boundaries facing waterways and waterfront reserves.</p> <p>Development is to minimise the impact on existing significant vegetation.</p> <p>The applicant shall demonstrate the retention and regeneration of existing native vegetation outside of the immediate area required to carry out the development.</p> <p>The development is to incorporate measures for planting and maintenance of native vegetation within those areas which are already cleared, and which are not required to be cleared to allow for the development.</p> <p>The siting, building form, orientation and scale of the development shall not compromise the visual integrity of the site by removal of canopy trees along ridges and upper slopes.</p> <p>The development must incorporate the use of unobtrusive and non-reflective materials and the colours of exterior surfaces shall help blend structures into the natural environment.</p> <p>Applicants are to demonstrate that proposed colours and materials will be dark and earthy.</p>	<p>As described through the preceding parts of this compliance table, the development will retain a notable amount of site vegetation which will be supplemented with further levels of planting. The accompanying Flora and Fauna assessment prepared by Narla also affirms that the development will not result in any unreasonable level of impact to established endemic vegetation.</p> <p>The materiality of the dwelling is subtle and will not generate any unreasonable level of reflectivity where it will remain commensurate with the tones currently observed across the Ocean Road setting.</p>	<p>✓</p>

Table 4:Pittwater 21 Development Control Plan Compliance Table

6.0 ENVIRONMENTAL IMPACT ASSESSMENT

This section will consider the following: The Assessment of the Natural Environmental Impact; the Built Environment Impacts; the Site Suitability and the Public Interest in accordance with Section 4.15 of the EPA Act.

6.1 Assessment of Natural Environmental Impacts

This section will assess the topographic and scenic impacts as well as the water and air quality impacts of the proposed development.

6.1.1 Topography & Scenic Impacts

The proposal will be a positive contribution to the topographic and scenic qualities of the locality. Matters related to geotechnical aspects of the proposal issues are addressed within the accompanying report prepared by GCA noting the required implementation of 'risk treatment measures' can be formalised by way of consent conditions. Furthermore, the proposed works are not deemed to result in any level of consequential impact to the scenic qualities of the setting as further affirmed in the coastal management reporting prepared by Horton Coastal Engineering.

Excavation will be undertaken in accordance with Council's standard conditions of consent and recommendations provided within the accompanying Geotechnical Report.

Tree removal has been adequately substantiated in the body of this report while construction measures will be implemented, again which can be formalised by consent conditions, that will ensure the retention and protection of all nominated site vegetation.

6.1.2 Water & Air Quality Impacts

The proposed development is, in our opinion, unlikely to result in any adverse effects on the locality in terms of water and air quality. Water quality and quantity controls to maintain and/or improve the nature of runoff discharging from the site will be implemented and an appropriate stormwater system designed so as to mitigate localised erosion and scour will be provided. This is detailed in the accompanying stormwater plan prepared by ae Design accompanying this application.

6.2 Assessment of Built Environmental Impacts: Character and Context

This section will address the impact of the proposed development on the character and context of the area.

6.2.1 Impact on the Area's Character

The development will present a siting, scale and volume which is not inconsistent with the scale and pattern of development across the local and broader site context.

The building/s present with well-articulated forms, incorporating varied setbacks and a range of modern and contemporary elements that will serve to complement surrounding development. New plantings and landscaped areas as detailed in the accompanying landscape plan prepared by Conzept, are provided throughout the site which will soften the bulk and scale of the development. In our opinion, the development will be a positive contribution to both streetscapes and will be compatible with the desired future character of the area.

6.3 Assessment of Built Environmental Impacts: Privacy and Amenity

6.3.1 Aural and Visual Privacy

The design and layout of the proposal will maintain aural and visual privacy for residents of neighbouring sites noting the extent of separation provided with this and directly adjoining site uses.

The proposed development has been sympathetically designed to ensure that privacy is provided to the future residents of the proposed development and to adjoining properties.

6.3.2 Solar Access

Having regard to the orientational relationship between the subject and neighbouring properties, additional levels of overshadowing will arise. Neighbouring properties will continue to receive acceptable levels of solar access as identified within the accompanying architectural plan set prepared by BJB Architects.

6.4 Assessment of the Site Suitability

This section will consider the proximity of the site to services and infrastructure; traffic, parking and access issues; and hazards.

6.4.1 Proximity to Services and Infrastructure

The subject site is already serviced and is located within an area that is provided with an ease of access to a number of transport and service facilities.

6.4.2 Traffic, Parking and Access

The extent of additional generation and or volume of the development is unlikely to create any perceptible level of impact to the surrounding road network.

We have also been informed that the parking dimensions and access to the proposed parking spaces are all capable of compliance with the relevant standards. The proposed development is in our opinion, suitable from a traffic and parking point of view.

6.4.3 Hazards

The site is burdened by a number of hazards; however, these can be managed in an orderly manner and will not preclude the development from taking place.

6.5 The Public Interest

This section will consider the social and economic effects of the proposal and the public interest.

6.5.1 Social and Economic Impact

The proposal will have social and economic benefits in the area. This will contribute to meeting the demand for housing within across this type of setting within the LGA.

The proposal will reduce water and energy consumption through efficient fixtures, fittings and insulation; and will provide off-street parking for residents. This will reduce water consumption and parking congestion in the area.

6.5.2 The Public Interest

The proposal has been designed with consideration of the adjoining residents' amenity and the streetscape. The building has been designed to maintain neighbours' and local amenity and contribute positively to the streetscape and local character. The proposal is a quality development which serves the public interest.

7.0 CONCLUSION

The proposal is permissible in the C4 – Environmental Living Zone under the LEP and is in our opinion, consistent with the relevant objectives of the Zone.

The proposal is a well resolved and considered design solution for the site, which has high regard for the amenity of adjoining properties and the natural features of the site. The proposal will not result in any unreasonable impacts upon adjoining properties or the surrounding natural environment and appropriately reflects the desired future character of the Palm Beach Locality.

It is considered that the proposed works satisfy the stated objectives of objectives of PLEP 2014, P21 DCP and other relevant plans and policies notwithstanding the LEP height departure and DCP variations sought.

Overall, the proposed development will positively contribute to the Palm Beach locality, and the application warrants Council's support in this regard.



Clause 4.6 Variation Request

Clause 4.3 Height PLEP 2014

15 Ocean Road, Palm Beach



1. INTRODUCTION

This Clause 4.6 Exceptions to Development Standards request has been prepared BMA Urban on behalf of BJB Architects. It is submitted in support of a Development Application ('DA') for the demolition of the existing dwelling and subsequent construction of a new multi-level dwelling at No. 15 Ocean Road, Palm Beach.

This request seeks approval to vary the height of buildings development standard in clause 4.3 of the Pittwater Local Environmental Plan 2014. Clause 4.3 prescribes a numerical building height limit of 8.5m over the subject site. The proposed building height departs from this standard as demonstrated in **Part 2** of this variation request.

Clause 4.6 of the *Pittwater Local Environmental Plan 2014* ('Pittwater LEP') enables consent for development to be granted even though it contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from development.

As the following request demonstrates, flexibility may be afforded by Clause 4.6 because compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the standard. This request also demonstrates that the proposal will be in the public interest, as the proposed development will be consistent with the objectives of the development standard and the zoning of the site.

The following sections of the report provide an assessment of the request to vary the development standard relating to "**height of buildings**" in accordance with Clause 4.6 of the Pittwater LEP.

Consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582
- Relevant planning principles and judgments issued by the Land and Environment Court. The *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 court judgment is the most relevant of recent case law.

Chief Justice Preston of the Land and Environment Court confirmed in the above judgment:

- The consent authority must, primarily, be satisfied the applicant's written request adequately addresses the 'unreasonable or unnecessary' and 'sufficient environmental planning grounds' tests:

"that the applicant's written request ... has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ... and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard ..." [15]

- On the 'Five Part Test' established under *Wehbe v Pittwater Council* [2007] NSWLEC 827:

"The five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way..." [22]

- That in establishing 'sufficient environmental planning grounds' the focus must be on the contravention and not the development as a whole:

"The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole" [26]

- That clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development:

"Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard will have a better environmental planning outcome than a development that complies with the development standard." [88]

This clause 4.6 variation has specifically responded to the matters outlined above and demonstrates that the request meets the relevant tests with regard to recent case law.

In accordance with the Pittwater LEP requirements, this Clause 4.6 variation request:

- identifies the development standard to be varied (**Part 2**);
- identifies the variation sought (**Part 2**);
- summarises relevant case law (**Part 3**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Part 4**);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (**Part 4**);
- demonstrates that the proposed variation is 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 (**Part 4**);
- provides an assessment of the matters the secretary is required to consider before providing concurrence (**Part 4**); and
- provides a conclusion summarising the preceding parts (**Part 5**).

This Clause 4.6 Exceptions to Development Standards request should be read in conjunction with the revised plan detail prepared by BJB Architects accompanying this development application.


2. VARIATION OF HEIGHT OF BUILDINGS STANDARD

2.1 DEVELOPMENT STANDARD

Clause 4.3(2) of the Pittwater LEP sets out the maximum building height for development as shown on the Height of Buildings Map. The site is subject to a maximum building height of 8.5 metres, as illustrated in **Figure 1** below.



Figure 1: Height of Buildings Map
(Source: www.legislation.nsw.gov.au)

Subject site 

 1 8.5

Clause 4.3(1) of the Pittwater LEP sets out the objectives for building height, as follows:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- (c) to minimise any overshadowing of neighbouring properties,
- (d) to allow for the reasonable sharing of views,
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

The definition of “building height” for the purposes of clause 4.3 of the Pittwater LEP is as follows:

“building height (or height of building) means—

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”

2.2 VARIATION TO HEIGHT OF BUILDINGS STANDARD

The extent of contravention with the prescribed height is best demonstrated across Figures 2 and 3 below being the building section and 3D height overlay. The building observes a maximum height of 13.6m and therefore, a 5.1m or 60% breach is observed.

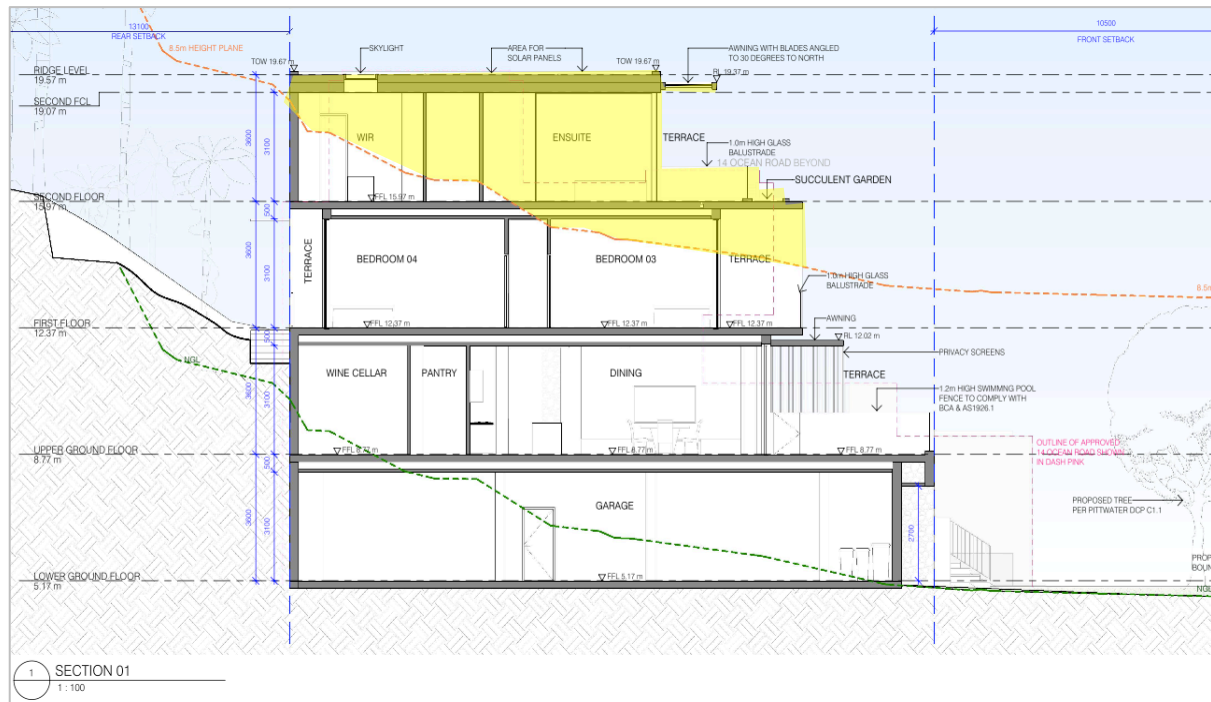


Figure 2: Height Breach Section (1) (Breaching component in yellow)

Source: BJB Architects

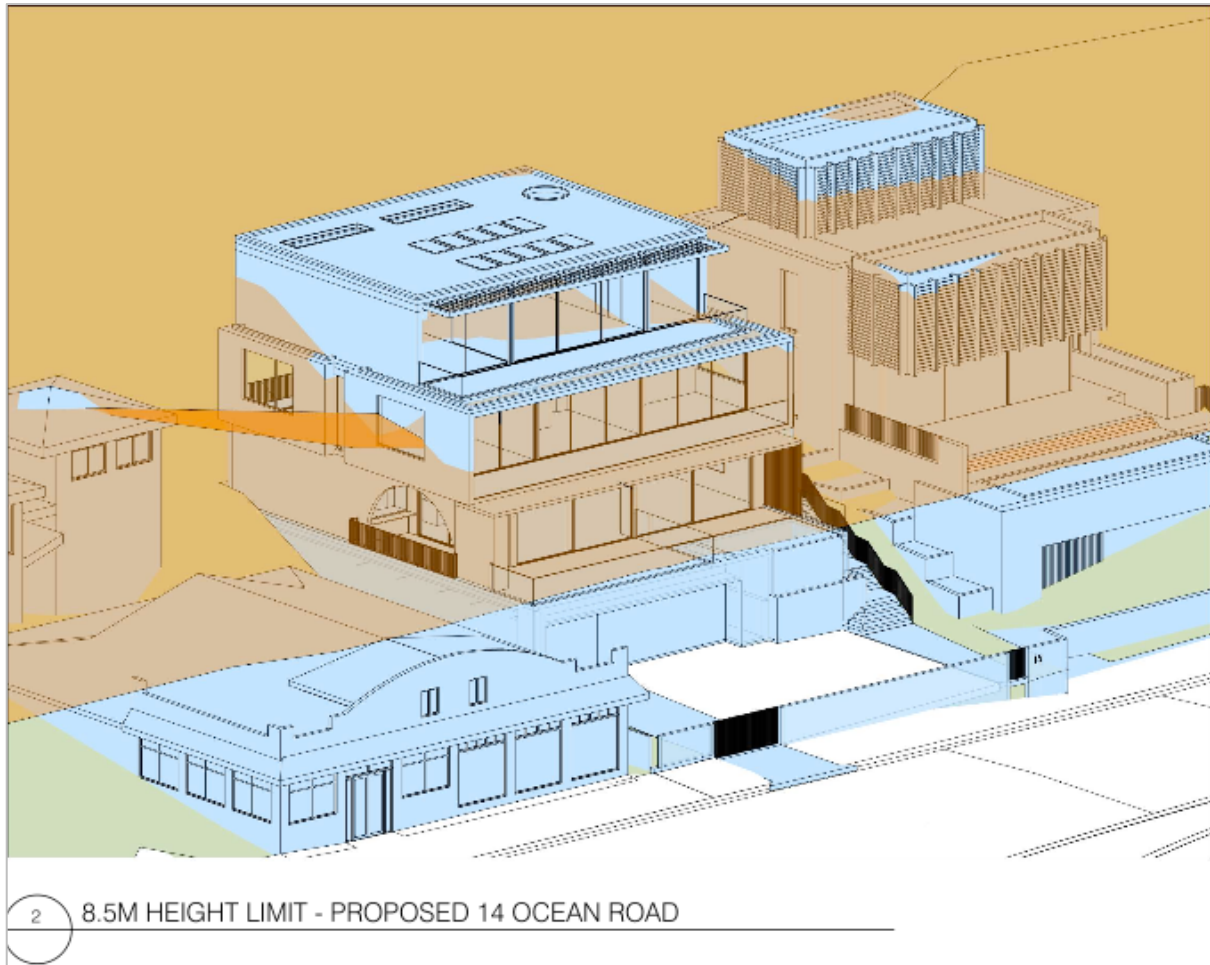


Figure 4: 3D - Height Overlay
Source: BJB Architects

3. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of the Pittwater LEP includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of the Pittwater LEP are:

- (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.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority consider a written request from the applicant that seeks to justify the contravention of the development 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.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that 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 it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Planning Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires the Planning Secretary to consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

The concurrence of the Planning Secretary may be assumed to have been granted, for the purpose of this variation request, in accordance with the NSW Department of Planning Circular PS 18-003 'Variations to development standards' dated 21 February 2018. This planning circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2021 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been granted.

The Planning Secretary may also be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

This clause 4.6 variation request demonstrates that compliance with the building height prescribed for the subject site via clause 4.3 of the Pittwater LEP is unreasonable or unnecessary; there are sufficient environmental planning grounds to justify the requested variation; and approval of the variation is in the

public interest because it is consistent with the objectives relating to the relevant development standard and land use zone.

In accordance with clause 4.6(3), the applicant requests that the building height standard be varied.

4. ASSESSMENT OF THE CLAUSE 4.6 VARIATION

The following sections of this report provide a comprehensive assessment of the request to vary the development standard relating to height of buildings, in accordance with clause 4.3 of the Pittwater LEP. Detailed consideration has been given to the following matters within this assessment:

- ‘Varying development standards: A Guide’ as prepared by the Department of Planning & Infrastructure (dated August 2011).
- Relevant planning principles and judgements issued by the NSW Land and Environment Court.

The following sections of this report provide detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the Pittwater LEP.

4.1 ABILITY TO VARY THE STANDARD

The height of buildings standard as prescribed in Clause 4.3 of the Pittwater LEP is a development standard capable of being varied under clause 4.6(2) of that LEP. The proposed variation is not excluded from the operation of clause 4.6(2) of the Pittwater LEP, as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of that LEP.

4.2 CONSIDERATION

4.2.1 Clause 4.6(3)(a) – Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires that the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently reaffirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable or unnecessary’ requirement.

▪ ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43]).

The specific objectives of the height of buildings development standard, as specified in clause 4.3(1) of the Pittwater LEP, are detailed in the table below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Objectives	Assessment
<p>(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,</p>	<p>The desired future character of the Palm Beach Locality is identified in clause A4.12 of P21 DCP, which states the following with respect to height and scale:</p> <p><i>'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'</i></p> <p>Despite the height breach, the resulting form of the development maintains a strong connection with both existing and evolving forms with respect to its massing. The form of the development responds to the characteristics of the land which displays a notable fall from the rear towards the street and in response, a staggered building form is provided. This is consistent with the local character most relevantly, to the north of the site where adjacent lands present characteristics not dissimilar to that of the subject site.</p> <p>The established site conditions have as a consequence, created a visual disparity across the street setting made evident by the current relationship between the subject and neighbouring properties both current and evolving. The height variation to some degree, assist in the reestablishment of a more conducive and visually responsive built form outcome across the Ocean Road setting.</p> <p>Having regard to the foregoing commentary, the proposal, despite the height breach, is deemed to present as contextually suitable and consistent in scale along the Ocean Road frontage. More generally, the proposed design will visually integrate with that of neighbouring development both current and future, serving as an affirmation of the objective and not that of a building that abandons height controls.</p> <p>Accordingly, it is considered that the height, bulk and scale of the dwelling and in turn, its proportions, will present as compatible with adjoining development, the character of the locality and the natural setting. The resultant height breach does not offend this compatibility in any noticeable way.</p>

<p>(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,</p>	<p>With respect to compatibility, we again rely on the foregoing commentary in address of the preceding objective.</p> <p>More generally, the proposal incorporates staggered facades, building recesses and the use of a variety of materials and detailing, to provide a highly articulated built form of contemporary external appearance. This design response ensures that the perceptible volume of the development, most notably the breaching components, will not be identified as an adverse contribution to bulk along the street edge but rather, will facilitate the provision of a more sympathetic streetscape outcome.</p>
<p>(c) to minimise any overshadowing of neighbouring properties,</p>	<p>In terms of overshadowing, a shadowing analysis prepared by BJB architects accompanies the DA. This analysis affirms that the extent of additional shadow cast over neighbouring properties, specifically No. 16 Ocean Road to the south as a result of the breach, will not be adversely influenced by the extent of height non-compliance observed.</p>
<p>(d) to allow for the reasonable sharing of views,</p>	<p>In terms of view impacts, the landform characteristics relevant to both the subject and neighbouring sites, and the relationship the proposed development will have with those dwellings, ensures that the breaching elements will not have a discernible impact on the extent of view enjoyed. The view loss impacts associated with the development, most notably the breaching elements, are not likely to be significant and have been mitigated through appropriate building design and siting.</p>
<p>(e) to encourage buildings that are designed to respond sensitively to the natural topography,</p>	<p>The built form has been designed in response to the natural landform characteristics which displays a notable slope from the rear towards the street. The staggering of the floor plates in response to the varying land levels is deemed the most appropriate outcome across this setting.</p> <p>It is also pertinent to note that the height breach in part, arises as a consequence of this landform typology.</p>
<p>(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.</p>	<p>The height breach in no way hinders the ongoing ability to retain contributory site vegetation ensuring that a fine balance between built and landscaped site attributes and elements is achieved. The scale of the development is consistent with the evolving character and will therefore, not present as a jarring contribution to the setting.</p> <p>In terms of impact to heritage items, the proposed development, more specifically the breaching aspects, are identifiably separated from two (2) items of significance identified as follows:</p> <ul style="list-style-type: none"> · 'House' located at 2 Palm Beach Road

	<p>Norfolk Island Pines (<i>Araucaria heterophylla</i>) located within the road reserve along Ocean Road</p> <p>Specifically, the primary view to the heritage listed dwelling at 2 Palm Beach Road is from along Palm Beach Road itself. Therefore, any future built form on the subject site, specifically the breaching elements, will in no way hinder views to, from and across this item of relevance from along this vantage point.</p> <p>With respect to the Norfolk Island Pines, these are well separated from the subject site and proposed dwelling and have no direct association with the proposal.</p>
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4.2.2 Clause 4.6(3)(b) – Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

Clause 4.6(3)(b) of the Pittwater LEP requires the consent authority to be satisfied that the applicant's written request has adequately addressed that clause, by demonstrating:

“that there are sufficient environmental planning grounds to justify contravening the development standard.”

The environmental planning grounds relied upon in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development, as summarised in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] (NSWLEC 118).

There is an absence of environmental harm arising from the contravention of the development standard and positive planning benefits arising from the proposed development, as outlined in detail above. These include:

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

- 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.
- 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.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed non-compliance with the height of buildings standard in this instance.

The Objects of the Environmental Planning & Assessment Act 1979 ('EP&A Act') under Section 1.3 of that Act are also relevant to whether grounds exist to warrant a variation. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in **the table below** we consider whether the proposed development is consistent with each object.

The objects of the EP&A Act and how this proposal responds to each of the objects are detailed as follows:

Object	Comment
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	This object is not relevant to this development.
To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The proposal will facilitate an ecologically sustainable development given that no negative impact on environmental and social considerations will arise. This in turn will serve to offer the ongoing sustainment of the economic health of the area.
To promote the orderly and economic use and development of land	The proposed development will promote the orderly and economic use of the land by way of providing a land use typology and intensity, consistent with that envisaged by Council.
To promote the delivery and maintenance of affordable housing	This object is not relevant to this development.
To protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	Given the nature and character of the urban setting the proposed development is located within, no impact on threatened species or ecological communities is likely to result.
To promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	This object is not relevant to this development
To promote good design and amenity of the built environment	The proposed development promotes good design in that it serves to provide a built form and massing arrangement that serves to positively influence the future amenity of the dwelling occupants while adopting an architectural form and language, with an overall silhouette, height and land use intensity

	compatible with both the established and emerging development and housing typology.
To promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposed development will comply with all relevant BCA codes and will promote the health and safety of occupants.
To promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	This object is not relevant to this development
To provide increased opportunity for community participation in environmental planning and assessment	This proposed development will be publicly notified in accordance with Council's Community Engagement Strategy/DCP.

Based on the above, the consent authority can be satisfied that the proposed development remains consistent with the Objects of the Act despite the height non-compliance.

4.2.3 Clause 4.6(4)(a)(i) - Has the Written Request adequately Addressed the Matters in Sub-Clause (3)?

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the subclause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

4.2.4. Clause 4.6(4)(a)(ii) - Will the Proposed Development be in the Public Interest because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?

Clause 4.6(4)(a)(ii) provides that development consent must not be granted for development that contravenes a development standard, unless 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 land use zone in which the development is proposed to be carried out.

In Section 4.2.1 of this request, it was demonstrated that the proposal is consistent with the objectives of the development standard. The proposal (inclusive of the height non-compliance) is also consistent with the objectives of the C4 – Environmental Living Zone, as follows:

Zone C4 – Environmental Living

Objective	Comment
<ul style="list-style-type: none"> To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values. 	<p>The proposal is for a detached dwelling designed in response to the site constraints and natural landform characteristics. The proposed development will sit harmoniously on the site and will in no way preclude the ability to continually achieve these values.</p>
<ul style="list-style-type: none"> To ensure that residential development does not have an adverse effect on those values. 	<p>The proposed development will not have any adverse impacts upon the special values of the site.</p>
<ul style="list-style-type: none"> To provide for residential development of a low density and scale integrated with the landform and landscape. 	<p>The resultant development form is consistent with the low density character of the locality. The proposal is of an architectural style, siting and volume characteristic of that anticipated across a steeply sloping site and broader locality.</p>
<ul style="list-style-type: none"> To provide for residential development of a low density and scale integrated with the landform and landscape. 	<p>The development has been designed in response to the natural landform characteristics. Significant trees are being retained and are further supplemented by way of additional site landscaping.</p>

The objectives of the land use zone as detailed above, as well as the objectives of the standard, have been adequately satisfied. Therefore, the proposal is considered to be in the public interest.

4.2.5. Clause 4.6(5)(a) – Would the Non-Compliance raise any Matter of Significance for State or Regional Planning?

The proposed minor non-compliance with the height of buildings development standard will not raise any matter of significance for state or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

4.2.6. Clause 4.6(5)(b) – Is there a Public Benefit of Maintaining the Planning Control Standard?

The proposed development achieves the objectives of the building height development standard and the land use zone objectives. As such, there is no public benefit in maintaining the development standard.

4.2.7. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Planning Secretary before granting concurrence?

There are no known additional matters that need to be considered within the assessment of this clause 4.6 variation request and prior to granting concurrence, should it be required.

5. CONCLUSION

For the reasons set out in this written request, strict compliance with the height of buildings development standard contained within clause 4.3 of the Pittwater LEP 2013 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the height of buildings development standard to the extent proposed, for the reasons detailed within this submission and as summarised below:

- Compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the proposed development.
- The proposal, notwithstanding the non-compliance, is consistent with the objectives of the height of buildings standard and the C4- Environmental Living Zone.
- There are sufficient environmental planning grounds to justify the contravention, which results in a better planning outcome than a strictly compliant development in the circumstances of this particular case.
- There is an absence of any environmental impacts arising from the proposed variation.
- The proposed non-compliance with the height of buildings standard will not result in any matter of significance for State or regional environmental planning

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the height of buildings development standard should be applied.

DISCLAIMER

This report incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of BMA Urban Pty Ltd opinion in this report. BMA Urban prepared this report on the instructions, and for the benefit only, BJB Architects (**Instructing Party**) for the purpose of the Statement of Environmental Effects and Clause 4.6 Variation Request (**Purpose**). To the extent permitted by applicable law, BMA Urban expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

In preparing this report, BMA Urban was required to make judgements which may be affected by unforeseen future events, the likelihood and effects of which are not capable of precise assessment.

All surveys, forecasts, projections and recommendations contained in or associated with this report are made in good faith and on the basis of information supplied to BMA Urban at the date of this report, and upon which BMA Urban relied. Achievement of the projections and budgets set out in this report will depend, among other things, on the actions of others over which BMA Urban has no control.

Whilst BMA Urban has made all reasonable inquiries it believes necessary in preparing this report, it is not responsible for determining the completeness or accuracy of information provided to it. BMA Urban (including its officers and personnel) is not liable for any errors or omissions, including in information provided by the Instructing Party or another person or upon which BMA Urban relies, provided that such errors or omissions are not made by BMA Urban recklessly or in bad faith.

This report has been prepared with due care and diligence by BMA Urban and the statements and opinions given by BMA Urban in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.