

**SUBJECT: N0373/17 - 13 A Ocean Road, PALM BEACH NSW 2108 Construction of a secondary dwelling.**

**Determination Level: Manager - Development Assessment**

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**SUMMARY OF RECOMMENDATION: CONSENT WITH CONDITIONS**

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**REPORT PREPARED BY:** Nick Armstrong

**APPLICATION SUBMITTED ON:** 21 August 2017

**APPLICATION SUBMITTED BY:** VAUGHAN MILLIGAN DEVELOPMENT CONSULTING P/L

PO BOX 49  
NEWPORT NSW 2106

**OWNER(S):** Michele Matthews

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## **1.0 SITE DETAILS**

The site is known as 13A Ocean Road, Palm Beach and legally referred to as Lot 1 in DP 121833. The site is rectangular in shape and the total area of the site is 986m<sup>2</sup> with a primary frontage of 27.61m, facing the western side of Ocean Road and a secondary frontage of 11.47m facing the eastern side of Sunrise Road. The site contains a one and two storey concrete block, steel and clad house that is located at the Ocean Road frontage. The rear of the site is heavily vegetated. Adjoining the site are low density residential dwellings to the north, south and west and Palm Beach to the east. The slope of the site is 74.5% and falls from Sunrise Road to Ocean Road.

## **2.0 PROPOSAL IN DETAIL**

The application seeks consent for the construction of a secondary dwelling.

The estimated cost of works is \$395,475.

## **3.0 STATUTORY AND POLICY CONSIDERATIONS**

The site is zoned E4 Environmental Living under Pittwater Local Environmental Plan 2014. Pursuant to the land use table in Part 2 of this instrument, secondary dwellings are permissible with consent.

The following relevant state, regional and local policies and instruments apply:

- Environmental Planning and Assessment Act, 1979 (the Act)
- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)
- State Environmental Planning Policy No 71 - Coastal Protection (SEPP 71)
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
  - Acid Sulphate Soils Map - Area 5
  - Geotechnical Hazard Map - H1 Hazard
  - Coastline Hazard Map - D Wave Inundation
  - Height of Buildings Map - I ~ 8.5m
  - Lot Size Map - Q ~ 700m<sup>2</sup>
- Pittwater 21 Development Control Plan (P21 DCP)
  - Palm Beach Locality
  - Geotechnical Risk Management Policy for Pittwater
  - Beach Management Hazard
  - Palm Beach Flora and Fauna - Category 2 Area
  - Land within Vicinity of Heritage Item
  - Scenic Protection - Category 1
  - OSD Required
  - Landscaped Area Map - Area 1
- Draft Pittwater Local Environmental Plan 2014 - Clause 4.3 Height of buildings

#### **Variation to development standards:**

The application of Clause 4.6 is not required.

## **4.0 BACKGROUND**

N0373/17 was lodged at Council at 21/08/2017 and referred to Council's Development Engineer and Natural Environment Officer.

### **Property History**

27/03/2017

Development Application N0328/16 for the construction of a secondary dwelling was withdrawn.

### **Application History**

21/12/2017

Request for either the application to be withdrawn or for additional information to be provided on the basis that the application currently does not provide sufficient off-street parking facilities.

20/02/2018

Applicant submitted a formal request for the car parking requirement to be varied in accordance with Clause B6.3 of P21 DCP. 2 concept parking proposals were submitted to demonstrate the inability of the site to provide a reasonable parking arrangement for the secondary dwelling.

## **5.0 NOTIFICATION**

N0373/17 was notified from 30/08/2017 to 13/09/2017 to adjoining property owners in accordance with Council's notification policy. The site inspection on the 11/09/2017 confirmed the placement of the notification sign. During the notification period, five (5) submissions were received.

### **Issues Raised in Submissions**

#### Susan Fuller Architects (on behalf of 9 Sunrise Road) - Inspected 13/12/2017

- Use of existing dwelling as a dual occupancy (secondary dwelling will create three dwellings on-site)
- No off-street parking provided
- Building height
- View loss from the subject site

#### 11 Sunrise Road

- Use of existing dwelling and secondary dwelling as short-term holiday letting
- Built form impact on the existing escarpment
- No on-site car parking

#### Turnbull Planning (on behalf of 14 Sunrise Road) - Inspected 13/12/2017

- Consistency with the E4 Zone
- Geotechnical considerations
- Stormwater and drainage
- Car parking
- Visual privacy
- Tree removal and resultant visual impact
- Use of existing dwelling as dual occupancy (resulting in three dwellings on-site)

#### 18 Sunrise Road

- Use of existing dwelling as a dual occupancy (secondary dwelling creates three dwellings on-site)
- Non-compliance with the objectives of the E4 Zone
- Scenic impact
- Built form dominating natural environment
- Lack of on-site car parking and impact of cars parking along Sunrise Road
- View loss from the public domain
- Building height
- Visual privacy
- Acoustic privacy
- Dilapidation report
- The secondary dwelling will not be used in conjunction with the existing dwelling

#### Palm Beach and Whale Beach Association

- Use of existing dwelling as a dual occupancy (secondary dwelling results in three dwellings on-site)
- Lack of off-street parking
- View loss from a public place (Sunrise Road)
- Out of character with adjoining dwellings along the escarpment
- Use of undercroft space as additional living area
- Geotechnical constraints of the site
- Visual privacy
- Solar access

The following additional concerns were raised after the submission of the applicant's formal request to vary the off-street parking requirements for secondary dwellings:

Susan Fuller Architects (on behalf of 9 Sunrise Road)

- Advertisement of secondary dwelling a separate dwelling with car space
- Visual impact of parking structure
- Lack of connection between the secondary dwelling and principal dwelling

11 Sunrise Road

- Built form, safety and amenity of parking structure
- Reiterated lack of parking

Turnbull Planning (on behalf of 14 Sunrise Road)

- Reiterated concern for the lack of off-street parking
- Reiterated concern for the use of existing dwelling as a dual occupancy (secondary dwelling results in three dwellings on-site)
- Contravention of existing development consent (kitchen facilities installed within ground floor)

18 Sunrise Road

- Reiterated lack of off-street parking concern
- Not in support of raised parking platforms on a bulk, scale and amenity perspective
- Reiterated current dwelling used as a de-facto dual occupancy

Palm Beach and Whale Beach Association

- Reiterated lack of off-street parking concern
- Parking structure will impact on safety, amenity and visual impact

## **6.0 ISSUES**

- Zone E4 Environmental Living
- 4.3 Height of buildings
- 5.5 Development within the coastal zone
- A1.7 Considerations before consent is granted
- B4.3 Flora and Fauna Habitat Enhancement Category 2 Land
- B6.3 Off-Street Vehicle Parking Requirements
- C1.3 View Sharing
- C1.5 Visual Privacy
- C1.7 Private Open Space

- C1.11 Secondary Dwellings and Rural Worker's Dwellings
- D12.1 Character as viewed from a public place
- D12.8 Building envelope
- D12.12 Fences - Flora and Fauna Conservation Areas

## 7.0 COMPLIANCE TABLE

- T - Can the proposal satisfy the technical requirements of the control?
- O - Can the proposal achieve the control outcomes?
- N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
<b>Pittwater Local Environmental Plan 2014</b>					
1.9A Suspension of covenants, agreements and instruments			Y	Y	Y
Zone E4 Environmental Living		See below for discussion.	Y	Y	N
4.3 Height of buildings		See below for discussion.	Y	Y	Y
5.4 Controls relating to miscellaneous permissible uses		Secondary dwelling GFA = 59.76m <sup>2</sup> . Complies.	Y	Y	Y
5.5 Development within the coastal zone		See below for discussion.	Y	Y	N
5.10 Heritage conservation			Y	Y	Y
7.1 Acid sulfate soils		Class 5 - no apparent issues	Y	Y	Y
7.2 Earthworks			Y	Y	Y
7.7 Geotechnical hazards			Y	Y	Y
7.10 Essential services			Y	Y	Y
<b>Pittwater 21 Development Control Plan 2014</b>					
A1.7 Considerations before consent is granted		See below for discussion.	Y	Y	N
A4.12 Palm Beach Locality		See D12.1 for discussion.	Y	Y	N
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites			Y	Y	Y
B1.4 Aboriginal Heritage Significance		No apparent issues	Y	Y	Y
B3.1 Landslip Hazard			Y	Y	Y

<b>Control</b>	<b>Standard</b>	<b>Proposal</b>	<b>T</b>	<b>O</b>	<b>N</b>
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land		See below for discussion.	Y	Y	Y
B5.10 Stormwater Discharge into Public Drainage System			Y	Y	Y
B6.3 Off-Street Vehicle Parking Requirements		See below for discussion.	N	Y	N
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
B8.6 Construction and Demolition - Traffic Management Plan		A Traffic Management Plan has been conditioned by Council's Development Engineer due to the narrowness of Sunrise Road.	Y	Y	Y
C1.1 Landscaping		See B4.3 for comment	Y	Y	N
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing		Objections received. See below for discussion.	Y	Y	N
C1.4 Solar Access		The proposed secondary dwelling will not impact upon the solar access enjoyed by the neighbouring properties.	Y	Y	Y
C1.5 Visual Privacy		See below for discussion.	Y	Y	N
C1.6 Acoustic Privacy			Y	Y	Y
C1.7 Private Open Space		See below for discussion.	Y	Y	Y
C1.11 Secondary Dwellings and Rural Worker's Dwellings		See below for discussion.	Y	Y	N
C1.12 Waste and Recycling Facilities			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
C1.23 Eaves			Y	Y	Y

Control	Standard	Proposal	T	O	N
C1.24 Public Road Reserve - Landscaping and Infrastructure		Property has no concerns regrading the location of access stairs within the road reserve. A condition has been inserted for a Section 139 consent to be required prior to the construction of these stairs.	Y	Y	Y
D12.1 Character as viewed from a public place		See below for discussion.	Y	Y	N
D12.3 Building colours and materials			Y	Y	Y
D12.5 Front building line			Y	Y	Y
D12.6 Side and rear building line			Y	Y	Y
D12.8 Building envelope		See below for discussion.	N	Y	Y
D12.10 Landscaped Area - Environmentally Sensitive Land		616.3m <sup>2</sup> or 62.5%. Complies.	Y	Y	Y
D12.12 Fences - Flora and Fauna Conservation Areas		See below for discussion.	N	Y	Y
D12.13 Construction, Retaining walls, terracing and undercroft areas		Undercroft height = 3.47m. Complies. Conditions to include appropriate planting to allow for sufficient screening of this area to minimise built form impact.	Y	Y	Y
D12.14 Scenic Protection Category One Areas		See B4.3 for discussion.	Y	Y	N
<b>State Environmental Planning Policies and other</b>					
SEPP No 71 - Coastal Protection		Clause 8 of SEPP 71 has been assessed as part of this application and the proposed development is believed to satisfy the matters for consideration.	Y	Y	Y
SEPP (Building Sustainability Index: BASIX) 2004			Y	Y	Y
EPA Act 1979 No 203 section 147 Disclosure of political donations and gifts			Y	Y	Y

## 8.0 DISCUSSION OF ISSUES

- **Zone E4 Environmental Living**

Concerns were raised from neighbouring residents regarding the ability of the development to satisfy the objectives of the E4 Environmental Living Zone. The objectives of the 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 affect 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 application is for the construction of a secondary dwelling which is permissible development within the zone. The application is largely compliant with Council's built form criteria for low density residential development apart from a minor envelope breach along the northern elevation (which is further discussed under Clause D12.8). Council's Natural Environment Officer has assessed the development with reference to the submitted Arborist Report, prepared by Landscape Matrix, and Landscape Plan, DA1 Revision C, prepared by Volker Klemm Landscape Design and is in support of the proposed tree removal and replacement planting being consistent with Clauses B4.3 and C1.1 of P21 DCP. As the subject site does not demonstrate special ecological, scientific aesthetic values that would prohibit development of this nature, the secondary dwelling is considered to be consistent with the objectives of the E4 zone.

#### • **4.3 Height of buildings**

The maximum height of the proposed secondary dwelling is approximately 8.3m when measured from the ridge to the existing ground level below. While this currently complies with Council's maximum height limit for secondary dwellings (8.5m), a housekeeping amendment (Amendment No.9) to the Pittwater Local Environmental Plan 2014 is close to being finalised which, if made, would insert the following additional subclause within Clause 4.3 Height of buildings:

*(2FA) Despite subclause (2), the maximum height for a secondary dwelling or a rural worker's dwelling in Zone E4 Environmental Living or Zone RU2 Rural Landscape is 5.5 metres if the secondary dwelling or rural worker's dwelling is separate from the principal dwelling.*

As the amendment has been publicly exhibited via Planning Proposal PP002/15, with the exhibition period ending 22 May 2017, the proposed amended height is a relevant consideration.

The intention of the amendment is to ensure that secondary dwellings are to appear as a single storey structure and remain consistent with the existing character of the surrounding locality, which was consistent with the P21 DCP prior to the PLEP 2014 being made.

The habitable space of the proposed secondary dwelling is located on one level, with the inclusion of a 'highlight roof' above to allow for additional natural light into the primary living area. The highlight roof has a internal height of 1.6m, making it incapable of being reconfigured for habitation purposes at a later stage. The principal reason for the significant height of a single storey structure is due to the excessive site slope, measured at 74.5% for the site and 32% for the proposed building footprint. This represents a significant constraint in regards to the location of a numerically compliant structure. However, the secondary dwelling is almost entirely compliant Council's other built form controls, apart from a minor envelope breach. The size of the structure is below that of neighbouring and nearby development and is considered to reflect the character of the area which is predominately dwelling houses on lots above 700m<sup>2</sup>, many of which also contain secondary dwellings. Therefore, the current application is considered to achieve the intentions of the Planning Proposal and imminent amendment to the PLEP 2014.

#### • **5.5 Development within the coastal zone**



Concern has been received from neighbouring residents in relation to the the inconsistency of the development with the objectives and controls of the coastal zone. The development is considered to be a modest secondary dwelling that is generally consistent with similar built form along Ocean Road and within the wider Palm Beach Locality. The dwelling is located above the escarpment in a similar location to the neighbouring dwellings along Sunrise Road. Some vegetation is intended to be removed to compensate for the works, however Council's Natural Environment Officer has reviewed the application and is in support of the development and has provided conditions to ensure adequate replacement planting. The development will not impede public access to the foreshore or create any undesirable effect on the existing coastal processes. Therefore, the application is consistent with Clause 5.5.

- **A1.7 Considerations before consent is granted**

Concerns have been raised by neighbouring residents regarding the use of the existing dwelling as two separate residences and that the secondary dwelling will not be able to be established in conjunction with the principal dwelling.

A search of Council's records reveal no compliance action taken against the landowner for the operation of the existing dwelling in this configuration. However, under the previous development consent (N0567/10) condition B21 states:

*The ground floor of the dwelling is not to be used for separate habitation and no kitchen facilities are to be installed.*

Upon investigation the dwelling is advertised as a holiday rental on the website 'Stayz' which provides the following description:

*Versatile floor plan allows for one large residence or 2 self contained levels. Second living area, contemporary bathrooms, and two kitchens - perfect for one or two families.*

The dwelling is equipped to be used as two self contained units and includes a kitchenette on the ground floor as identified on the submitted architectural drawings. The existing dwelling was originally approved with a wet bar in place of the kitchenette. The house is generally only occupied for short term holiday letting, it is not considered that the house is permanently used as an unauthorised dual occupancy as identified by neighbouring residents.

Due to the concerns raised above, the applicant was asked to provide a response to the use of the existing dwelling. The following comments were provided:

*My clients have owned the property for the last couple of years and have never at any stage leased the property for as two separate occupancies. The property is available for short term rental and notwithstanding the advertisement referring to two separate areas, the building is and remains a single occupancy dwelling.*

*The wording in the advertisement was as placed by the previous owners and was intended to indicate that the building was suitable for a single group, who may wish to use the ground floor kitchenette for tea making facilities or as a bar for entertaining. The kitchenette is not suitable for use a separate kitchen and in fact, my clients have received negative feedback from a previous tenant that the building was not suitable for two separate occupancies.*

*The dwelling has been approved as a single occupancy and remains available for this purpose.*

*My clients are adamant that they have no intention of using the building for any other purpose contrary to its approved use and it is to remain as a single dwelling with all floor areas directly and internally connected to facilitate single dwelling use.*

Therefore it is considered that the applicant intends to use the existing dwelling as a single dwelling and not as a dual-occupancy as suggested.

Should consent be granted for the subject secondary dwelling application, it is recommended that a condition should be included to restrict the use of the existing house for the purposes of a single dwelling only to ensure that a maximum of two dwellings are located within the site and for the no cooking facilities to be installed within the ground floor kitchenette/wet bar.

- **B4.3 Flora and Fauna Habitat Enhancement Category 2 Land**

Council's Natural Environment Officer provided the following comments;

*The site of proposed works contains several small (generally <10m) locally native tree species with a heavily disturbed understorey. Due to the fragmented and disturbed state of vegetation within the upper portion of the site, it is considered that the site currently provides low biodiversity value.*

*An arborist report (Landscape Matrix, August 2017) has been submitted with the DA and assesses twenty-eight (28) trees, eleven (11) of which are proposed for removal to facilitate the development and three (3) recommended for removal reportedly due to poor health. General and targeted tree protection measures are recommended for remaining trees. These measures are to be adopted. Whilst several specimens of the threat-listed *Syzigium paniculatum* are proposed for removal, these specimens are young and it is considered that replanting with advanced specimens, as per recommended consent conditions, can mitigate this loss.*

*A Landscape Plan (Volker Klemm Landscape Design, August 2017) has been submitted with the DA and comprises generally native and locally native species. Conditions of consent are recommended to improve the biodiversity/habitat value of proposed landscaping, including replanting with advanced *Syzigium paniculatum* and *Banksia integrifolia* specimens and provision of a canopy tree between the existing dwelling and new proposed dwelling to soften the built form.*

- **B6.3 Off-Street Vehicle Parking Requirements**

Concerns were raised from neighbouring residents regarding the lack of off-street parking. Development for the purposes of a secondary dwelling requires the inclusion of an off-street parking space in accordance with Clause B6.3. Council requested that the applicant submit a suitable off-street parking arrangement for the secondary dwelling, or to provide a suitable reasoning as to why Council should consider a variation to the control.

The applicant provided some initial concept models to display the difficulties in terms of locating a compliant car parking solution within the grounds of the subject site. As a result, instead of submitting amended plans to provide additional car parking, the applicant has provided a formal response to Council's initial request for off-street parking to be provided, by citing the variation within Clause B6.3 which permits a variation for secondary dwellings. The variation states:

*A reduction in the car parking requirements for a secondary dwelling or dual occupancy to a minimum of 2 spaces per allotment may be considered on merit.*

The applicant has provided Council with the following reasoning as to why they seek to vary the requirement for an additional space:

- The construction of an access driveway and elevated car stand would entail significant loss of the existing tree cover
- Height of the car parking structure and the resulting visual impact to neighbouring properties, Ocean Road and Sunrise Road
- The secondary dwelling will not result in any significant adverse impacts for the neighbouring properties or traffic flows and parking within Sunrise Road.

Council's Development Engineer was also consulted on the inability of the development to provide off-street parking and provided the following comment:

*Provision of parking for the secondary dwelling is onerous and difficult, considered the terrain. Sunrise Road is narrow but off street parking is available.*

The ability to provide off-street parking on a site such as this is recognised to be difficult, predominately due to the excessive slope (74.5%), visual impact and associated canopy tree loss of providing a compliant parking structure that is accessible from the proposed secondary dwelling. Clause B6.3 provides an additional consideration for parking on steeply sloping sites as outlined below:

*On steeply sloping sites, car parking solutions may need to be negotiated for each individual site.*

*The range of possible car parking solutions is outlined below:*

- *the provision of suspended or rooftop car parking to provide direct access from the road, and/or*
- *shared vehicular access with adjoining properties may be acceptable where there is a mutual agreement.*

*The provisions for car parking on the steepest sloping sites may be waived, subject to the merit considerations for each case.*

While the preference is for additional off-street parking to be provided, the variations exist within this control for situations such as the this where the parking structure would result in a significant detrimental impact to the surrounding environment. Sunrise Road is recognised to be narrow and available on-street parking can be at time difficult to provide, although the addition of a single, one bedroom secondary dwelling along this street is not considered to drastically alter the demand for parking to the point where the application could be recommended for refusal. Therefore, considering the site constraints and minor change to the demand of on-street parking the variation to the additional car parking requirement is supported on merit.

### ● **C1.3 View Sharing**

One objection was received regarding the potential loss of views from 9 Sunrise Road. As stated under Clause C1.3, concerns relating to the loss of views are to be considered under the planning principle for views - general principles established within *Tenacity Consulting v Warringah Council [2004] NSWLEC 104*.

**Step one is to assess the reasonableness of the view loss concern in order to determine the views which are to be affected.**

The occupants of 9 Sunrise Road enjoy a mixture of whole and filtered land and water views of Barrenjoey Headland, Barrenjoey Lighthouse, Palm Beach, The Tasman Sea, Palm Beach Rock Baths, Little Head Reef, Little Head and Palm Beach (suburb). The majority of the view is unfiltered, with portions obscured by existing development and vegetation. The most significant elements of the view are considered to be Barrenjoey Headland, Barrenjoey Lighthouse and the land-water interfaces of Palm Beach and Little Head.

**Step two is to determine the location from which the views are obtained.**

Views are obtained from multiple locations within the site including several ground floor bedrooms, rumpus room and courtyard and the first floor living/sun room, kitchen and dining room. The view that is potentially impacted by the works includes a filtered view of Palm Beach.

**Step three is to assess the extent of the impact to the entire property, not just the view that is affected.**

The proposed secondary dwelling will be able to be viewed from the ground floor bedrooms, courtyard and first floor living/sun room. The development will be within the main view corridor as it is located directly across Sunrise Road facing west from this neighbouring property. However, as the only views that will be impacted by the location of the development are filtered views of Palm Beach through the subject site, the views identified are recognised to be vulnerable to development. Considering the expansive, whole north to south views that are retained, the extent of view loss is best described as minor.

**The final step is to determine the reasonableness of the proposal based on compliance with the relevant planning controls.**

The application is almost entirely compliant with Council's built form controls apart from a minor building envelope non-compliance along the southern elevation, which as addressed under D12.8 is not seen to create a detrimental impact to neighbouring properties. The site is recognised as being heavily constrained and the proposed built form is thought to demonstrate a reasonable view sharing arrangement.

Two submissions (18 Sunrise Road and The Palm Beach and Whale Beach Association) raised concerns over the loss of views from the public domain (Sunrise Road). Issues relating to the loss of views from the public domain is considered through the planning principle for impact on public domain views established within *Rose Bay Marina Pty Limited v Wollahra Municipal Council and anor [2013] NSWLEC 1046*.

**The first step is to identify the nature and scope of the existing views from the public domain.**

The existing view obtained through the subject site (13A Ocean Road) from Sunrise Road includes Palm Beach and The Tasman Sea. The view is filtered by existing vegetation, some of which has recently been cleared (as of the site inspection on 11/09/2017). The view is considered to be dynamic due to the changing location of the tide altering the wave breaking/swash zone. The majority of properties along the eastern side of Sunrise Road do not allow for views to be obtained through the sites due to the presence of existing dwellings. The change in the current view will be permanent.

**The second step is to identify the locations in the public domain from which the potentially interrupted view is enjoyed.**

The view is only able to be obtained from the road reserve of Sunrise Road.

**The third step is to identify the extent of the obstruction at each relevant location.**

The proposed location of the secondary dwelling is approximately 12m below the level of the road and 20m from the road itself. The development is likely to obstruct a portion of Palm Beach and potentially the swash zone at high tide. The filtered view of The Tasman Sea element will be retained.

**The fourth step is to identify the intensity of public use of those locations where that enjoyment will be obscured, in whole or party by the proposed private development.**

The secondary dwelling will obscure the view as identified above when looking directly down through the site. Sunrise Road is a minor dead-end street with no footpath, meaning pedestrian and vehicular thru-traffic is likely to be minimal.

**The final step to be identified is whether or not there is any document that identifies the importance of the view to be assessed.**

Based on a search of the property, not correspondence exists stipulating the importance of this view in particular.

Therefore, based on the above assessment of the view impact to the public domain is considered acceptable.

- **C1.5 Visual Privacy**

Concern has been raised by the neighbouring property at 14 Sunrise Road regarding the potential privacy impact of the secondary dwelling and lack of screening proposed along the southern elevation. The southern elevation contains three windows, one of which is a floor to ceiling bathroom window (W1.4) and the other two are contained within the 'highlight roof' (W1.9 and W1.10). As W1.4 is a bathroom window, it is recommended that obscure glazing be used should consent be granted. Windows W1.9 and W1.10 will have a sill height of 2.65m above the FFL minimising any overlooking impacts. Additionally, privacy screening is intended to be included along the W1.9. Furthermore, the landscape plan (DA2 Landscape Plan, prepared by Volker Klemm Landscape Design provides a good selection of planting between the subject site and the neighbouring property at 14 Sunrise Road. The privacy arrangement is therefore considered acceptable.

- **C1.7 Private Open Space**

Due to the slope of the allotment and various other constraints including the presence of bush rock and significant trees, the secondary dwelling has chosen to be located near the Sunrise Road frontage. As a result, the sharing of private open space between the two dwellings can not occur. An area of private open space of approximately 10.5m<sup>2</sup> has been provided at the rear of the secondary dwelling. The dwelling itself provides a large primary living area (37.8m<sup>2</sup>) directly adjoining the rear courtyard in addition to sliding glass doors and a 'highlight roof' to maximise natural light for the potential residents of the dwelling which is acknowledged as difficult to obtain considering the terrain. This is considered to be an adequate arrangement considering the site constraints.

- **C1.11 Secondary Dwellings and Rural Worker's Dwellings**

Concerns were raised by neighbouring residents regarding the development being not able to be classified as a secondary dwelling as it not established 'in conjunction' with the principal dwelling. Under the PLEP 2014 a secondary dwelling is defined as:

*a self contained dwelling that:*

*(a) is established in conjunction with another dwelling (the principal dwelling),*

*and*

*(b) is on the same lot of land as the principal dwelling, and*

*(c) is located within, or is attached to, or separate from, the principal dwelling.*

The primary concern raised by the neighbouring residents is that as the secondary dwelling has no physical connection or relationship with the principal dwelling and is intended to be accessed separately off Sunrise Road rather than Ocean Road. However, the establishment of a secondary dwelling 'in conjunction' with a principal dwelling does not necessitate that a physical connection or relationship between the two is required. Rather, it is to prevent the establishment of a secondary dwelling without a principal dwelling first being erected or consent being granted. The definition of a secondary dwelling does not prohibit or restrict access from a secondary street frontage or require a connection to the principal dwelling. As the proposed secondary dwelling is proposed to be within the same allotment as the existing dwelling and is separate from the principal dwelling, the development is considered to satisfy the definition of a secondary dwelling as listed under PLEP 2014.

- **D12.1 Character as viewed from a public place**

Concerns have been raised from neighbouring residents regarding the impact of the secondary dwelling on the existing character of the escarpment, Ocean Road and Sunrise Road. The dwelling will be a maximum of one storey and located approximately 35m from Ocean Road with existing vegetation providing for appropriate screening and minimising the impact of the development when viewed from this perspective. The ridge of the secondary dwelling is approximately 10m below the road level of Sunrise Road and located a minimum of 20m from the edge of the road which results in a minimum built form impact when viewed from this perspective. It is acknowledged that the development will impact upon the existing vegetation of the escarpment, however Council's Natural Environment Officer is in support of the trees and vegetation proposed to be removed and has provided appropriate replacement planting to ensure the secondary dwelling remains secondary to surrounding vegetation. Additionally, the secondary dwelling is intended to be painted in dark and earthy tones to blend in with the natural environment. Therefore, the development is consistent with the character of the area.

- **D12.8 Building envelope**

The application results in a building envelope breach along both the northern and southern elevations of the secondary dwelling where a portion of the the ground floor eaves and the 'highlight-roof' will extend beyond the building envelope. However, the control provides an exemption for eaves to extend beyond the envelope parameters, meaning that the only true non-compliance arises from the 'highlight roof'. The non-compliance is minor and only arises due to the significant slope of the building footprint (32%) for which the control provides a variation. The envelope non-compliance does not contribute to a unreasonable amenity impact to neighbours and the development results in a character that is consistent with the Palm Beach Locality. Additionally existing vegetation (that is proposed to be retained) with the inclusion of proposed vegetation as indicated within landscape plan (DA1, prepared by Volker Klemm Landscape Design) provides suitable landscaping to further reduce the visual impact of any built form. Therefore, the envelope non-compliance is considered acceptable on merit.

- **D12.12 Fences - Flora and Fauna Conservation Areas**

A fence is proposed along the Sunrise Road boundary, however no details regarding the size or type of fence has been proposed. If the application is granted consent, it is recommended that the fence not form a part of any consent.

## 9.0 CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan, Pittwater 21 Development Control Plan and other relevant policies as listed at item 3.0.

The proposal has been found to be consistent with the outcomes of the relevant controls of P21 DCP. The proposal is considered to be consistent with the existing character of Ocean Road and Sunrise Road and the desired future character of the Palm Beach Locality. As a result of these considerations the proposal is recommended for approval.

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## **RECOMMENDATION OF DEVELOPMENT OFFICER/PLANNER**

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Development Application N0373/17 for the construction of a secondary dwelling at 13A Ocean Road, Palm Beach subject to the conditions of consent.

Report prepared by

Nick Armstrong  
**PLANNER**

Date: 27 March 2018

