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**Sent:** 23/07/2019 5:33:39 PM  
**Subject:** 13A Ocean Road Palm Beach - DA 2019/0619 (PVL:190409)  
**Attachments:** 23072019172839-0001.pdf;

Attention: Jordan Davies

Please see attached submission on behalf of Shirley Walsh. Kindly acknowledge receipt of this submission in due course.

Kind regards,  
Roslyn McCulloch | Partner | Accredited Specialist - Local Government & Planning Law

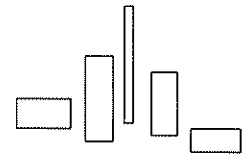
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**PIKES & VEREKERS**  
LAWYERS

23 July 2019

The General Manager  
Northern Beaches Council  
PO Box 82  
MANLY NSW 1655

Dear Sir

**DA2019/0619**  
**13A OCEAN ROAD, PALM BEACH**  
**Our ref RMC:BMJ:190409**  
**Your ref Jordan Davies**

We refer to the above matter and thank Council for allowing an extension of time for the lodgement of this submission.

We act on behalf of Mrs Shirley Walsh who is the owner and resident of 18 Sunrise Road, Palm Beach and have been instructed by her to make a submission on her behalf in relation to the above development application.

The proposed development comprises a swimming pool, spa, terrace, stairs, inclinator and associated paved area and landscaping. It is to be located between an existing two storey residence at the Ocean Road frontage of the allotment and a secondary dwelling currently under construction toward the Sunrise Road frontage of the allotment.

The site at 13A Ocean Road Palm Beach has some development history which is relevant to this application. In 2016 DA No. 328/16 was lodged for alterations and additions to an existing dwelling house and the construction of a detached secondary dwelling. That dwelling, which included a pool and rumpus room, was in the approximate location of the currently proposed swimming pool and ancillary development. The 2016 development application was ultimately withdrawn following widespread objection, including from our client.

In 2017 development application No373/17 was lodged for the construction of a secondary dwelling. Despite widespread local objection, including from our client, that development application was approved and permits a single bedroom dwelling with a floor area of 59.76m<sup>2</sup> with pedestrian access only to Sunrise Road.

The current proposals seeks to "fill the gap" between the existing residence and the secondary dwelling under construction which will irreversibly obliterate the bushland setting of those dwellings and the vegetated escarpment.

### **State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP)**

The subject site is mapped as Coastal Use Area under the Coastal Management SEPP. Pursuant to clause 14(1)(a)(iii) the consent authority must consider the visual amenity and scenic qualities of the coast when considering a development application in the "coastal use area". Clause 14(1)(b)(i) requires the consent authority to be satisfied that development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a). Clause 14(1)(c) requires the consent authority to take into account the surrounding coastal and built environment and the bulk, scale and size of the proposed development.

The visual amenity and scenic qualities of this part of Palm Beach is characterised by steeply sloping vegetated land known locally as "the escarpment". Development is generally confined to the upper or lower sections of the escarpment and a clear band of vegetation runs between. The proposed development will create a continuous form of development from Ocean Road to Sunrise Road, drastically altering the visual amenity and scenic quality of the escarpment. The proposed inclinor will provide a permanent vertical scar on the landscape and introduce a hitherto unknown form of development to it. This site is highly visible from many public places including Palm Beach (south and north), Palm Beach pool and the headland above it.

Approval of development in the location proposed will only serve to encourage other landowners to seek consent for development in a similar location.

### **Pittwater Local Environmental Plan 2014 (PLEP)**

The subject site is zoned E4 Environmental Living under PLEP. The relevant objectives of that zone are:

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

The proposed development is far from low impact. It involves excavation and fill in a steeply sloping site and the elimination of vegetation. The area has special ecological and aesthetic values which will be greatly diminished by the proposed development.

The proposed development fails to integrate at all with the landform and landscape. It creates artificial platforms in a steeply sloping section of the site which must be linked with the dwellings on the site by a series of scarring stairs and an inclinator. All of this development will be highly visible from the public domain and will present as incongruent and alien to the landform and the landscape.

### **Pittwater Development Control Plan 21 (PDCP)**

Part of the desired future character of Pittwater is to conserve, protect and enhance the natural environment and the beauty of the area. In relation the Palm Beach in particular, the desired future character is to ensure development takes place in a landscape setting and is integrated with the landform and landscape. For the reasons set out above, the proposed development fails to integrate with the landform and will detract from the natural environment and its beauty.

C1.19 of PDCP applies to inclined passenger lifts and stairways. It requires that inclinator be erected as near as possible to the ground level (existing) of the site. The proposed inclinator rail will sit up to 2 metres above the existing ground levels of the site. The plans include no details of structures to support the inclinator rails.

There is no necessity for an inclinator in any event as extension stairs and pathways are provided to the proposed pool level from the existing residence and the secondary dwelling.

D12.1 of PDCP deals with character as viewed from a public place. It requires new development to respond to, reinforce and sensitively relate to the social characteristics of the existing built and natural environment. Those characteristics are described earlier in this submission, namely, that the escarpment is generally vegetated through a central band with development confined to the upper and lower levels of the escarpment. The proposed development fails to respond to that special characteristic and will irreversibly alter it.

D12.1 also requires the visual impact of built form to be secondary to landscaping and vegetation. The proposed development will clear most of the site of vegetation, permitting only formal and uncharacteristic vegetation to provide privacy.

D12.1 also requires the bushland vista of Pittwater to be the predominant feature of the landscape with built form being a secondary component. The proposed development will see the built form dominate over and obliterate the landscape.

D12.10 Landscaped Area – Environmentally Sensitive Land requires that 60% of the site be "landscaped area". "Landscaped area" is defined under PLEP as "means a part of the site used for growing plants, grasses and trees but does not include any building, structure, or hard paved area".

D12.10 allows for a variation to this control for impervious areas less than 1 metre in width (e.g. pathways and the like).

The landscaped area calculations in the Statement of Environmental Effects are dubious, to say the least. In the Statement of Environmental Effects for the 2017 secondary dwelling development application the proposed landscape area was to be 63.7% or 628.68 m<sup>2</sup>. The landscaped area calculation for the subject development application states that the total landscaped area would be 61% or 601.78m<sup>2</sup> (inclusive of 6% allowance for functional open space).

There are two problems with this calculation. Firstly, a comparison of the landscaped area proposed for the secondary dwelling and that now proposed would suggest that there is only a 26.3m<sup>2</sup> reduction in landscaped area as a result of the proposed development. That is impossible. The proposed pool and terrace areas cover more than 72m<sup>2</sup> of the site. A 6% allowance for functional open space would only decrease that figure by 3.5m<sup>2</sup>.

The second problem with the landscaped area calculation is the use of the 6% allowance for functional open space. The clause D12.10 variation (ii) only applies for single dwellings. The subject site has two dwellings. The variation permitted under PDCP is not applicable.

D12.14 Scenic Protection Category One Areas applies to the subject land. The outcomes envisaged under D12.14 include the preservation and enhancement of the visual significance of district and local views of the natural topographic features, the maintenance and the enhancement of tree canopy, the maintenance and enhancement of the natural environment as the predominant feature of the landscape with built form being a secondary component, visual integration and connectivity to the natural environment and the minimisation of visual impact on the natural environment when viewed from any waterway, road or public reserve.

The siting of the proposed development and the ancillary structures connecting it to the existing dwelling and the secondary dwelling will present as a jarring and uncharacteristic element in the Palm Beach escarpment. The built form will dominate the natural and will be inconsistent with the classification of the land as Scenic Protection Category One.

### **Development by Creep**

The development history of this site demonstrates the danger of development creep. The 2016 development application which proposed a secondary dwelling in a similar location to the currently proposed pool ought to have been refused with Council clearly stating the inappropriateness of development in that locality. The 2017 development application for the secondary dwelling which is now under construction was clearly not all the development applicant had planned for the site. The current application may still only represent another step in the development creep process. It is easy to envisage further applications for an extension of the inclinator, the provision of parking at Sunrise Road, the list goes on.

23 July 2019  
Northern Beaches Council  
Page 5

Council's response to this development application should be a clear and unambiguous refusal for the reasons set out in this submission.

Yours faithfully



Roslyn McCulloch  
Partner  
Accredited Specialist Local Government and Planning Law