



statement of environmental effects



SUBDIVISION OF 2 LOTS INTO 3 AND THE CONSTRUCTION OF A NEW DWELLING HOUSE ON EACH RESULTANT LOT

173-175 WHALE BEACH ROAD,
WHALE BEACH NSW 2107

May 2023

Disclaimer

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introduction

This statement of environmental effects has been prepared by Northern Beaches Planning on behalf of Peter Heyworth to accompany the lodgement of a development application for the subdivision of 2 lots into 3 and the construction of a new dwelling house on each resultant allotment at 173-175 Whale Beach Road, Whale Beach (**site**).

This statement is informed and accompanied by the following documentation:

- Architectural Plans by Bureau SRH
- Landscape Plan by Fiona Cole Design
- Detail and Boundary Survey by Stutchbury Jaques Pty Ltd
- Stormwater Management Plans by Torinex Consulting Engineers
- Geotechnical Report by White Geotechnical Group
- Coastal Risk Assessment Report by Horton Coastal Engineering
- Arboricultural Impact Assessment by Urban Arbor
- Traffic and Parking Assessment Report by Varga Traffic Planning Pty Ltd
- BASIX Certificates by Outsource Ideas
- Quantity Survey Report by Construction Consultants
- Waste Management Plan

site details

The site comprises two allotments, being 173 Whale Beach Road (Lot 22 in Deposited Plan 10782) and 175 Whale Beach Road (Lot 21 in Deposited Plan 10782).

173 Whale Beach Road is slightly irregular in shape, with a 20.115m wide frontage to Whale Beach Road, a maximum depth of 60.59m and a total area of 998m². 173 Whale Beach Road comprises a two storey dwelling with a multi-storey detached garage and hardstand parking area, with access via two separate driveways to Whale Beach Road.

175 Whale Beach Road is slightly irregular in shape, with a 20.115m wide frontage to Whale Beach Road, a maximum depth of 71.465m and a total area of 1183m². 175 Whale Beach Road is currently vacant and is heavily vegetated.

When combined, the site has a 40.230m wide frontage to Whale Beach Road, a maximum depth of 71.465m and a total area of 2181m². The site falls approximately 32m from the upper street frontage down to the rear, where it adjoins a public reserve which separates the site from the ocean beyond. The site is otherwise surrounded by dwelling houses of varying age, character and scale.

Aerial images of the site and its surrounds is provided in Figures 1 and 2 on the following page. Images of the site, the existing dwelling and the streetscape are also provided (Figure 3-7).



Figure 1 – Aerial image with site bordered in yellow
Source: Nearmap



Figure 2 – Aerial image (zoom) with site bordered in yellow
Source: Nearmap



Figure 3 – The garage and hardstand at 173 Whale Beach Road as seen from Whale Beach Road
Source: NBP



Figure 4 – Existing vegetation at 175 Whale Beach Road as seen from Whale Beach Road)
Source: NBP



Figure 5 – Looking across the frontage of 175 Whale Beach Road towards the existing garage at 173 Whale Beach Road
Source: NBP



Figure 6 – Development on the high side of Whale Beach Road (No. 126)
Source: NBP



Figure 7 – Views from the existing dwelling at 175 Whale Beach Road
Source: NBP

proposed development

The application seeks consent for the subdivision of 2 lots into 3 and the construction of a new dwelling on each resultant allotment. Specifically, the works include:

- Demolition of the existing dwelling and garage at 173 Whale Beach Road,
- Tree removal (as detailed in the accompanying Arboricultural Impact Assessment Report),
- Subdivision of 2 lots into 3:
 - Lot A – 700.84m²
 - Lot B – 779.5m²
 - Lot C – 700.57m²
- Essential services to each lot,
- Construction of a new dwelling on each resultant lot comprising:
 - First Floor Plan: master bedroom with ensuite and WIR, two bedrooms, bathroom, laundry, internal stair and lift access,
 - Second Floor: open plan kitchen/living/dining area, pantry, powder room, rear terrace, internal stair and lift access,
 - Third Floor: double garage, entrance, internal stair and lift access,
 - Ground Floor: one bedroom, bunk room, bathroom, lounge, deck and internal stair access swimming pool
- Swimming pools for each dwelling,
- New driveways and driveway crossings,
- Landscaping, and
- Infrastructure.

The works are depicted in the Architectural Plans prepared by Bureau SRH dated 1 May 2023 that accompany this application.

legislation, plans and policies

The following relevant state and local policies are applicable to the proposed development:

- Environmental Planning and Assessment Act (**EP&A Act**)
- Environmental Planning and Assessment Regulation 2021 (**EP&A Regulation**)
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Resilience and Hazards) 2021
- Pittwater Local Environmental Plan 2014 (**PLEP 2014**):
 - Acid Sulfate Soils Map: Class 5
 - Lot Size Map: 700m²
 - Land Zoning Map: C4 Environmental Living
 - Height of Buildings Map: 8.5m
 - Geotechnical Hazard Map: H1
 - Coastal Hazard Map: Bluff/Cliff Instability
 - Biodiversity Map
 - Foreshore Building Line Map
- Pittwater 21 Development Control Plan (**P21 DCP**)
 - Palm Beach Locality
 - Landscaped Area 1

environmental planning and assessment act

The matters prescribed by section 4.15(1) of the EP&A Act are considered, as follows:

Clause	Provision	Comment
(a)	<p><i>the provisions of—</i></p> <ul style="list-style-type: none"> <i>i. any environmental planning instrument, and</i> <i>ii. any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and</i> <i>iii. any development control plan, and</i> <i>iv. any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and</i> <i>v. the regulations (to the extent that they prescribe matters for the purposes of this paragraph),</i> <p><i>that apply to the land to which the development application relates,</i></p>	<p>The relevant provisions of PLEP 2014, all relevant SEPPs, and P21 DCP have been considered and addressed in this statement.</p>
(b)	<p><i>the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,</i></p>	<p>The likely impacts of the proposed development have been addressed with respect to relevant plans and policies in this statement. The proposed development will not result in any unacceptable impacts upon the natural or built environment, or any social or economic impacts in the locality.</p>
(c)	<p><i>the suitability of the site for the development,</i></p>	<p>The subject site is suitable for the proposed development.</p>
(d)	<p><i>any submissions made in accordance with this Act or the regulations,</i></p>	<p>The application will be notified to all neighbouring properties, with any submissions received to be considered by Council.</p>
(e)	<p><i>the public interest.</i></p>	<p>The proposed development is in the public interest, in so far as it is consistent with the objectives and outcomes of PLEP 2014 and P21 DCP.</p>

state environmental planning policy (resilience and hazards)

Coastal Hazard

The site is identified as land in the:

- coastal environment area on the Coastal Environment Area Map, and
- coastal use area on the Coastal Use Area Map,

The provisions of chapter 2 of SEPP (Resilience and Hazards) are applicable in relation to the site and this proposal. The application is supported by a Geotechnical Report by White Geotechnical Group and a Coastal Report by Horton Coastal Engineering, which confirms that the proposed development can be undertaken safely with respect to the geotechnical and coastal hazards that apply in relation to the site.

Development on land in the coastal environment area

The consent authority can be satisfied that the proposed development has been designed, sited and will be managed to avoid adverse impacts upon the relevant matters identified in section 2.10(1) of this policy.

Development on land in the coastal use area

The consent authority can be satisfied that the proposed development has been designed, sited and will be managed to avoid adverse impacts upon the relevant matters identified in section 2.11(1)(a) of this policy, and that the surrounding coastal and built environment has been taken into account with regard to the bulk, scale and size of the proposed development.

Coastal Zone

The proposed development is not likely to cause increased risk of coastal hazards on the land or other land, and the consent authority can be satisfied with respect to section 2.12 of this policy.

Remediation of Land

Chapter 4 of SEPP (Resilience and Hazards) applies to all land and aims to provide for a state-wide planning approach to the remediation of contaminated land.

Clause 4.6(1)(a) of this policy requires the consent authority to consider whether land is contaminated. 173 Whale Beach Road has been used for residential purposes for an extended period of time, with no known prior land uses. 175 Whale Beach Road is vacant, with no evidence of prior development. 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).

*state environmental planning policy
(biodiversity and conservation)*

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 9 individual trees and 1 group of Casuarinas from the site, as detailed in the Arboricultural Impact Assessment by Urban Arbor. Trees 1-4 are located within the road reserve and are required to be removed to facilitate vehicular and pedestrian access to the proposed dwellings. Trees 5-9 are located on the currently vacant site at 175 Whale Beach Road and are located within the only buildable area on the site. The group of Casuarinas are dead or in decline.

The proposed development includes a comprehensive landscape solution for the site, as detailed in the Landscape Plans by Fiona Cole Design. Despite the tree removal proposed, the development will result in a significant enhancement to the quality and quantity of landscaping across the site.

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

*state environmental planning policy
(building sustainability index: basix)*

The proposed works constitute 'BASIX affected development', as defined by the EP&A Regulation. The application is accompanied by a BASIX Certificate demonstrating that each of the proposed dwellings can meet relevant performance criteria.

local environmental plan

The site is identified on the Land Application Map of PLEP 2014 and the provisions of this policy are applicable in relation to the site and the proposed development. The relevant provisions of PLEP 2014 are considered, as follows:

Clause	Standard	Proposal	Compliance
Clause 2.7 Demolition requires consent			Yes
Zone C4 Environmental Living			Yes See discussion
4.1 Minimum lot size	700m ²	Lot A: 700.84m ² Lot B: 778.50m ² Lot C: 700.57m ²	Yes
4.3 Height of buildings	10m	Lot A: 9.96m Lot B: 10.58m Lot C: 12.01m	No See discussion
4.6 Exceptions to development standards			Yes
7.1 Acid sulfate soils	Class 5		Yes
7.2 Earthworks			Yes
7.5 Coastal Risk Planning			Yes See discussion
7.6 Biodiversity			Yes
7.7 Geotechnical hazards			Yes See discussion
7.8 Limited development on foreshore area			Yes See discussion
7.10 Essential services			Yes See discussion

Zone C4 Environmental Living

The site is zoned C4 Environmental Living under the provisions of PLEP 2014. Pursuant to the land use table in Part 2 of this instrument, dwelling houses are permissible with consent. Furthermore, the proposed development is consistent with the objectives of the C4 Environmental Living zone, as follows:

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

Comment: The proposed dwellings are well articulated with distinct vegetated breaks between each built form. The buildings are stepped in response to the fall of the land and are of a scale that is commensurate with surrounding development along Whale Beach Road and within the wider C4 Environmental Living Zone and the Palm Beach locality.

The proposed development, specifically the construction of Dwelling A, will result in site disturbance and tree removal. However, this is not unreasonable in consideration of the development of a heavily vegetated vacant site. Furthermore, the dwellings have been sited to maximise the area for rehabilitation and revegetation of the foreshore area, resulting in an overall enhancement of the quality and quantity of vegetation across the site.

Excavation is proposed to accommodate the proposed dwellings. However, excavated material is to be used as fill on Lots B and C, where historical excavation has eroded the natural fall of the land. This will ensure that the volume of material leaving the site will be appropriately minimised.

In consideration of the context of the site, in an area characterised by large multi-storey development, the proposed development is considered to be reasonably described as low-impact.

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

Comment: The LEP does not specify what attributes of this specific site constitute special ecological, scientific or aesthetic values, and as such, it is difficult to gauge how such values are to be impacted.

It could be said that the geotechnical and coastal hazards are special values of the site. In this respect, the application is accompanied by a Geotechnical Report and a Coastal Report to confirm that the sites can be developed safely and without adverse impact.

The landscaped quality of the site could be said to be special, given the coastal foreshore location of the site. In this respect, the application is accompanied by a Landscape Plan that demonstrates a superior landscaped treatment, with the majority of the site to be

revegetated and rehabilitated to enhance the landscape character of the site and avoid adverse impact.

Alternatively, it could be the scenic quality of the site that is said to have special value. In this regard, the proposed development provides three high-quality architecturally designed homes that are to be complemented by significant landscaping. The bulk and scale of the dwellings is commensurate to that which currently exists on the site and that of surrounding and nearby dwellings along Whale Beach Road. In consideration of the context of the site, and what is reasonably anticipated on the two existing sites, the proposed development does not result in any adverse impacts upon the scenic quality of the site.

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

Comment: The proposed development seeks to provide three new dwellings, each on a lot size in excess of 700m². Despite the additional lot proposed, the development remains a low density development. The proposed new dwellings are designed to follow the natural topography of the land, with excavation limited in both area and height. The degree of excavation proposed is entirely commensurate with that on surrounding properties and other properties on steeply sloping land. The footprint of each of the dwellings is also appropriately minimised, with compliant landscaped area calculations and an enhancement of the quality of landscaping across the site.

Minor parts of each dwelling reach a maximum of three storeys in height. This is not uncommon in the locality and is characteristic of contemporary dwellings on blocks fronting the ocean, and specifically of dwellings along Whale Beach Road. Whilst the dwellings involve departure with the building envelope control, the bulk and scale of the three dwellings proposed is considered to be significantly less than what would be achieved if a single dwelling was developed at 175 Whale Beach Road in conjunction with the existing dwelling at 173 Whale Beach Road, or if a single dwelling was constructed across both lots. The provision of three dwellings accommodated two district landscape breaks between the proposed built form, which would be lost if developed for one or two dwellings.

The proposed development is also considered to be appropriately integrated with landform and landscape, and of a scale that is contextually appropriate in its setting.

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

Comment: The existing foreshore area is heavily weed infested, and the majority of existing trees are in poor health. The proposed development provides for the rehabilitation and revegetation of the site, significantly improving the quality of landscaping, specifically that within the foreshore area.

Clause 4.3 Height of buildings

The site is identified within Area I of the Height of Buildings Map of PLEP 2014. Pursuant to the provisions of 4.3(2) of PLEP 2014, the height of buildings within this area shall not exceed 8.5m. The proposed new dwellings reach maximum heights of 9.96m – 12.01m exceeding the 8.5m maximum prescribed.

However, clause 4.3(2D) of PLEP 2014 provides a variation to enable buildings to reach a maximum of 10m in height if the development is consistent with the prescribed criteria. This variation is considered to be relevantly applicable in relation to Dwelling A.

The matters prescribed by clause 4.3(2D) are considered and are achieved, as follows:

- *the consent authority is satisfied that the portion of the building above the 8.5m height limit is minor,*

Comment: The portions of the dwelling above the 8.5m height plane are shown in the 8.5m Height Plane Diagrams prepared by Bureau SRH at Figure 8 below. The areas are limited to minor portions of the roof form and in consideration of the development as a whole, they are reasonable described as minor.

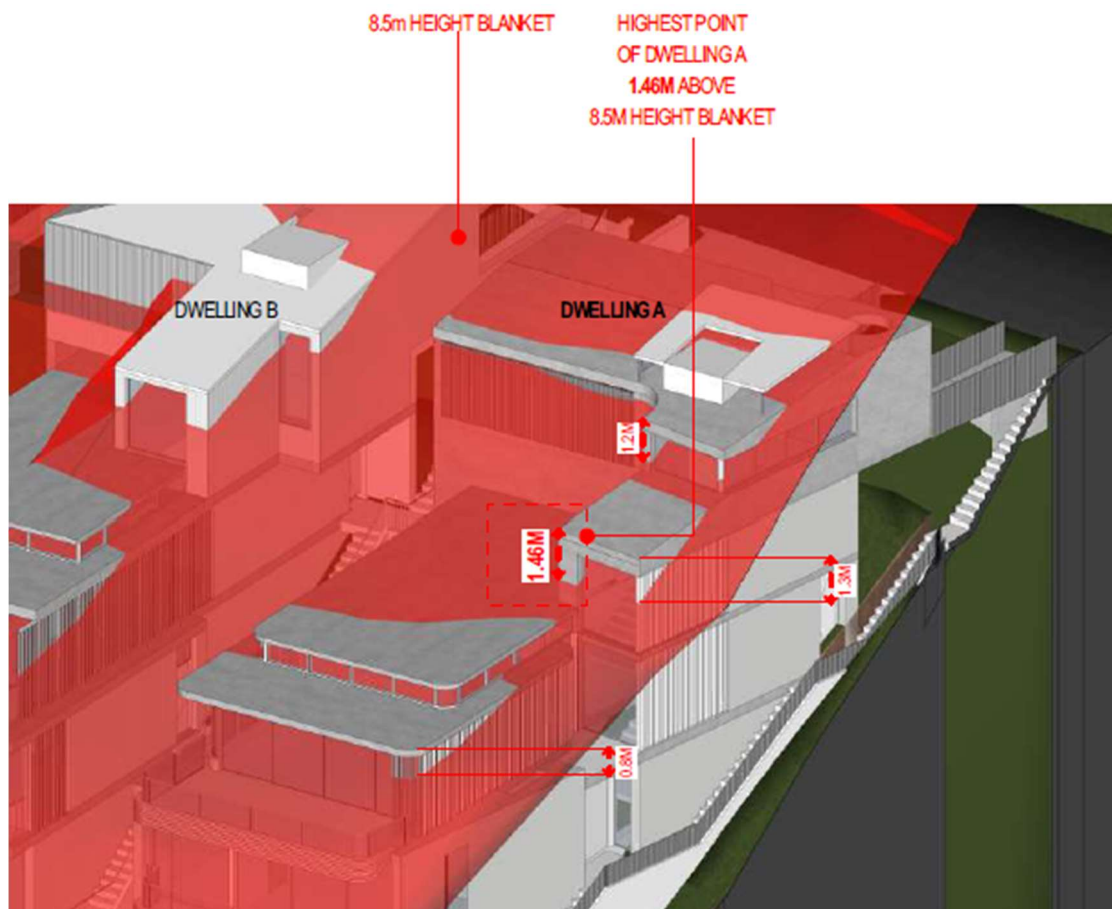


Figure 8 – Extract of 8.5m Height Plane Diagram
Source: Bureau SRH

- *the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and*

Comment: The land beneath Dwelling A falls from an approximate RL of 47m AHD to 36.3m AHD, over a distance of 22m, resulting in a gradient of approximately 48%.

- *the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.*

Comment: The dwelling has been designed to step up the slope of the land. Whilst excavation is proposed, the degree of excavation is entirely commensurate with that which has been approved and undertaken on sloping sites throughout the Palm Beach locality and the wider LGA.

Further, the objectives of clause 4.3 of PLEP 2014 must be achieved. Council can also be satisfied that the objectives of the building height clause are achieved, as follows:

- *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

Comment: 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:

The locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape... Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale.

The proposed dwellings have a single storey presentation to Whale Beach Road and are stepped in response to the fall of the land. Whilst portions of the dwellings reach three storeys above existing ground levels, these three-storey elements are stepped back from the level below and are highly articulated to ensure that the apparent size of the development is appropriately minimised.

The resultant development will sit comfortably below the canopy of proposed landscaping and below the line of canopy upslope and on surrounding sites. The dwellings are integrated into the hillside and are of a scale that is commensurate with that of neighbouring and nearby dwellings. The three storey nature of the proposed dwellings is consistent with the three storey character of development along Whale Beach Road and does not detract from consistency with the desired future character of the locality.

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

Comment: The proposed dwellings present as single storey structures to Whale Beach Road, with a distinct landscaped break between each building. As shown in Figure 9, the garage doors are semi-transparent, maximising the retention of views through the structure, as seen on other elevated garages along Whale Beach Road (Figures 10 and 11).



Figure 9 – Perspective images of the proposed dwellings as seen from Whale Beach Road)
Source: Bureau SRH



Figure 10 – 223 Whale Beach Road
Source: Google Streetview



Figure 11 –167 Whale Beach Road
Source: Google Streetview

The dwellings present as two and three storey buildings to the rear, consistent with that of surrounding dwellings, as shown in Figure 12. Consistent with the findings of the NSW LEC in the matter of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, to be compatible in an urban design context is to be capable of existing in harmony together. The proposed dwellings will sit harmoniously in this specific context, and most observers would not find the height or bulk of the proposed development to be offensive, jarring or unsympathetic in the streetscape context. This is particularly relevant noting the low likelihood that the dwellings will be seen by the general public from the rear of the site, as the only public vantage point at which the rear of the proposed dwellings will be visible is from the ocean. The rear of the site is not visible from Whale Beach and the rocky foreshore below the site is not readily accessible.



Figure 12 – Drone image of site
Source: realestate.com.au

- *to minimise any overshadowing of neighbouring properties,*

Comment: The proposed development will not result in any adverse impacts upon adjoining properties with regard to solar access. The site adjoins a drainage channel to the south, with no unreasonable impacts upon adjoining residential properties.

- *to allow for the reasonable sharing of views,*

Comment: Properties on the opposite side of Whale Beach Road sit significantly higher on the escarpment compared to the proposed dwellings, and as such, it appears unlikely that the height breach will result in any adverse impacts upon views. Views to the ocean and to distant headlands over the roofs of the proposed dwellings will be retained.

- *to encourage buildings that are designed to respond sensitively to the natural topography,*

Comment: The height of the development is stepped in response to the natural fall of the land. Whilst excavation is proposed, the degree of excavation is entirely commensurate with that which has been approved and undertaken on sloping sites throughout the Palm Beach locality and the wider LGA.

- *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Comment: The proposed new dwellings are highly articulated, with varied setbacks and materiality, to ensure that the apparent size of the dwellings are reasonably reduced.

The dwellings are stepped in response to the fall of the land and comprise a range of different roof forms and awnings to manipulate light and shade across the elevations. Landscaping is also proposed to soften the visual impact of the dwellings as seen from the street, with a significant enhancement of landscaping within the foreshore area. The proposal will not result in any adverse visual impacts upon the surrounding natural environment.

Overall, Council can be satisfied that the application of the 10m variable height limit prescribed by clause 4.3(2D) of PLEP 2014 is applicable and warranted in relation to Dwellings A and B.

Dwelling C breaches the 10m height limit as a result of historic excavation on the site. Clause 4.6 of PLEP 2014 provides the mechanism to vary the maximum height development standard. A request made pursuant to clause 4.6 of PLEP 2014 accompanies this application.

Clause 7.5 Coastal risk planning

The site is located within the Cliff/Bluff Instability area of the Coastal Risk Planning Map of PLEP 2014. The application is supported by a Geotechnical Report by White Geotechnical Group and a Coastal Risk Assessment Report by Horton Coastal Engineering which confirm consistent with the provisions of this clause.

Clause 7.6 Biodiversity

The site is identified on the Biodiversity Map of PLEP 2014. The application is supported by an Arboricultural Impact Assessment Report by Urban Arbor detailing the extent of tree removal proposed and providing recommendations to ensure the safe retention of trees to be retained. The proposed development is also supported by a detailed Landscape Plan by Fiona Cole Design that includes compensatory replacement plantings, with an overall enhancement of the quality and quantity of landscaping at the site. Council can be satisfied that the development has been designed, sited and will be managed to avoid any significant adverse environmental impact.

Clause 7.7 Geotechnical hazard

The site is identified within Area H1 on the Geotechnical Hazard Map of PLEP 2014. The application is supported by a Geotechnical Report by White Geotechnical Group that addresses the matters prescribed by clause 7.7(3) of PLEP 2014. Further, the application is supported by Stormwater

Management Plans by Torinex Consulting Engineers to confirm that a suitable stormwater management solution has been achieved.

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.

Clause 7.8 Limited development on foreshore area

The foreshore building line bisects the site at a distance of approximately 30-47m from the rear boundary, as shown on the Foreshore Building Line Map of PLEP 2014, such that more than half of the site is nominated as foreshore area.

Clause 7.8(2) of PLEP 2014 states that development consent must not be granted for development on land within the foreshore area (being the land between the foreshore building line and the mean high water mark) except for the following purposes:

- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- (b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

The application seeks consent for the construction of a swimming pool and access stairs within the foreshore area, which are permitted within the foreshore area by virtue of part (b), above.

Overall, the consent authority can be satisfied that –

- a. The proposed works within the foreshore area will not detract from consistency with the objectives of the C4 Environmental Living zone,
- b. The appearance of the works within the foreshore area is compatible with the surrounding foreshore area,
- c. the proposed works will not cause environmental harm, but are designed to facilitate ongoing maintenance of the foreshore area,
- d. the proposed works will not cause congestion or generate conflict between people using open space or the waterway,
- e. public access along the foreshore is not compromised,
- f. the proposed works will not impact upon the natural or aesthetic significance of the foreshore area, and
- g. geotechnical hazards affecting the foreshore area have been considered.

Further, the consent authority can be satisfied that the proposed development, that is wholly maintained within private property, will not impact upon public access along the foreshore and that the natural character of the foreshore is appropriately maintained.

Clause 7.10 Essential Services

The consent authority can be satisfied that the supply of water and electricity, the disposal and management of sewerage, stormwater drainage and suitable vehicular access will be readily available to each lot/dwelling prior to the occupation of the proposed works and/or prior to the release of the subdivision certificate, consistent with the provisions of clause 7.10 of PLEP 2014.

development control plan

P21 DCP is applicable to the site and the proposed development. The site is identified within the Palm Beach Locality.

The relevant provisions of P21 DCP are considered, as follows:

Clause	Control	Proposal	Compliance
A1.7 Considerations before consent is granted	Have regard for the matters for consideration under section 4.15 of the EP&A Act.	The matters for consideration prescribed by section 4.15 of the EP&A Act have been considered (above).	Yes
A4.12 Palm Beach Locality			Yes See discussion
B1.3 Heritage Conservation – General			Yes
B1.4 Aboriginal Heritage			Yes
B2.2 Subdivision – Low Density Residential	Minimum lot depth: 27m Minimum lot width: 16m Maximum gradient: 30% Minimum footprint: 175m ²	Minimum lot depth: 52.8m Minimum lot width: 12.45m Maximum gradient: >30% Minimum footprint: 225m ²	Yes No No Yes See discussion
B3.1 Landslip Hazard	Development is to comply with Council's <i>Geotechnical Risk Management Policy for Development in Pittwater 2009</i> .	The application is supported by a Geotechnical Report prepared by White Geotechnical Group.	Yes
B3.4 Coastline (Bluff) Hazard	Development is to comply with Council's <i>Geotechnical Risk Management Policy for Development in Pittwater 2009</i> .	The application is supported by a Geotechnical Report prepared by White Geotechnical Group and a Coastal Risk Assessment Report by Horton Coastal Engineering.	Yes
B3.6 Contaminated Land and Potentially Contaminated Land			Yes
B4.4 Flora and Fauna Habitat Enhancement			Yes

Clause	Control	Proposal	Compliance
Category 2 and Wildlife Corridor			
B5.15 Water Management	The stormwater drainage systems for all developments are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.	The application is supported by Stormwater Management Plans prepared by Torinex Consulting Engineers, which demonstrate consistency with Council's Water Management Policy.	Yes
B6.1 Access Driveways and Works on the Public Road Reserve			Yes
B6.2 Internal Driveways			Yes
B6.3 Off-Street Vehicle Parking Requirements	2 spaces (minimum) per dwelling	2 spaces per dwelling	Yes
B8.1 Construction and Demolition – Excavation and Fill			Yes
B8.3 Construction and Demolition – Waste Minimisation			Yes
B8.4 Construction and Demolition – Site Fencing and Security			Yes
C1.1 Landscaping	<p>All canopy trees, and a majority (more than 50%) of other vegetation, shall be locally native species.</p> <p>At least 2 canopy trees are to be provided in the front yard and 1 in the rear yard.</p>	<p>The proposed development provides for the significant enhancement of landscaping on the site, with 89 canopy trees proposed across the 3 lots, well in excess of the 9 prescribed.</p> <p>However, given the nil setbacks of the proposed dwellings, no trees are proposed between the dwellings and the front property boundary, resulting in inconsistency with this clause.</p>	No

Clause	Control	Proposal	Compliance
		Nonetheless, the single storey structures to Whale Beach Road will be screened and softened by landscaping proposed within the road reserve and to the sides of each dwelling.	
C1.2 Safety and Security			Yes
C1.3 View Sharing	All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.	<p>Properties on the opposite side of Whale Beach Road sit significantly higher on the escarpment compared to the proposed dwellings. As such, it appears unlikely that the proposed new dwellings will result in any adverse impacts upon views, with views to the ocean and to distant headlands over the roofs of the proposed dwellings to be retained.</p> <p>Dwelling A is also sited to maximise the retention of views from 177 Whale Beach Road. With the greatest (2.5m) side setback afforded to the common side boundary and the swimming pool positioned to the opposite side of the site.</p>	Yes
C1.4 Solar Access	3 hours of direct sunlight to the main private open space and windows of principal living areas between 9am and 3pm in mid-winter.	<p>The proposed development will not result in any adverse impacts upon adjoining properties with regards to solar access.</p> <p>Sunlight to the proposed development is maximised, with in excess of 3 hours of sunlight to living room</p>	Yes

Clause	Control	Proposal	Compliance
		windows and private open space.	
C1.5 Visual Privacy	Private open space and living rooms of adjoining dwellings are to be protected from direct overlooking.	Adequate privacy is maintained and achieved by virtue of off-set windows, landscaping, fixed screens and spatial separation.	Yes
C1.6 Acoustic Privacy			Yes
C1.7 Private Open Space			Yes
C1.12 Waste and Recycling Facilities	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	The application is accompanied by a Waste Management Plan demonstrating consistency with Council's Waste Management Guidelines.	Yes
C1.13 Pollution Control			Yes
C1.17 Swimming Pool Safety	Swimming pool fencing and warning notices (resuscitation chart) shall be manufactured, designed, constructed, located and maintained in accordance with the Swimming Pools Act 1992 and regulation.	The proposed swimming pools are designed in accordance with the Swimming Pools Act and Regulation.	Yes
C4.1 Subdivision – Protection from Hazards	All subdivision is to be designed such that adequate building platforms/building areas are provided that have a low risk due to hazards including flood, landslip, bushfire, coastline and estuarine hazards.	The proposed lots and dwellings have been designed to be safe from hazards, as confirmed in the accompanying Geotechnical and Coastal Reports.	Yes
C4.2 Subdivision – Access Driveways and Off-Street Parking Facilities	The design of each individual lot created within the subdivision is to provide for off street parking facilities compatible with the proposed development uses for that lot.	Each lot has its own driveway access to Whale Beach Road.	Yes
C4.3 Subdivision – Transport and	A traffic assessment is to be undertaken in accordance with	The application is supported by a Traffic and Parking	Yes

Clause	Control	Proposal	Compliance
Transport Management	the RTA Guidelines for Traffic Generating Developments or similar guidelines.	Assessment Report by Varga Traffic Planning, which confirms that the proposal will not adversely affect traffic or parking availability within the locality.	
C4.5 Subdivision – Utility Services	All lots created within the subdivision are to be fully serviced by electricity, water, gas, communications and sewer.	Each lot will be provided with all essential services.	Yes
C4.7 Subdivision – Amenity and Design	<p>Subdivision should be designed to ensure that all properties, both existing and proposed, achieve/retain a level of amenity commensurate with the locality and the desired character of the area; and the impact on the environment of the completed development (including buildings to be constructed on the proposed lots) has an acceptable impact on the environment.</p> <p>An assessment of the buildings which will be erected as a result of the proposed subdivision is to be carried out demonstrating that the requirements and outcomes of the controls in this DCP which will apply to those buildings will be able to be complied with.</p>	<p>The proposed development seeks consent for the subdivision of 2 lots into 3, and for the construction of a new dwelling on each lot.</p> <p>As demonstrated throughout this assessment report, the proposed lots/dwelling can achieve a level of amenity commensurate with the locality and the desired character of the area, without resulting in any unacceptable impacts upon the environment or the amenity of adjoining properties.</p>	Yes
C4.8 Subdivision – Landscaping on the existing and proposed public road reserve frontage to subdivision lots	Landscaping in the public road reserve is to include street trees planted to the road reserve frontage of the development placed at 6m centres.	Landscaping is proposed within the road reserve.	Yes
D12.1 Character as Viewed from a Public Place	Walls without articulation shall not have a length greater than 8 metres to any street frontage.	The proposed development is well articulated, with no walls exceeding 8m in width presenting to the street.	Yes

Clause	Control	Proposal	Compliance
	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.	Garage width: 6m (<50%) The proposed garages are sited with a nil setback to the street.	Yes No See discussion
D12.3 Building Colours and Materials		The materiality and finishes of the proposed development comprise natural tones, consistent with those of surrounding and nearby dwellings.	Yes
D12.5 Front Building Line	6.5m	Garages: Nil Dwelling: 2.2 – 2.6m	No See discussion
D12.6 Side and Rear Building Line	1.0m to one side, 2.5m to the other Rear: FSBL	Lot A: 1m & 2.5m Lot B: 1m & 1.8m – 2.5m Lot C: 1m & 2.0m – 2.5m	No See discussion
D12.8 Building Envelope	Buildings maintained within a plane projected at 45 degrees from FPL along the side boundary.	Minor portions of the proposal protrude beyond the prescribed building envelope.	No See discussion
D12.10 Landscaped Area – Environmentally Sensitive Land	60%	Lot A: Lot B: Lot C:	Yes
D12.12 Fences			N/A
D12.14 Scenic Protection Category One Area			Yes

Clause A4.12 Palm Beach Locality

The site is located within the Palm Beach locality, as identified on the Palm Beach Locality Map of P21 DCP. The proposed dwelling houses are consistent with the desired future character identified for the Palm Beach Locality, as follows:

- The dwelling houses contributes to the existing low-density residential area.
- The dwelling houses have a single storey character as seen from the public domain, integrated with the landform and landscaping.

- The height of the dwelling houses will remain below the height of existing and proposed tree canopy.
- The design of the proposed dwelling houses is a highly considered and sensitive response to the positive attributes and constraints of the site.
- The proposed dwelling houses are appropriately articulated and incorporate shade elements in order to reduce the visual impact of the development.
- The proposed development has been designed to be safe from hazards that affect the site.

Clause B2.2 Subdivision – Low Density Residential

Clause B2.2 of P21 DCP identifies minimum and maximum numerical requirements for proposed new lots, which are addressed below.

DCP Requirements	Lot A	Lot B	Lot C
Minimum lot depth: 27m	66.8m	59.2m	52.8m
Minimum lot width*: 16m	15.3m	12.5m	12.5m
Minimum gradient: 30%	>30%	>30%	>30%
Minimum footprint: 175m ²	>175m ²	>175m ²	>175m ²

*Note: Minimum lot width is defined by the dictionary at clause A1.9 of P21 DCP as “the width of a lot measured from one side boundary to the other at the primary street front building line not including access handles”.

At 12.5m – 15.3m in width, the proposed lots are less than the 16m wide minimum lot width prescribed by clause B2.2 of P21 DCP. Furthermore, each of the lots have a slope in excess of 30%, being the maximum gradient for new lots prescribed by this control.

Nonetheless, the lots exceed the minimum subdivision lot size prescribed by clause 4.1 of PLEP 2014 and can readily accommodate dwelling houses that are compatible with the character of the locality. Furthermore, the proposed development is consistent with the outcomes of the control, as follows:

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

Comment: As discussed above, the proposed development is consistent with the desired character for the Palm Beach Locality prescribed by clause A4.12 of P21 DCP. The proposed non-compliant widths and gradients do not detract from consistency with any of the outcomes identified.

Furthermore, the desired future character is also inferred by the character of surrounding sites and how they may be developed in the future. In this respect, it is important to note that surrounding sites are not all 16m in width. As demonstrated in Figure 13, a considerable number of properties along this particular stretch of Whale Beach Road and Rayner Road are less than 16m in width. The same can be said with respect to gradient, noting that the locality is characterised by steeply sloping land.



Figure 13 – Lots on Whale Beach Road or Rayner Road with a width less than 16m (bordered in yellow)
Source: Nearmap

Of particular relevance are the lots at 119, 121, 123 and 125 Whale Beach Road, with a lot width of approximately 12m, and the lots at 181, 183 and 185 Whale Beach Road with a lot width of approximately 13m, each of which have been developed with dwelling houses and contribute to the existing character of the locality.

- *Maintenance of the existing environment.*

Comment: It is suggested that this outcome should be interpreted to require the ‘reasonable’ maintenance of the existing environment, as emphasised in the control itself:

*“Any lot or lots are to be capable of providing for the construction of a building which is safe from hazards, **does not unreasonably impact on the natural environment**, does not adversely affect heritage and can be provided with adequate and safe access and services.”*

Whilst the proposal will alter the existing environment of the site, such impact is reasonable and anticipated in consideration of the existing vacant nature of 175 Whale Beach Road and in light of the suite of controls that are applicable in relation to the development. The impact associated with the proposed subdivision is not greater than if each lot was to be developed in isolation, or if the two lots were to be developed together. Furthermore, no additional

adverse impact arises as a consequence of the non-compliance width or the gradient of the lots.

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

Comment: The reduced width and gradient of the lots do not result in any adverse impacts upon view corridors. If anything, the reduced width of the lots maximises view corridors through the site, as a result of the reduced width of the proposed dwellings.

- *The built form does not dominate the natural setting.*

Comment: The application seeks consent for the construction of 3 new dwelling houses that are of a scale that is commensurate with that of surrounding properties. As above, the reduced width of the lots in turn limits the width of future dwellings, reducing the bulk and scale of the dwellings as seen from the public domain. The subdivision also ensures two distinct vegetated breaks between the dwellings, which would not be achieved if the two existing lots were developed in isolation or together as one dwelling.

- *Population density does not exceed the capacity of local and regional infrastructure and community services.*

Comment: The proposed lots are consistent with the minimum lot size of PLEP 2014 which is the overarching control to limit the capacity and density of the locality. The non-compliant width of the lots does not result in development that exceeds anticipated capacity of the area.

- *Population density does not exceed the capacity of local and regional transport facilities.*

Comment: As above, the proposed lots are consistent with the minimum lot size of PLEP 2014 which is the overarching control to limit the capacity and density of the locality. Further, as addressed in the accompanying Traffic and Parking Assessment Report, the proposed development will not result in traffic generation that will exceed existing infrastructure.

As such, the proposed development is supportable on merit, despite non-compliance with the minimum lot width and maximum gradient controls.

Clause D12.1 Character as viewed from a public place

Clause D12.1 of P21 DCP prescribes that parking structures must not be the dominant site feature when viewed from a public place, and that parking structures should be located behind the front building line.

The proposed garages are located with a nil setback to Whale Beach Road and are located forward of the 6.5m minimum front building line prescribed by clause D12.5 of P21 DCP. However, the proposed garages are integrated with the entrance to the dwellings and are limited in width to 6m or 40-48% of the width of the lots.

The application seeks to enhance landscaping within the setback between the dwellings and the road pavement, with additional landscaping proposed between dwellings. Furthermore, the garages are designed with semi-transparent garage doors, similar to other garages along Whale Beach Road, to maximise views through the structures.

Clause B6.3 (Off-Street Vehicle Parking Requirements) and clause D12.5 (Front Building Line) of P21 DCP provide variations for parking forward of the front building line on steeply sloping sites. Upon inspection of the Whale Beach Road streetscape, it is apparent that this variation has been commonly utilised on both sides of the street due to the topography of the land and available sightlines. The proposed development is considered to be consistent with the provisions of this control.

Clause D12.5 Front building line

In accordance with the requirements of this control, a 6.5m minimum front building line is applicable on this site. The proposed garages, undercroft structures and entrance lobbies are inconsistent with this control, with a nil setback to the front boundary. Clause D12.5 of P21 DCP includes an expressed variation for reduced or nil setbacks for carparking structures on steeply sloping sites. Further variations are also applicable in consideration of established buildings lines and where it is difficult to achieve acceptable levels for buildings.

The proposed variations to the front building line control are reasonably supportable on merit, as the outcomes of the control are otherwise achieved, as follows:

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

Comment: The structures forward of the front building line do not detract from consistency with the desired future character of the locality. The proposed dwellings will be secondary to landscaping and are designed to step down the slope of the land and be safe from hazards. Furthermore, the desired future character is also inferred by the character of surrounding sites and in this respect, it is noted that a significant proportion of properties fronting Whale Beach Road have reduced or nil setbacks to the street.

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

Comment: The existing front setback is highly vegetated, which obstructs ocean views available across the site. The proposed garage doors are semi-transparent and preserve views through the structures. The incorporation of 3 dwellings at the site ensures that two distinct breaks are maintained between structures for the entire length of the site, which cannot be achieved if developed as two separate sites or as one large lot.

- *The amenity of residential development adjoining a main road is maintained.*

Comment: Not applicable – the site does not adjoin a main road.

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

Comment: Landscaping is to be enhanced across the site and the adjacent road reserve, as demonstrated on the Landscape Plans by Fiona Cole Design.

- *Vehicle manoeuvring in a forward direction is facilitated.*

Comment: Vehicular movement in a forward direction is not facilitated. However, it is not required under the provisions of clause B6.2 of P21 DCP, as the gradient of the internal driveway does not exceed 1:4, as the roadway is not subject to high pedestrian use, and as the driveway length is less than 30m.

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

Comment: The site is not located within a rural or bushland area. However, the proposed development will retain the landscaped character of the existing site, with a high-quality landscaped solution proposed.

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

Comment: The proposed dwellings are skilfully designed and add interest to the existing streetscape. Despite being proposed in on application, the presentation of each dwelling fronting Whale Beach Road is unique. The proposed development provides a superior design solution for the subject site, that sits below established and proposed tree canopy and integrates with the landform and landscape.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment: As demonstrated in the perspective images by Bureau SRH provided to accompany the application, the proposed development has an attractive presentation to Whale Beach Road that positively enhances the streetscape, which in turn, improves pedestrian amenity.



Figure 14 – Perspective image of the proposed dwellings as seen from Whale Beach Road
Source: Bureau SRH

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

Comment: Carparking structures with nil and reduced setbacks to the front boundary are common features along Whale Beach Road. The proposed location of the garages is responsive to the location of the existing carparking structures at the site, other car parking structures along the street and on other sloping properties throughout the locality.

Clause D12.6 Side and Rear Building Line

The proposed development is generally consistent with the minimum side and rear building lines prescribed by this control, with the exception of the entrance structures of Dwellings B and C that are sited within the 2.5m setback prescribed. The non-compliant elements are highlighted in pink on the extract of the Third Floor Plan by Bureau SRH in Figure 15.

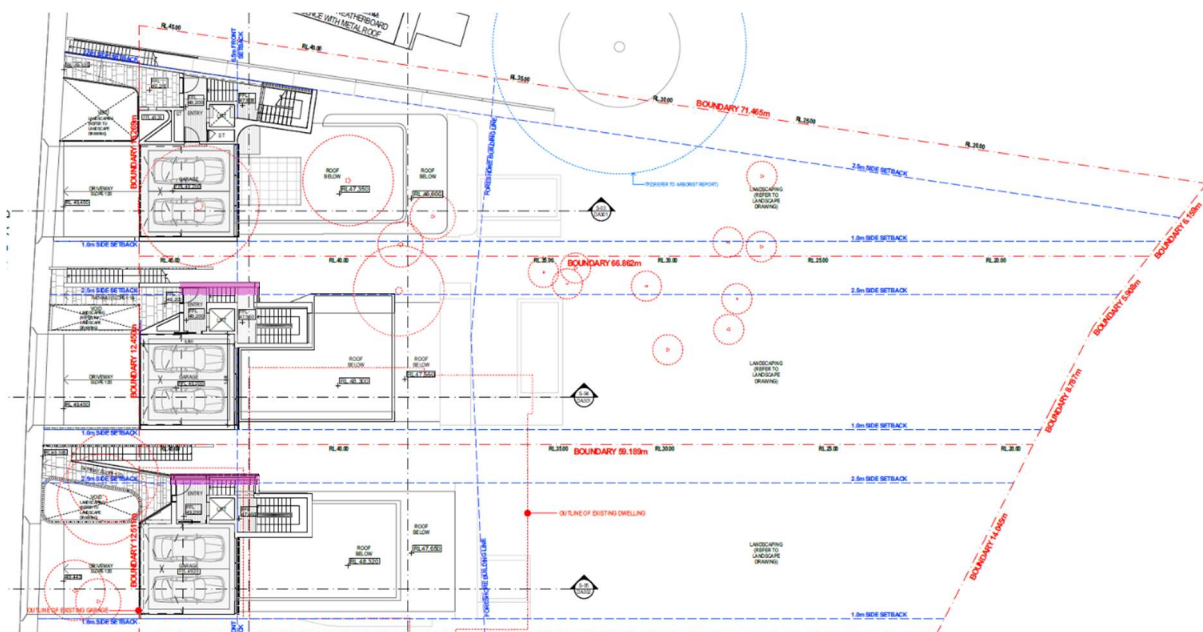


Figure 15 – Extract of the Third Floor (Street Level) Plan with side setback non-compliance highlighted in pink
Source: Bureau SRH

The non-compliances are limited in depth, and relate to proposed internal boundaries, with strict compliance achieved with respect to common boundaries to adjoining properties. As such, the consent authority can be satisfied that the non-compliances do not result in any adverse impacts upon the amenity of neighbouring dwellings.

Sufficient spatial separation is achieved between the proposed dwellings, with view corridors from the street preserved and adequate area to provide landscaping of a height and scale that is commensurate with that of the dwellings proposed. As such, the outcomes of the side building line control are achieved, despite the minor non-compliances proposed.

Clause D12.8 Building Envelope

Clause D12.8 of P21 DCP prescribes that buildings are to be maintained within a plane projected at 45 degrees from a height of 3.5 metres above existing ground levels along the side boundaries. Each of the proposed new dwellings protrude beyond the prescribed envelope on both side elevations.

However, clause D12.8 of P21 DCP provides an expressed variation for steeply sloping sites where the dwelling is located on a slope in excess of 30%. This application of this variation is justified in the circumstances of this application, as each of the proposed dwellings is situated on a slope in excess of 30% and as outcomes of the building envelope are otherwise achieved, as follows:

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

Comment: The portions of the dwelling that protrude beyond the building envelope do not detract from consistency with the desired future character of the Palm Beach locality. The height and scale of the development is stepped to respond to the fall of the land and is compatible with that of nearby dwellings.

- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

Comment: The proposed development will sit harmoniously in the streetscape. Whilst the garage and entrances structures protrude beyond the prescribed envelope, they are limited to single storey in height above the roadway and will not be perceived to be excessively or unreasonably bulky from Whale Beach Road. The proposed new dwellings are of superior architectural design, are well articulated and are to be finished with quality materials that will blend with the natural environment.

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

Comment: The height and scale of the dwelling is responsive to the natural topography of the land. The proposed development includes an integrated landscaped solution to ensure that the spatial characteristics of the existing natural environment are reinforced.

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

Comment: The proposed dwelling houses are well articulated, with deep balconies and awnings to shade the external walls of the dwelling to actively minimise the visual impact of the development. The proposed dwelling is of a height and scale that is commensurate with surrounding built form, including that highlighted in documentation supporting development consent DA2020/1420 issued in relation to 24-26 Rayner Road (Figure 16).



Figure 16 – Photomontage prepared to accompany DA2020/1420 at 24-26 Rayner Road, Whale Beach
Source: Northern Beaches Council DA Tracking

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

Comment: The building envelope non-compliance does not result in any unreasonable impacts upon views currently enjoyed by adjoining dwellings. Views to the horizon and distant headlands will be retained over the subject site.

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

Comment: The portions of the development that protrude beyond the prescribed envelope will not result in any unreasonable impacts upon the adjoining properties with regard to solar access, acoustic or visual privacy.

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

Comment: The non-compliant elements do not result in the removal of existing vegetation. Vegetation across the site is to be significantly enhanced, as demonstrated on the Landscape Plans prepared by Fiona Cole Design.

conclusion

The proposal is a well resolved and considered design solution for the site, which has appropriate 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.

The proposal involves minor areas of non-compliance with the minimum lot width, maximum lot gradient, front boundary, side boundary and building envelope controls of P21 DCP. We ask that Council apply flexibility in this regard, consistent with the provisions of 4.15(3A)(b) of the EP&A Act, noting that the outcomes of these controls are nonetheless achieved.

The proposed lots and dwellings are entirely compatible with the context of Whale Beach Road and will provide high levels of amenity for future residents, without adversely impacting on existing residents.

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



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