

## Memo

### Development Assessment

**To:** Development Determination Panel

**Cc:** Rodney Piggott  
Manager Development Assessment

**From:** Phil Lane  
Principal Planner

**Date:** 27 November 2019

**Subject:** DA2019/0309 – 257 Whale Beach Road, Whale Beach

**Record Number:** 2019/686357

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Dear Panel,

Reference is made to a typographical error on page 62 of the Agenda for the Development Determination Panel Meeting to be held on Wednesday 27 November 2019.

Under the heading SEPP (Coastal Management) 2018 the following is stated within the assessment report: -

*“As such, it is considered that the application does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.”*

The correct wording is: -

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Further, whilst no CI 4.6 variation is proposed the following assessment against the objectives of CI 4.3 is provided:

### **Pittwater Local Environmental Plan 2014**

#### Clause 4.3 Height of buildings

The objectives of this clause are as follows—

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

Comment: The proposal reflects the established built form character of the immediate Whale Beach Road and the immediate area where multi-level, variably stepped houses

are prevalent, due to the steeply sloping topography of the land.

The proposed levels will step down the site and demonstrate a height and scale that is consistent with the locality and newer housing developments.

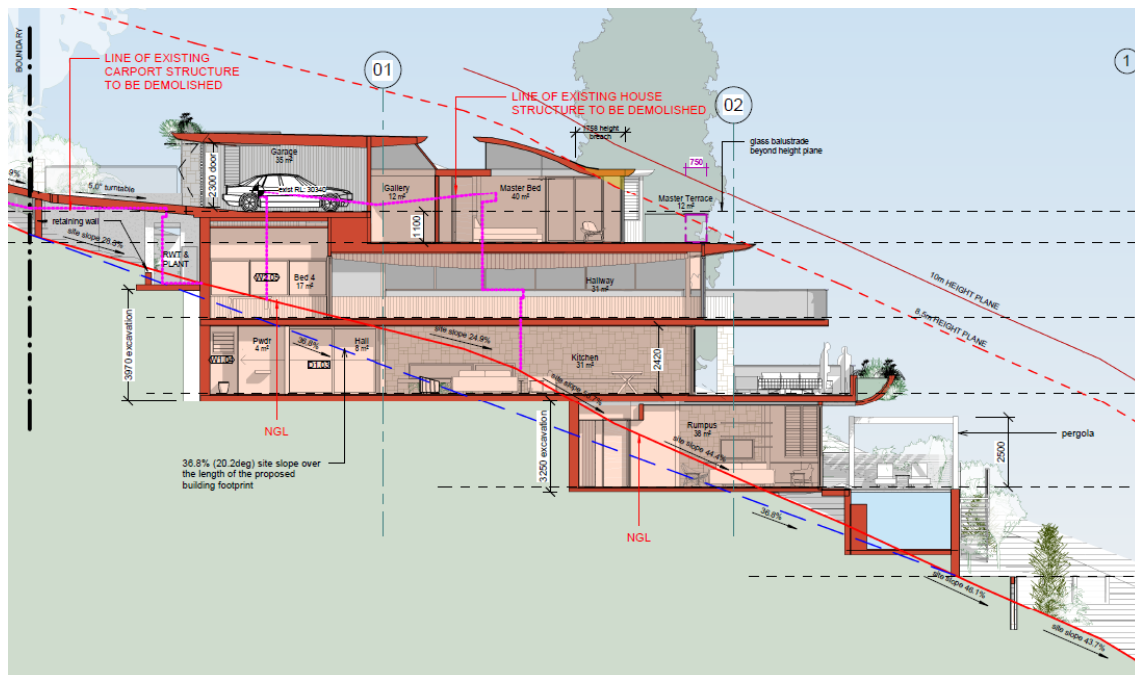
The residential nature of the development is considered to be consistent with the objectives of the standard and the urban context of the local area.

The development satisfies this objective.

(b) *“to ensure that buildings are compatible with the height and scale of surrounding and nearby development,”*

Comment: The site is located on the downward slope of the Whale Beach Road (eastern side) which is characterised by undulating topography to Whale Beach. This results in variable built forms in the area, such that there is an eclectic mix of height and scale in which to be compatible with.

The building height of the proposed dwelling varies from 5.6m - 9.5m, which demonstrates compliance with the height of buildings (8.5m – 10m) given the slope of site being developed is greater 30% (Clause 4.3(2D)).



**Figure 1.** Section through the proposed dwelling west to east demonstrating height (8.5m and 10m height limits) and slope of site.

(c) *“to minimise any overshadowing of neighbouring properties,”*

Comment: The subject site has a slope of approximately 36.89%, which is considered a steep and adverse slope. Where there is adverse slope or topography, reasonable solar access to main private open space and to windows to principal living areas will be assessed on a merit basis.

Consent may be granted where a proposal does not comply with the standard Part C1.4 Solar Access of P21 DCP, provided the resulting development is consistent with the general principles of the development control, the desired future character of the locality. The proposal is considered consistent with the desired future character of the locality for the reasons detailed in the section of this report relating to A4.12 Palm Beach Locality of the Pittwater 21 DCP 2014. The State Environmental Planning Policies relevant to this application are addressed throughout the assessment report. The proposed development is acceptable in relation to the relevant outcomes of this clause of the P21 DCP, as follows:

*Residential development is sited and designed to maximise solar access during mid-winter. (En)*

The proposed dwelling is closer to the south than the north, though this is due to the existing mature and healthy Norfolk Island Pine on the northern boundary of the development. However, the proposal is compliant with the required side building lines (subject to condition(s), with the exception of the lowest floor deck, though this does not contribute to overshadowing. Additionally, the proposal includes compliant landscaped open space on site. As such, the proposal is demonstrably of an acceptable footprint for the site. The proposed development is acceptable in relation to the relevant built form controls within the P21 DCP, for the reasons detailed throughout the assessment report. In this way, the proposed development is reasonable in its context. The proposed development, being located on an east-west orientated lot, is designed in order to provide reasonable solar access in consideration of the topography of the site and surrounding areas.

*A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)*

The proposal provides a reasonable level of solar access to the subject site and surrounding sites, considering the site's slope and context. The level of overshadowing resulting from the proposed development is a product of the steep topography of the site and the surrounding land. In this way, overshadowing impacts on the property to the south are inherently exacerbated compared to flat land.

The property to the south are particularly vulnerable to overshadowing. To require strict adherence to the solar access requirements in this case would unreasonably restrict development of the subject site. The proposed development demonstrates it is acceptable in relation to all built form controls, for the reasons detailed in the assessment report.

Further, the proposal also includes clear glazing to the proposed terraces, allowing some solar access through to the south. As such, given the reasonableness of the proposed dwelling, the overshadowing impact is considered reasonable.

*Reduce usage and/dependence for artificial lighting. (En)*

The subject site achieves adequate solar access in order to reduce its reliance upon artificial lighting. As above, the proposal provides a reasonable level of solar access to the subject site and surrounding sites, given the context of the area's topography and the vulnerability of the site's to the south.

Given the finding in this part, the development satisfies this objective.

(d) *“to allow for the reasonable sharing of views,”*

Comment: A detailed analysis was undertaken within the assessment report under Part C1.3 View Sharing of Pittwater 21 DCP 2014 including an assessment against the planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd vs Warringah Council (2004) NSWLEC 140.

From this analysis it was considered that the view impacts from adjoining and surrounding properties were negligible/minor to minor.

Given the finding in this part, the development satisfies this objective.

(e) *“to encourage buildings that are designed to respond sensitively to the natural topography,”*

Comment: The development will retain native trees and vegetation including the large Norfolk Island Pine Tree located on the northern boundary via mitigation measures to be implemented throughout construction to ensure the safe retention of this tree. The site also contains large natural rock outcrops and the eastern boundary connects to the sand dunes of Whale Beach. Given the Landscape Plan includes mostly local native species east of the proposed dwelling and pool it is considered that the proposed development demonstrates consistency with this objective.

(f) *“to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.”*

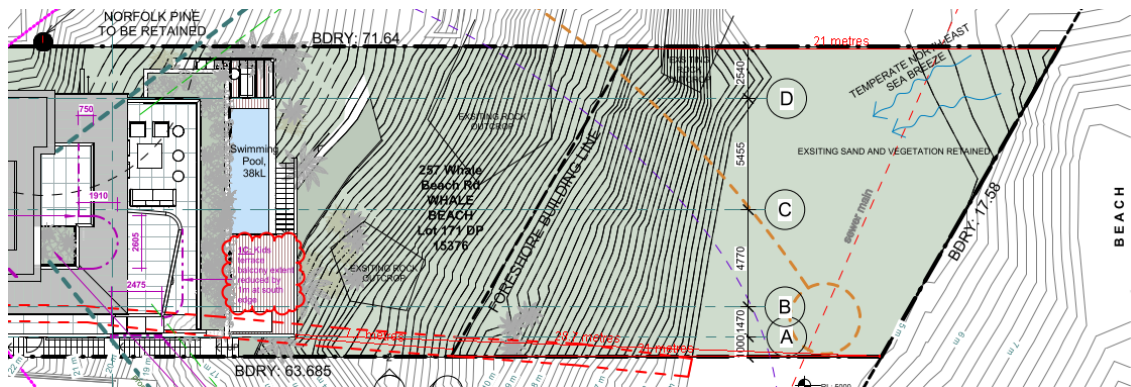
Comment: The proposal is considered to minimise any adverse visual impact given the building stepping down of the site with articulation and modulation demonstrated by the design. The development integrates adequately with the site topography (significant sloping site) and the landscape ensuring minimal impacts on the natural environment, heritage conservation areas and heritage items.

The development satisfies this objective.

#### Principles Development Standards

Development Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m - 10m*	5.6m -9.5m*	N/A	Yes
Foreshore Building Line (FBL)	FBL (21m west of rear boundary)	Outside FBL (7.7m behind FBL & 28.7m from rear boundary)	N/A	Yes

Note: Refer Part 4.3 Height of buildings



**Figure 2.** Rear section of the proposed development demonstrating the Foreshore Building Line (FBL) and the distance of FBL from the rear boundary (21m), the distance of the development from the rear boundary 28.7m and the distance of the development behind the FBL (7.7m).