



The Palm Beach & Whale Beach Association Inc.

www.pbwba.org.au | PO Box 2 Palm Beach NSW 2108

CONSERVATION ZONES REVIEW

SUBMISSION TO NORTHERN BEACHES COUNCIL

7 November 2022

1. Introduction

PBWBA is thankful for the opportunity to put forward its views on the Council's Conservation Zones Review. The Council is to be commended for providing a very detailed consultants' report with an LGA-wide view of the conditions and methodology for recommending the adoption of a single code of Conservation Zones across the LGA.

The Palm Beach & Whale Beach Association Inc represents the residents and businesses of a particularly beautiful part of the Northern Beaches LGA and has done so for more than 100 years. Its views necessarily concentrate on its area of responsibility of the suburbs of Palm Beach and Whale Beach, although the Council would, we believe, be justified in applying the analysis PBWBA has provided for these two suburbs to other areas of special natural beauty within the LGA, such as Avalon, Bilgola and Bilgola Plateau, Clareville, Newport, Collaroy Plateau, Church Point and Bayview, Seaforth and Clontarf.

The Council's statement of its purpose is: - *"to work with the community to conserve, protect and enhance the Northern Beaches' natural and built environment and to improve the quality of life for our community now and in the future through the application of appropriate building and development controls"*. (Planning and Development website)

and

"Our spectacular coastline and natural bushland are home to around 75 threatened native plant and animal species and significant Aboriginal sites. This makes Northern Beaches a unique living environment with precious features that are vulnerable to pressures from development, pollution and climate change" (Environment webpage).

Palm Beach & Whale Beach Association fully supports these aims.

2. Outline of Conditions and Risk Factors in Palm Beach and Whale Beach

As the Meridian Urban document points out, the suburbs of Palm Beach and Whale Beach possess a number of significant attributes, some positive and some negative. The former LGA of Pittwater is one of the most beautiful areas in Sydney. The factors behind its beauty are its setting on the shores of Pittwater and the Pacific Ocean, its views up and down the coast and over Broken Bay, its connection

with the Hawkesbury River system, its green environment as one of the areas with the densest tree cover in Sydney, its bushland surroundings of Ku-ring-gai and Gadigal National Reserves and its rugged landscape, giving many scenic viewpoints from which to view the surroundings.

Palm Beach and Whale Beach sit at the end of a narrow but rugged peninsula on the north-eastern shore of Pittwater. It is almost entirely a residential area, with no industry or major shopping centres but with its beaches, ferries, walks, parks and open spaces and leafy environment, it is a popular destination for visitors. The residential area almost entirely comprises single dwellings, with a little shop-top housing, two blocks of units and a single group of town houses.

Palm Beach has two significant nature reserves, McKay Reserve and Sunrise Hill Reserve, several smaller reserves, including the Annie Wyatt Reserve (named after one of the founders of the National Trust) and clifftop areas of bush and heathland. Tree canopy cover is well above the Sydney average and should be separately mapped. Whale Beach has a nature reserve, Morella Reserve, and similar clifftop areas as Palm Beach but has a lower degree of tree canopy cover.

With its assets and topography, there are a number of hazards: -

- There is a central area of Vegetation Class 1 in McKay Reserve, together with a smaller area on the southern flank of Barrenjoey Headland (Map 6 on page 79 of the Meridian Urban Review);
- Fire risk is a significant problem because of the central position of McKay Reserve; it is within reach of embers from any fires in Ku-Ring-Gai Nature Reserve, blown by dry westerlies or south-westerlies; the nearest fire-station is Avalon (but a NSW Fire & Rescue Community Fire Unit is located beside the Reserve).
- A substantial portion of the coastline in Palm Beach and Whale Beach is subject to coastal hazard (Technical Studies Layer Mapping).
- A significant proportion of both suburbs is in a slip zone (Technical Studies Mapping);
- Access is poor in both suburbs because of narrow twisting and steep roads, often made more difficult by on-street parking.
- Houses on low-lying areas, particularly along Iluka Road, Palm Beach could become exposed to inundation as sea levels rise.
- Infrastructure is limited and there is only one access road to the outside world for the two suburbs, Barrenjoey Road. Evacuation of any significant part of the two suburbs would be a severe challenge because of Barrenjoey Road, which can be subject to traffic jams and gridlock, even on just an ordinary summer sunny Saturday. Barrenjoey Road is also subject to flooding from Careel Creek.
- Public transport is limited, both in hours of service and geographic coverage; the bus service operates only on Barrenjoey Road, except for a school bus service on Whale Beach Road which frequently cannot get through due to parked vehicles.

Summing up the effect of the hazards, the Meridian Urban report said: - *“A criterion for land to be included within the C3 Zone in the Northern Beaches is land exposed to natural hazard that is unsafe for people and vehicles and where buildings may be subject to failure. As such allowing additional buildings in these locations would allow for additional people and dwellings to be located in locations that may be unsafe for people and property”*.

We will need to refer further to this aspect of the Review.

- As a positive measure, there are considerable numbers of biodiversity corridors throughout both suburbs (Technical Studies Mapping) as well as the significant tree canopy.

However it must be pointed out that, if the various categories of mapping in the Technical Studies Mapping are overlain, one on another, the cumulative effect is that almost the entirety of the two suburbs is either a natural hazard area. or possesses biodiversity corridors and as a consequence should be covered by the one conservation zone.

3. Scoring of the Criteria Definitions for the Zones

In the methodology for determining the appropriate zones, each of the criteria is allocated a score, with a total of 1 required to determine whether a particular area falls into a Conservation Zone. Those that do not reach a score of 1 fall into the R2 Zone. However for reasons not explained, Bush Fire risk is not seen as a hazard for C4 Zones. This is an unreasonable position to take for a number of reasons: -

- First, only one of the 8 quoted High Environmental Values can apply in Palm Beach and Whale Beach– namely Heritage Conservation Area (outside the C3 zone) and only one of the three MEV’s - the Geotechnical Planning Class – can apply - the other Values do not occur in the area; this makes it difficult to classify so much of these two suburbs as C3.
- Second, the extent of tree cover, one of the highest in Sydney, extends the bush fire risk zone considerably.
- Third, the exclusion of secondary dwellings in C3 Zones is unreasonable for the types of dwellings and their use in both Palm Beach and Whale Beach (perhaps the Council could include attached secondary dwellings as an acceptable alternative form of development in the LEP.
- Fourth, for C4 zoned properties to be regarded as falling outside the fire risk zone is not based on experience nor on proper evaluation of the risk – properties proposed to be zoned C4 and R2 on Bynya Road, Cynthea Road, Ebor Road, McKay Road, Pacific Road and Ralston Road plus Sunrise Road and Northview Road will be exposed to fire risk if McKay Reserve or Sunrise Hill Reserve catch fire. It would appear to be contrary to the methodology to classify these properties as outside the danger fire zone because they are C4 or R2, rather than to classify them as C3 because of their exposure.

The fact is that both McKay Reserve and Sunrise Hill Reserve are ridgetop nature reserves, exposed to westerly and sou-westerly winds and within reach of fires on Ku-Ring-Gai National Park. Embers will blow over Pittwater to Palm Beach as they have on many occasions in the past. McKay Reserve has a sloping wooded slope on its western side, funnelling any fire up and over the ridge and below it on the eastern side for its southern half is another reserve, Morella Reserve.

This fire risk is by far the most damaging risk faced by Palm Beach and Whale Beach residents – the others being inundation or flooding which can be moderated and land slip - the last major land slip was more than 30 years ago (but there have been numbers of minor landslips along the roads caused by similar conditions to what we are experiencing now). This argues for reweighting the bush fire risk rating as 1 in the criteria for all conservation zones and we recommend this change.

The conclusion from this is that ideally properties on Bynya Road, Cynthea Road, Ebor Road, Pacific Road and Ralston Road and for at least 200 metres east or north of those roads where at least 25% of the site is within the fire risk zone, should be zoned C3, in recognition of the gravity of the risk. A vegetation buffer zone is inadequate as a response – insistence on planting with indigenous species increases the risk of fire.

(Note - 25% has been suggested because of the risk that a fire on even as little as 25% is likely to impact on the house and cause damage to it and risk to inhabitants – a significant proportion of the houses in these suburbs incorporate timber construction. However the inclusion of any specified proportion is misleading because of the unpredictable way in which wind and weather can change and vary during a serious fire. A “broad brush” approach which recognises this factor is preferable).

4. Features of the Proposals

The following figures come from Pittwater Online News of October 2-15, Issue 557 which states “Planners told the Council...”. Of the 3671 houses proposed to be affected by the proposals, 3616 are in Pittwater Ward = 98.5% of the total affected, with supposedly only 1 C-Zoned property in Warringah and 54 C-zoned properties in the former Manly Municipality being rezoned. However these figures are distorted because the former Warringah Shire did not have any C Zones other than Cottage Point but many lots in their zone equivalent to a C Zone will be converted to R2.

The numbers in Palm Beach and Whale Beach as supplied by the Council are as follows

<i>Proposed Change</i>	<i>Palm Beach</i>	<i>%</i>	<i>Whale Beach</i>	<i>%</i>	<i>Total*</i>
C4 to R-Zone	280	22	122	29	379
C4 to C3	300	24	70	16	369
R2 to C3	23	2	-	-	23
Unchanged C4	660	52	234	55	787
Total	1263	100	426	100	

*These totals do not add up because suburb boundaries were not included in the master cadastre used by the consultants and some properties fall both sides of suburb boundaries.

People are not informed of the meaning of “Residential” – its criteria and characteristics are not described in the Review. How can property owners whose properties might be converted to “Residential” comment meaningfully on the proposals when they don’t know what it entails? It may be likely to be “similar” to R2 but no detail is provided as to what may be permitted or prohibited upon which a decision can be made.

5. R2 Zoning

The existing category of R2 Zoning has a number of features which make it unattractive or unacceptable to residents in Palm Beach and Whale Beach: -

- It does not have, as one of its purposes, the preservation or protection of environmental values of any kind – it does not even refer to environmental, ecological, scientific, cultural, aesthetic or scientific values. For these R2 zones to sit in the middle of Palm Beach and Whale Beach, within close reach of or adjoining nature reserves and in an area of great natural beauty is not recognising the nature of the area and is not acceptable to the residents of these two suburbs.
- So far as planning rules are concerned, this zoning means that (i) no D/A’s are required for complying developments so residents will have no idea what is being built beside them and no say in the matter and no chance to make their views known – the decision is again in the hands of private certifiers and that has been found to be unsatisfactory; (ii) there are lower requirements for parking onsite meaning more congested roads and gridlock, and (ii) there will be reduced setbacks, meaning structures will be closer together and more trees will be lost.
- There is no quantification of what the “Residential” zoning entails so it is not possible to make any constructive comment on its implications for the two suburbs.

- Finally, we refer the Council back to the comment on C3 Zones quoted earlier (on page 2) and to our comments earlier on fire risk, our greatest risk. Although it is not the current intention of the Council to allow greater density in the R2 Zone, the regulations for that zoning expressly provide for increased density and Government pressure is directed towards increasing density. The area is simply not appropriate for zoning for increased density of housing, for the same reasons that secondary dwellings are currently not allowed in the C3 Zone and that development of Ingleside has been abandoned – it would put lives and property in danger, as well as damaging the conservation values of the area and the area does not have the infrastructure to support greater density. If it does not make sense to permit secondary dwellings in C3 zones because it would increase density, how can it make sense to introduce the potential for significantly greater density in fire-prone areas where egress in case of emergency would be even more difficult?

6. Mapping

Without checking more than a sample of properties, anomalies and inconsistencies have emerged. For example, 15 Waratah Road, Palm Beach, a coastal property, is zoned C4 in a street otherwise exclusively C3; nos. 21, 21a and 23 Palm Beach Road are zoned Residential but are surrounded by C3, C4 and B1 zonings. There are more and the evidence suggests that the mapping itself should be revisited and perhaps what is called “ground-truthed”.

One implication of the mapping is that where there are two properties classified as, for example, C3 in an area of C4-zone properties, the two properties should be classified as C4. This would seem a logical step but it should not stop at two and we would suggest that this situation has occurred sufficiently often that the algorithms which have resulted in these anomalies should be revisited.

Some lots, e.g. 256, 265 and 270 Whale Beach Road, show a small strip of Residential zoning along the street frontage or along one boundary – not enough to build a garage on, with the rest of the lot shown as C4 or C3. These anomalies should be removed.

7. Foreshore Scenic Protection Area

Given the importance of the natural environment on Pittwater, Sydney Harbour and adjoining the Pacific Ocean, it is recommended that the former Pittwater Foreshore Protection zoning overlay be reinstated and extended to the former Manly and Warringah LGA’s or alternatively that the Manly Foreshore Protection Zone be extended to the other former LGA’s in order to provide an appropriate planning framework that recognises the need to protect the features of the natural environment and the special character of these areas.

It should have the following objectives: -

- To recognise and protect the natural and visual environment of Sydney Harbour, Pittwater and the Pacific Ocean (within the Northern Beaches LGA);
- To reinforce the general domination of the landscape over the built form;
- To ensure that development on land to which the clause applies is located and designed to be of appropriate bulk and scale to minimise the visual impact of those developments (= “low impact residential development”) and prevent blocking of views and public access to the water;
- To ensure that the Council as consent authority does not grant consent unless it is satisfied that measures will be taken, including in relation to the location and design,

to minimise the visual impact on Pittwater, Sydney Harbour and the Pacific Ocean and the development will maintain the existing landscape and landform.

We believe that this measure is essential for the protection of the special character of the LGA.

8. Conclusions

- (a) For all the reasons mentioned in the previous section, our conclusion is that any moves to rezone properties as R2 or Residential would be inappropriate and would lead inevitably to increased density. The reasoning is exactly the same as the reason given by Meridian Urban for introducing the C3 zoning in what it views as the main areas of natural hazard, as quoted on page 2. The concern is increased by the effect of the Low Rise Medium Density housing policy introduced by the Government in 2018, which specifically applies to R2 zoning and presumably to the Residential zoning put forward in the report. This policy not only encourages forms of housing which are not included in the current housing mix but it encourages development in a manner which avoids public scrutiny which is a feature of the D/A process; this lack of transparency would be totally inappropriate.
- (b) The purposes for which Zones C3 and C4 are established are very similar and are primarily focussed on the protection of environmental, scientific and aesthetic values. In our view these values exist all across the suburbs of Palm Beach and Whale Beach and justify the use of these zones exclusively across the two suburbs. The purposes for which land may be used in those two zones are also very similar, with the main difference of secondary dwellings. It should be noted that Ku-Ring-Gai Council obtained the advice of the emergency services on this point and was advised that the presence or absence of secondary dwellings made no significant difference to the risks in those zones.
- (c) The use of environmental hazards/processes as a planning criterion was included in the State documents such as PN 09-002 but only in relation to what is now C3 zoning; its applicability was where “highly constrained land where elements such as slope, erodible soils or salinity may have a key impact on water quality within a hydrographic environment”. The range of hazards and their applicability to C4 zoning has obviously been expanded since that P/N and that is not an unreasonable approach; we would not raise any argument on that ground.

We recommend that for the reasons spelt out above, the appropriate solution is to maintain the current C4 Conservation Living zone over the whole of the two suburbs (including the current small R2 zones) and excluding only the current B1, B2 and RE1 zones. The current foreshore building line should be maintained and the current restrictions on development in the area between the foreshore building line and the mean high-water mark enforced.

We also recommend that the Council should introduce a Foreshore Scenic Protection overlay for the area between the mean high-water mark and the nearest ridgeline. This would ensure greater protection for the environmental, scientific and aesthetic amenity of those areas which are, after all, included in the aims of the LEP: -

- *“To promote development in Pittwater that is economically, environmentally and socially sustainable”;*
- *“To protect and enhance Pittwater’s natural environment”.*

This overlay would be in similar terms to the equivalent area in current Manly, Mosman and George’s River LEP’s, with the important benefit that the areas in Palm Beach and Whale Beach are of at least equal environmental value to the equivalent areas in Manly, Mosman or George’s River due to its

portfolio of nature reserves, great environmental diversity, higher tree cover and coastal bushland and heathland. The overlay would provide greater protection for the existing green environment and against over-development.

The overlay could be used to restrict development of e.g. secondary dwellings in what might otherwise have been C3 zones but it would be preferred that attached secondary dwellings be permitted, perhaps as an acceptable alternative use but subject to a prohibition of subdivision.

These recommendations would provide a better balance of risk management against natural hazards, better preserve the current locality character, including the natural environment, and enable development which is environmentally sustainable.

They would also strengthen the Council's control over minimum lot sizes in the LEP to provide for buildings, pedestrian and vehicular access and landscaping and Council's power to retain the topographical natural features of the LGA.

We commend the recommendations to the Council.

PBWBA appreciates the opportunity to put forward this submission and to contribute to the consideration of this most vital topic in the lead-up to a consolidated LEP.

Yours Faithfully

A/Prof Richard West AM

President, Palm Beach & Whale Beach Association