Corporate First®
Lawyers

Date: 9 February 2023

Your Ref: MCU/2002/588

Council of the City of Gold Coast
Attention:
Zoe Lewis and
Adam Brown
Supervising Planner (South)

By Email: zlewis@goldcoast.qld.gov.au

Dear Sir/Madam

**Visual Amenity of Currumbin escarpment compromised by proposed 5 level development MCU/2002/588 at 776 Pacific Parade**

We act for the community group Save Currumbin which has had almost a million hits on its Facebook pages and associated website SaveCurrumbin.com showing strong community support for the group's efforts to preserve the unique green signature by placing reasonable limitations on over- development along the Currumbin strip that may otherwise deface or obstruct the green ribbon of vegetation along the Currumbin Hill escarpment between Woodgee Street and Pacific Parade. The proposed 5 level development MCU/2002/588 is therefore a concern to the community.

Save Currumbin is also very concerned about the safety to users of the council path at 774 Pacific Parade from risk of landslide and falling limbs from vegetation from 776 Pacific Parade as the developer has indicated he intends to remove the existing vegetation and plant gum trees in its place. Allowing such vegetation clearing and planting is obvious negligence risk for council in the event of foreseeable accidents causing damage to property and injury to the public.

We appreciate that at present the DA has been lodged as code assessable but that in one of your letters to the developer you have suggested it may be better that it amend its plans or lodge as an impact assessable application. (We believe the latter is preferable as then council can receive more feedback as to the community's concerns and risks associated with the proposed development on many fronts).

**Landslide hazard overlay Code**

This foreseeable risk to injury to the public as well as property owners and therefore legal liability of council is heightened during high rainfall events that are now common in the area because that saturates the loamy soil that sits on a bedrock which leads to landslip and landslide as recently witnessed at the Nippers development (see attached video) and the recent landslide that occurred two doors down to the South on the escarpment. The council is at serious risk of liability for property damage and personal injury by reason of these risks particularly as Council has failed to build any adequate retaining wall to the public path adjacent to 776 steep and dangerous slope that already shows dangerous soil creep to SE from the

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subject land's Western slope. It ought do so now and make it a condition of the DA that the developer link the Western part of their proposed new walls to that retaining wall in SE corner of the block where the risk of landslide is greatest.

The interstate developer has already started to cut down vegetation there that protects the loamy unstable soil from moving Southeast toward the well-used council beach steps along 774 Pacific Parade.

Stopping or constraining the removal of existing vegetation (particularly during construction stage when there is no effective retaining walls to hold back saturated soils from landslide SE) is likely to avoid foreseeable risk to people from injury or death from landslide from this **High risk** of landslide slope under the councils own mapping and code and which provides the unique green band amenity visible from Currumbin Beach (See below- particularly Figs 11 and 19 ) that ought be preserved in any event.

We note that nowhere in the reports accompanying the proposed DA is there evidence of the soil and bedrock in the 110 sqm area on the Western steep slope of 776 Pacific Parade or any material methodology to avoid the serious risk of landslide (especially during construction) on what is designated under current and proposed landslide hazard mapping as at a HIGH risk of landslide. The Geo tech reports are therefore inadequate. A more serious examination of this needs to be undertaken in conjunction with the council's legal responsibilities as neighbour at 774 Pacific Parade as part of any development approval not only for the safety of the public using the adjacent public steps but also for all property owners on the hill behind 776 Pacific Parade whose properties are at risk of foreseeable damage from landslide on 776 Pacific Parade especially during but also after construction of the proposed development as there already exists numerous precedents of landslide within a few hundred meters of the proposed development in recent years (see attached video of just one example).

**Ridges and Significant Hills Protection Overlay Code**

The following are relevant excerpts (in parentheses) from an analysis that was prepared for **Save Currumbin** via its consultant Greg Ovenden of Reel Planning by amenity expert **Nick McGowan of Insight Design and Assessment Services** on 7 November 2019 for the purposes of making submissions to council to limit building heights along Pacific Parade to 12 M to be consistent with the applicable laws that are designed to protect the visual amenity along the Woodgee Street- Pacific Parade escarpment interface- a proposition that was passed unanimously by Council and is awaiting State Government sign off as part of the overall review of the City Plan.

Save Currumbin has been told by the State Minister Steve Miles office that he is willing to sign off on height restrictions of 12M for Currumbin if Council can word an appropriate resolution to pass the amendments to the Council City Plan just as they relate to Currumbin-Tugun. We are pursuing that avenue.

The observations made in Nick McGowan's report are highly relevant and compelling to constrain the development submitted to Council MCU/2022/588 (DA).

We submit that these excerpts are germane to any proper evaluation and imposition of special conditions by the planning department of Council of the City of Gold Coast in assessing any DA on 776 as against code assessable performance outcomes and we commend them to you to assist you in evaluating the DA application by reference to the relevant laws and principles especially the **Ridges and Significant Hills Protection Overlay Code** and the Strategic Framework.

The thickly vegetated steeply sloped area behind 776 Pacific Pde (formerly the site of the iconic low rise and tastefully designed Elephant Rock Café) is part of the unique green topography of the Currumbin escarpment and is thus a sensitive character area (part of the Study Area and Character Area C of the Currumbin Hill escarpment referenced herein particularly in Figs 11 and 19) that helps define Currumbin as a unique green low rise beach village.
It is designated as one to be specially preserved under **Ridges and Significant Hills Protection Overlay Code.**

Also, as the steeply sloping vegetated slope in the 100 sqm to the West of the proposed development is designated **as High risk** under the **landslide hazard overlay map and associated code** in the City Plan any de-vegetation of that area is likely to increase the risk of landslide adjacent to a Council path.

**Summary**

It should be a condition of any development approval that these risks are reasonably mitigated and that the visual amenity is not compromised and that may of necessity mean not only preservation of vegetation under the Code and a prohibition on planting gum trees but also that heights are to be restricted to 3-4 levels under 12-15 M in total and not just in one plane from NGL (which metric must be read strictly in this case to 3 storeys/3-4 levels – not 5 as presently envisaged in conjunction with and subject to the **Ridges and Significant Hills Protection Overlay Code**, if the code is to have any meaning or effect).

It is submitted that allowing any development on 776 land above 12-15 M from the road level height (not natural ground height) and that lodged with council on 31 January 2023 as part of MCU/2022/588 that has a 5th level, will largely ***obliterate the views of the important vegetated slopes to the West of the land*** *and so* ***ruin the distinctive visual amenity of the vegetated escarpment that is a signature of Currumbin Hill*** that runs from Murraba Street uninterrupted to 774 Pacific Parade (Council steps from the beach to Woodgee Street- see Figs 11 and 19). The development ought be constrained by a proper application of the **Landslide hazard overlay Code** and the **Ridges and Significant Hills Protection Overlay Code** and **the Strategic Framework.**

**Relevant Excerpts from Nick McGowan of Insight Design and Assessment Services**

", it is clear that Currumbin is a particularly attractive part of the Gold Coast, owing to the confluence of prominent and appealing landscape features (the creek, headland, beach, Currumbin Hill, and vegetated slopes). The unique character and important visual qualities of Currumbin are recognised in a number of recent studies, including the LCS, and reflected in the **planning scheme**, where it is identified as one of only nine Landscape Character Areas across the city, and one of only two areas that are explicitly protected by the **Ridges and Significant Hills Protection Overlay**.

Throughout the current planning scheme there is an abundance of higher-level provisions (those in the **Strategic Framework** and well as overall outcomes of **Zone Codes**) which aim to protect the character and visual values of local areas and of the city generally. These higher order provisions are generally reinforced by the **Building Height Study prepared for Council in 2017 (BHS)**. While many of these provisions are not specific to any locality, some (particularly those in the Strategic Framework) are particularly applicable to Currumbin and the study area.

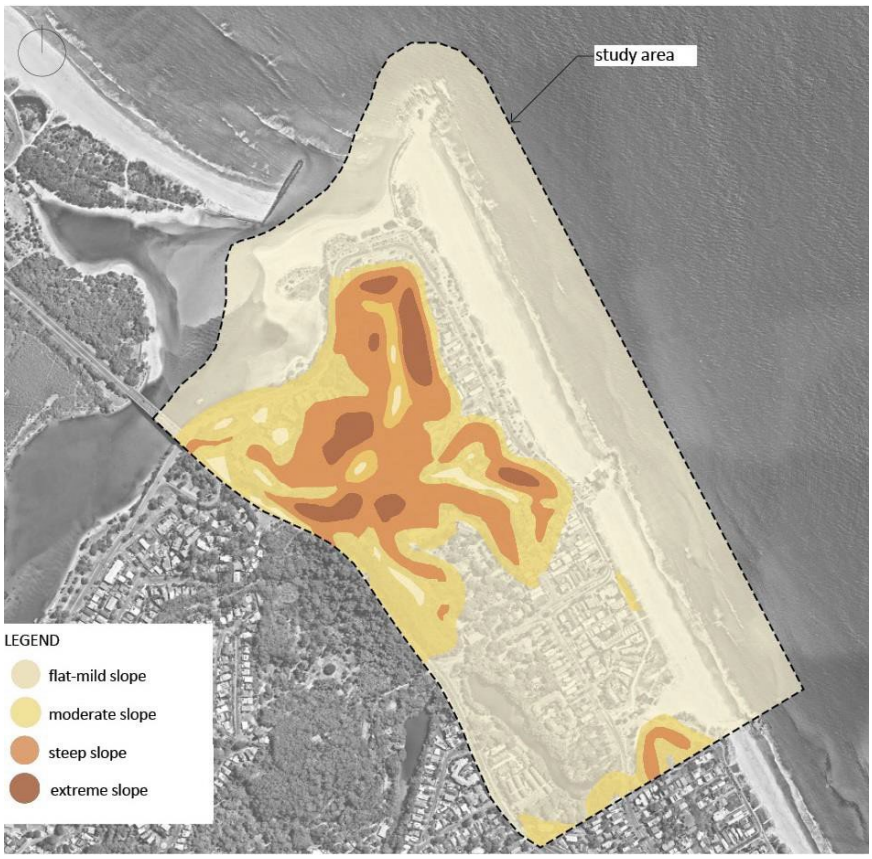


Figure 4 – Slope

The topography and landform of the area varies from *steeply sloping hillsides and forested ridgelines of Currumbin Hill to lowland and flat coastal beach* (refer Figure 4). It is this variation in topography that simultaneously provides unique development opportunities in the area (including opportunities for expansive views), as well as *development constraints that would ordinarily affect the scale and form of buildings* in the study area. The ridgeline extends beyond the study area, continuing to the hinterland as one of the city's main topographical features.

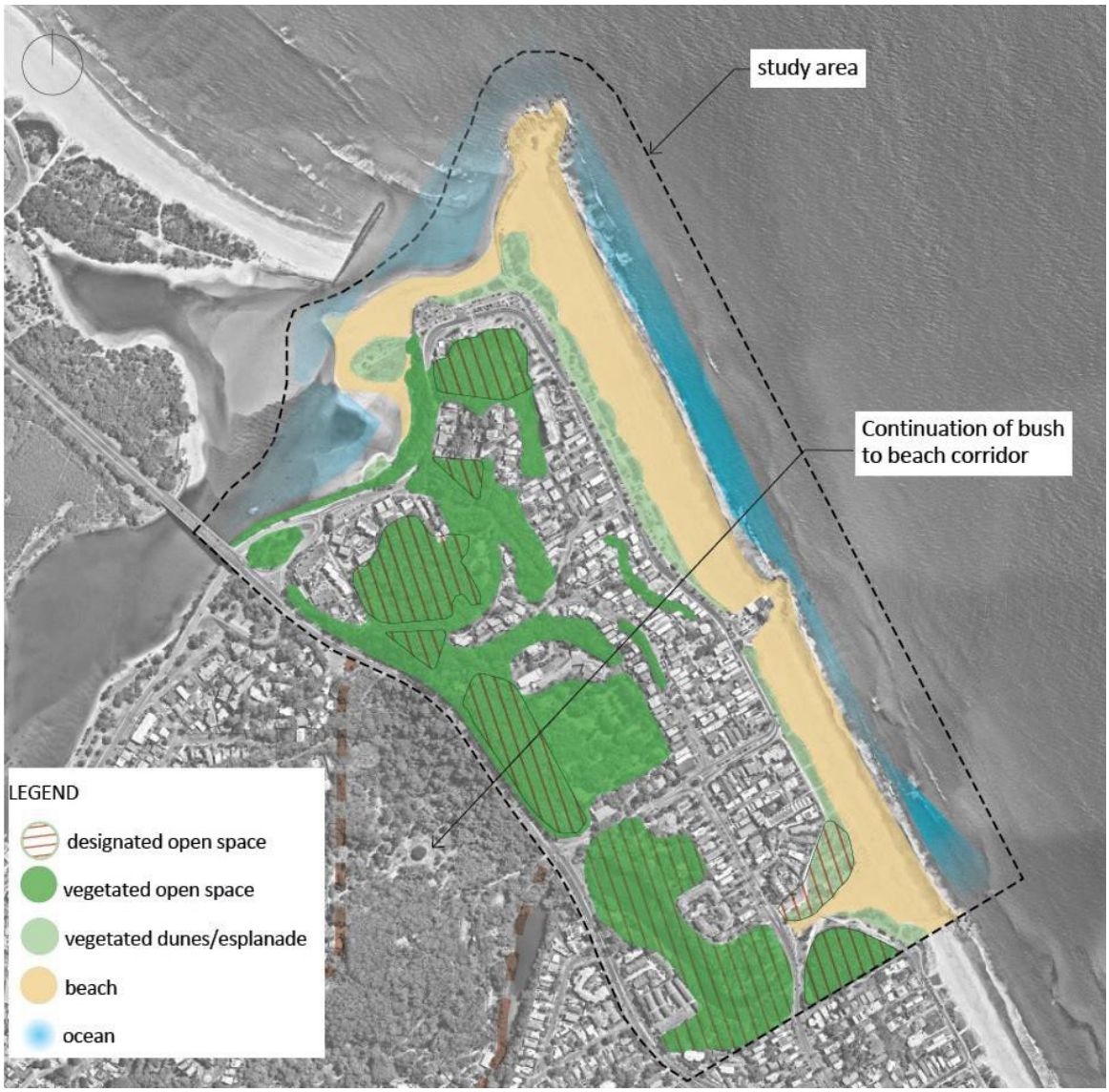


**Figure 5 - Prominent open spaces.**

The confluence of significant open spaces, including the vegetated open space across Currumbin Hill, the vegetated dunes, and the beach, ocean, and creek (refer Figure 5) collectively provide an attractive frame and setting for built form. ***Visua***l and physical ***access*** to these spaces is **one of the main contributors to the high levels of amenity of the locality.** Like topography, the open spaces provide unique opportunities for development in the area and would also ordinarily *constrain the extent and scale of built form*.

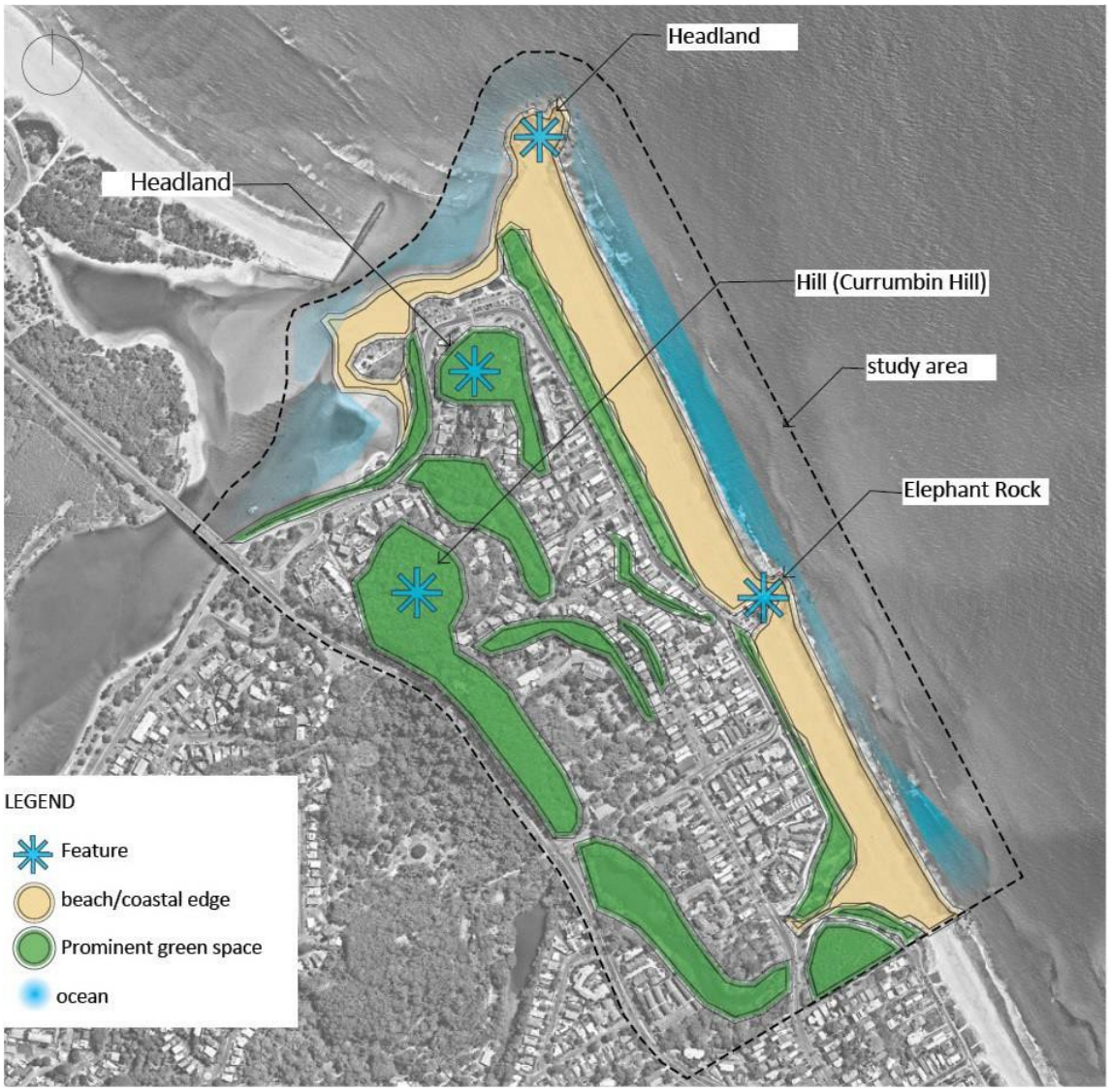


**Figure 6 - Key landscape features**

A number of open spaces are defined by identifiable landscape features which substantially define and contribute to the character of the area (refer Figure 6). These include the rocky headlands along the beach, Currumbin Hill, and a unique layering or stratification of open spaces.

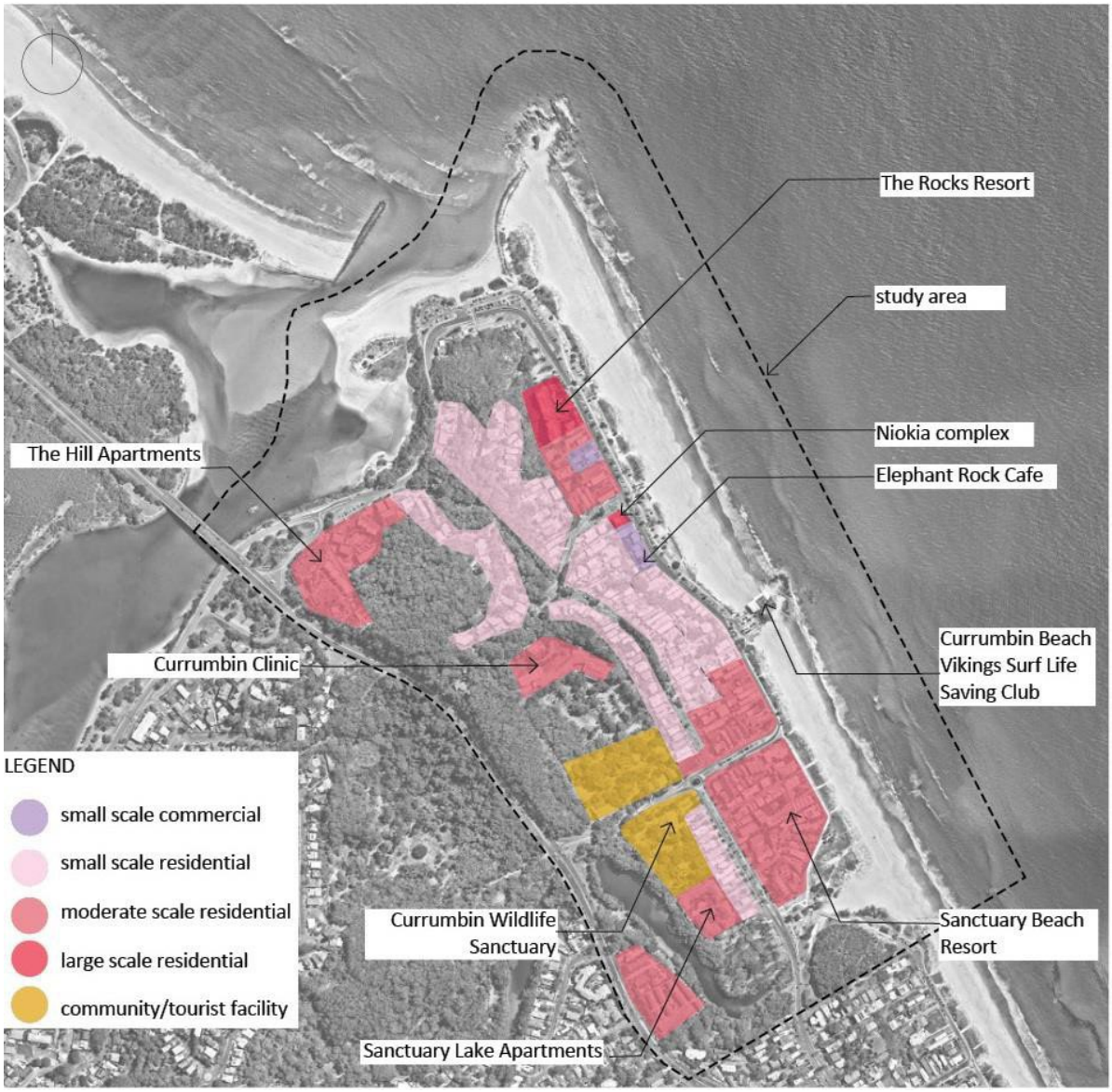


**Figure 8 - Built form.**

The area currently accommodates a diversity of land uses and built form (as shown on Figure 8). While there are some built form anomalies in the area, there is also some order resulting from the clustering of similar uses and forms. For example, there is recognisable consistency in building scale and form between Woodgee Street and Pacific Parade

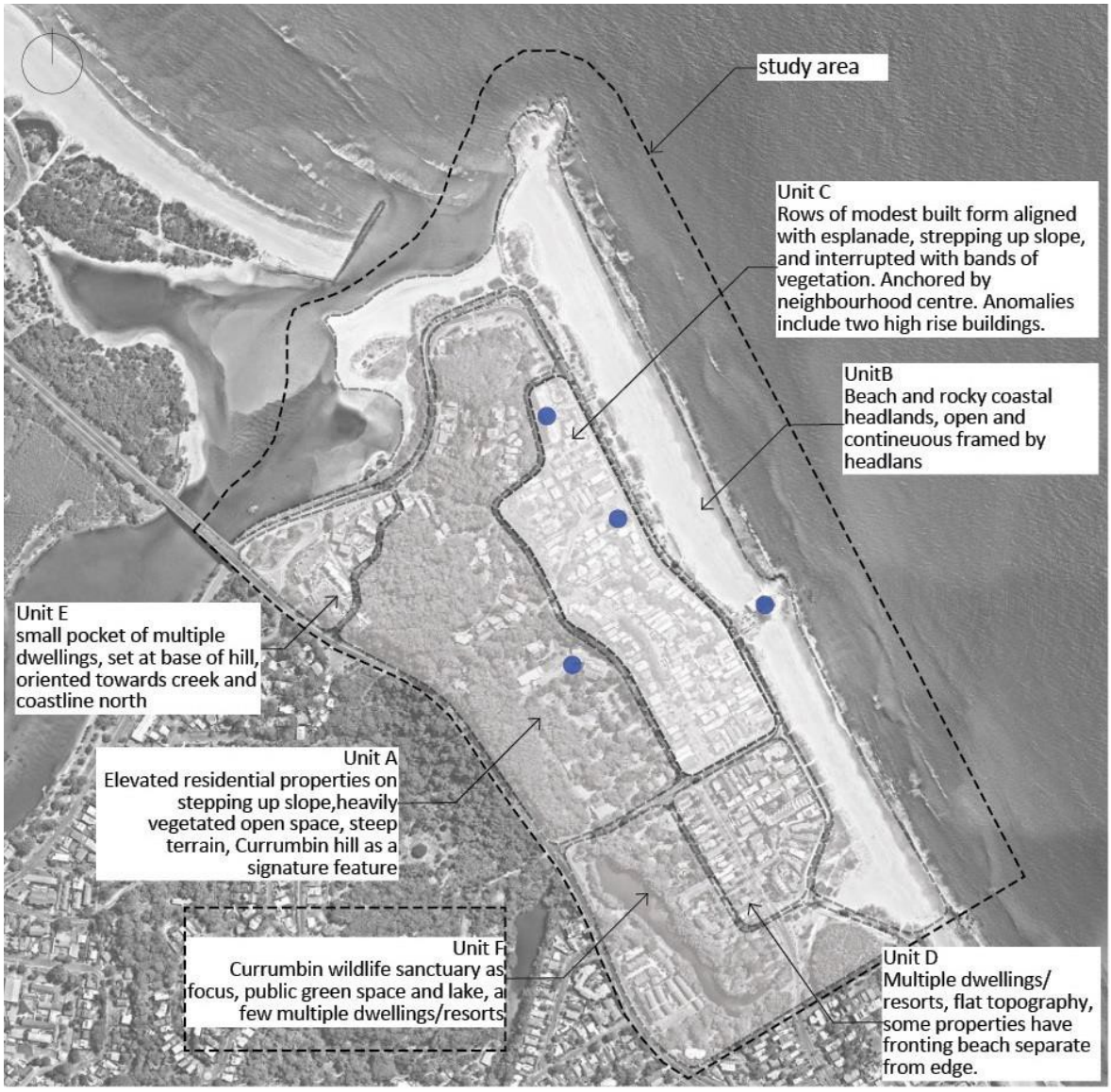


**Figure 9 - Character units within study area.**

It is clear that Currumbin generally and the study are more particularly benefits from an attractive and well-defined character, punctuated by a number of attractive landscape features and landmarks. The **features and qualities warrant protection from development that may erode those features and values, for example: by obscuring views to the identified landscape features** (including the ***banding of vegetation and skyline vegetation***); built form that was incompatible with the prevailing scale, particularly along the esplanade interface; or *development that resulted in degradation of landscape features, such as removal of skyline vegetation or substantial modification of topography*.

The characteristics identified above combine to create what we believe are five discrete character units through the study area. These are identified and described on **Figure 9**. Of particular note, **Unit C**, which includes **the Neighbourhood Centre**, *presents a unique and clear character comprising an obvious pattern of built form along Pacific Parade, then a clear band of vegetation on the steep slopes behind*, then another band of low rise built form, then another band of vegetation in the form of skyline vegetation along the local ridges and Currumbin Hill (illustrated in Figure 19). This *unique pattern of development is most apparent from the beach and ocean but is also observable from viewpoints along Pacific Parade*.

**Unit C** is also characterised by the ***appealing human-scale built form along Pacific Parade***, which ***is predominantly 2-3 storeys and 9-12 metres high***. This built form reflects a uniquely modest scale (historically limited by topography and vegetation) and a

tight arrangement of built form (owing to the lot configuration and the sinuous alignment of Pacific Parade).

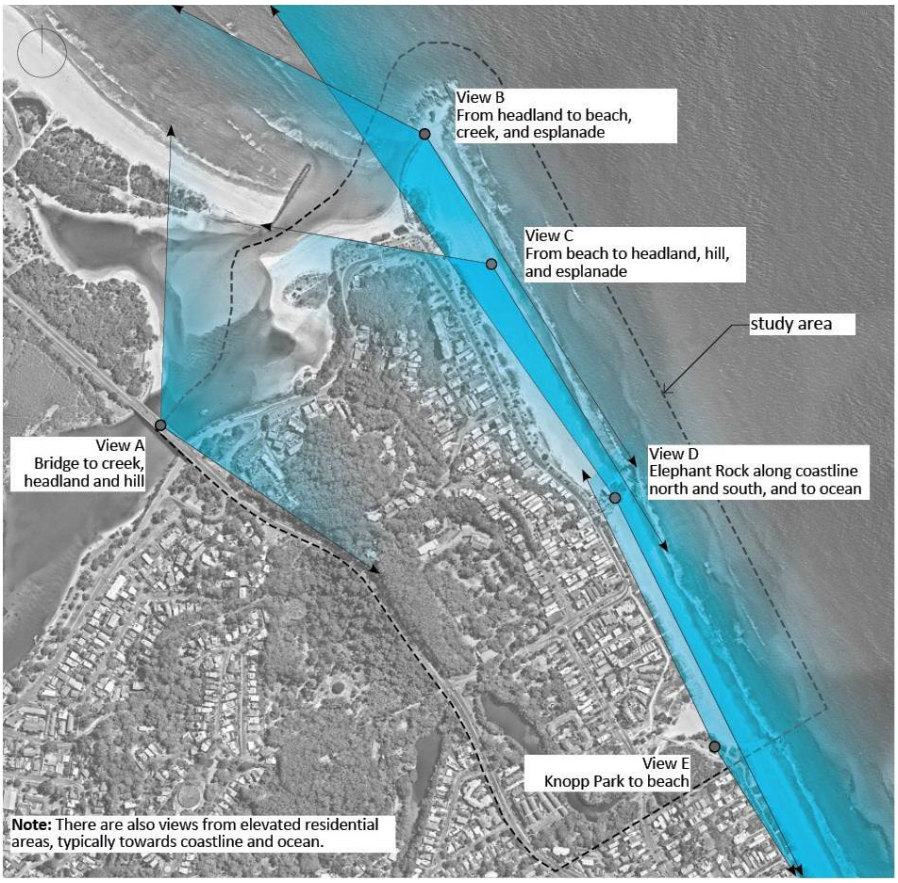


**Figure 10 - Key views from study area.**

The vegetated ridgeline creates a recognisable visual break along the coastline. This visual break is of significance beyond the local area. The BHS recognises the significance of visual breaks across the city, particularly in providing definition of distinct urban neighbourhoods and protecting key views to the city's natural setting.

**Figure 11 - Aerial view to Currumbin (and character Unit C identified in the analysis).**

**Figure 12 - View from beach to neighbourhood centre along Pacific Parade, and built form behind**

Figure 13 - View from Elephant Rock lookout towards Character Unit C


Figure 14 - View south along Pacific Parade, past neighbourhood centre,

**Figure 19 - Diagram illustrating banding of built form and vegetation through**

**Character Unit C.** It is clear that Currumbin generally and the study are more particularly benefits from an attractive and well-defined character, punctuated by a number of attractive landscape features and landmarks. *The features and qualities warrant protection from development that may erode those features and values, for example:* ***by obscuring views to the identified landscape features (including the banding of vegetation and skyline vegetation);*** *built form that was incompatible with the prevailing scale, particularly along the esplanade interface; or development that resulted in degradation of landscape features, such as removal of skyline vegetation or substantial modification of topography.*

We are concerned that, given the particular characteristics and visual qualities of the study area, realisation of these building heights would threaten the achievement of these higher order benchmarks (i.e. effective protection of landscape character and values). Taking Character Area C as a focus, development along the Pacific Parade and on the slopes behind could be appropriate at 3 storeys, but if built form exceeded 12 metres above ground it is possible that the dramatic topography and the unique banding of vegetation across those slopes would be obscured. This scenario is diagrammatically illustrated in Figure 20 and Figure 21 below.

Built form above 12 metres could also erode the relatively consistent and attractive human-scale of development fronting Pacific Parade. We note as well that there are few provisions (lower order or higher order) that would effectively control building articulation and modulation to ensure that built form along Pacific Parade reflected the modest scale and tight arrangement of built form prevailing through this part of the study area.

Having reviewed the recent development application made for 780 Pacific Parade (where Council Officers recommended approval, but Council ultimately refused), we are also concerns that effective controls may not be in place to limit the extent to which the topography of the local area (which is an important part of the landscape character) would be excessively modified, that visually significant vegetation could be removed, and that a built form that effectively presents 5 storeys to Pacific Parade could be achieved. This outcome is diagrammatically illustrated in Figure 22 below.

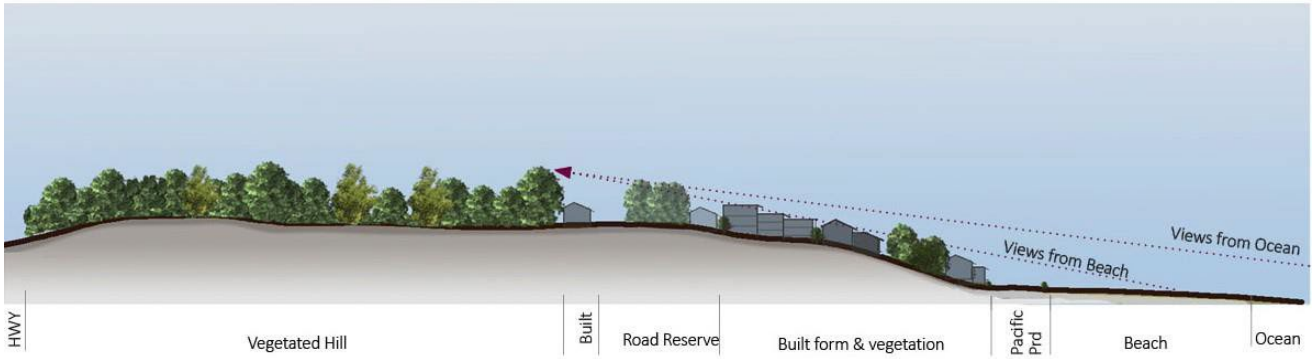


Figure 20 - Transcript through Character Area C showing built form along Pacific Parade to **9 metres**. Views from the beach take in the banding of built form and vegetation up the slope

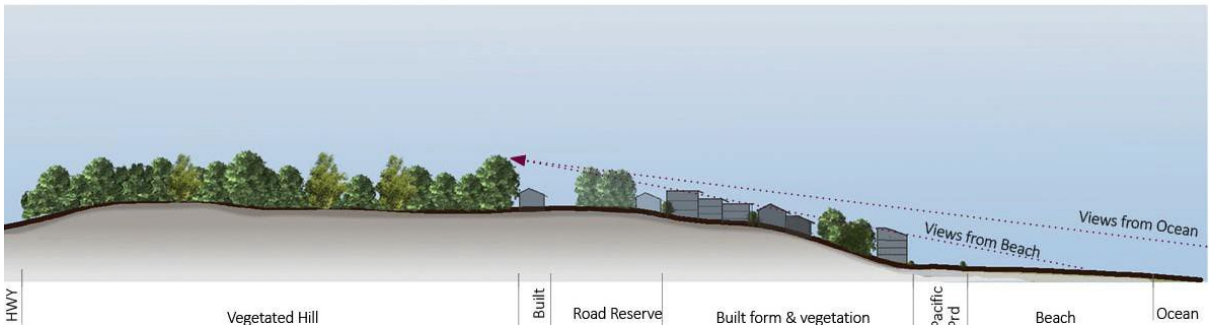


**Figure 21 - Transcript through Character Area C showing built form along Pacific Parade to** 12 metres**. Views from the beach to the banding of built form and vegetation up the slope would be obstructed.**

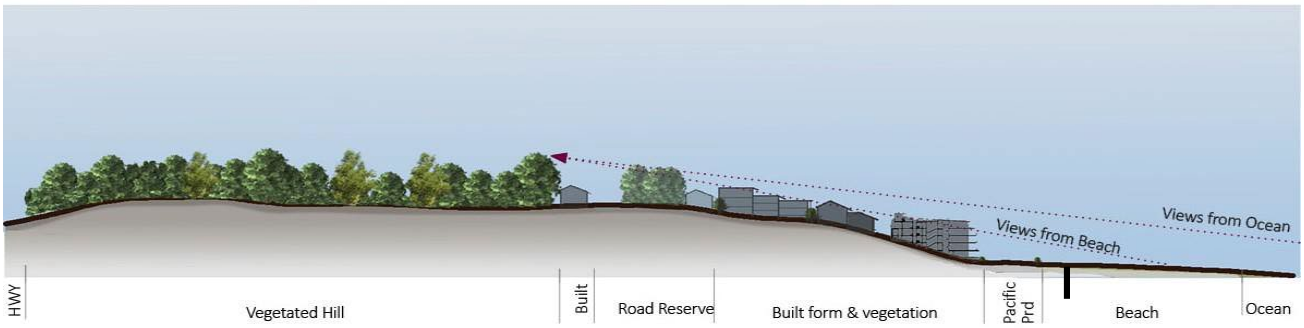


**Figure 22 - Transcript through Character Area C showing built form along Pacific Parade similar to proposal Pacific Parade. Vegetation behind the lower level built form may be removed and views from the beach the banding of built form and vegetation up the slope would be**

There are a number of high quality and important views from the study area (as shown on Figure 10 ). These include:

a) Views from the bridge over Currumbin Creek, and from the creek, towards the mouth of the creek, the headland, and Currumbin Hill (View A on Figure 10 and Figure 18);

b) Views from the headland near the mouth of Currumbin Creek, north and south along the coastline, and towards Currumbin and Currumbin Hill (View B on Figure 10 and Figure 15);

**c) Views from the beach (numerous locations) along the beach and towards Currumbin and Currumbin Hill (View C on Figure 10 and Figure 12);**

d) **Views from the Elephant Rock, north and south along the coastline, and towards Currumbin and Currumbin Hill (View D on Figure 10 and Figure 13);**

e) Views from the beach and Kropp Park along the beach and towards Currumbin and Currumbin Hill (View E on Figure 10 and Figure 17);

There are also high-quality views from many of the elevated residential areas along the slopes of Currumbin Hill.

Regarding views from the local area, the LCS makes the following observations:

- elements of importance include views to headlands **from the beaches and from one headland to another (and Landmark Views) and views to and from beaches, plus glimpses from surrounding streets and public open spaces as seen between buildings and vegetation**;
- water has the highest scenic preference value and consistently receives a high rating;
- gently sloping to undulating topography, and even minor changes in elevation allow views to surrounding or nearby landscape and built form features.

Previous high-rise constructions in Currumbin have illustrated how sensitive the local visual environment is to inappropriate building height and scale. This is reflected in the **Building Height Study (BHS) prepared for Council in 2017**· which rates the landscape character and scenic amenity of Currumbin as being most sensitive to building height, particularly as a consequence of the topography and landscape character of the area.

A key principle emerging from the BHS is to maintain the visual prominence of green elements in framing distinct areas of the city and urban neighbourhoods, particularly by **ensuring building heights at the foothill of hillsides and ridgelines do not exceed tree height.** Another key principle is to maintain key visual breaks in the urban form, as defined by significant natural features such as ridgelines, and creeks, by avoiding building height within them.

Specific guidance arising from the BHS included recommendations to:

- **establish low building heights within the foothills of ridges and headlands**;
- **keeping building heights along view corridors below views to ridge-lines;**
- maintain low building heights in key visual breaks in the urban form;
- step building heights down towards headlands to ensure they are visible from distant viewpoints;
- **maintain openness** along long linear view lines within lowlands, coastal plains, and low hills to articulate building height transitions between distinct neighbourhoods;
- **ensure building heights do not impede existing key strategic views** from coastal headlands back to the hinterland and **ridgelines;**
- **ensure no new buildings meet or breach the Currumbin ridgelines or coastal headlands**;
- preserve citywide strategic view corridors to and from coastal headlands.

The BHS recommended no changes to building heights in Currumbin and notes that the existing tall building on the beach is an anomaly and should not set a precedent for building height in the area.

Ultimately, for the study area, **the BHS generally reinforces provisions relating to character and visual values that are set out in the Planning Scheme and sets out some more specific principles and guidance in relation to views.**"

**Conclusion**

Limiting the 776 development to **3 storeys from the ground height at Pacific Parade** and not natural ground height in a single plane would achieve these outcomes and comply with the applicable Zone Codes to **preserve the unique visual amenity** for all residents of and visitors to Currumbin consistent with the applicable law. Approving the 5-level ziggurat style development going up and cutting into the escarpment based solely on building height and effectively obliterating the public visual amenity of the escarpment will not.

A proper evaluation of the DA against above codes [ **Ridges and Significant Hills Protection Overlay Code** and **Landslide hazard overlay Code]**, common law negligence duties to avoid foreseeable risk, and applicable laws and policies outlined above, we submit would see council only approving a 3 level development that does not de-vegetate the steep slope at the rear of 776 Pacific Parade and require the developer to mitigate against land slip and landslide by appropriate retaining walls, progressive battering up the steep slope when cutting in during construction on SE and not planting gum trees in the back yard to the West of the proposed built forms.

As the MCU is code assessable, we can only ask that you take these matters into careful and considered consideration in discharging your public duties and obligations according to law.

Yours faithfully,

Peter Janssen
Principal
Corporate First Lawyers.