
From: Richard West [REDACTED]
Sent: Sunday, 12 February 2023 12:40 PM
To: Planning Panels - Northern Beaches
Subject: 1102 Barrenjoet Rd
Attachments: 1102BarrenjoeyRdCommentaryA.docx

This attachment sets out some of the technical arguments underlying the Association's Submission of 13 October 2022.

The large number of submissions from the community indicates the degree of concern regarding this development application and its affect on what is a unique area in Palm Beach.

Richard West AM
President Palm Beach Whale Beach Association
[REDACTED]



The Palm Beach & Whale Beach Association Inc.
www.pbwba.org.au | PO Box 2 Palm Beach NSW 2108

DEVELOPMENT APPLICATION NO. 2022/0469
1102 BARRENJOEY ROAD, PALM BEACH
TECHNICAL ADDENDUM TO SUBMISSION

Introduction

This paper sets out some of the technical arguments underlying the Association's Submission of 13 October 2022. It is based on documents made available on the Council's website for this site, despite advice by the Council that what is proposed is NOT substantially the same as the approved development. This alone is sufficient to refuse approval for the modifications.

It would appear that the proposed modifications would increase the residential floor area by 46% and the retail floor area by 9% and increase the height of the building from 19.4% in excess of 8.5 metres to 29% excess over 8.5 metres, not to mention significant changes to the appearance of the building and to the amount of glazing. This is not substantially the same building.

The Technical Grounds

1. The height of the proposed development, at 10.972 metres, breaches the LEP height control of 8.5 metres by 29%.
2. The height also breaches the objectives of Cl. 4.3 (1)(a) and (b) in that it is not in accordance with the existing and desired future character of the locality and is not compatible with the height and scale of the surrounding and nearby development. To ascertain the existing and desired future character of the locality, it is necessary to refer to the locality character statement contained in the Pittwater DCP which refers to "seaside village character" and "village centres must retain village character". The height and scale of surrounding and nearby development is overwhelming 2-storey and of traditional design and materials.
3. The proposed development is adjacent to a heritage item, Barrenjoey House, and the design of the development must respect that heritage item. Instead it does not give that heritage item respect - it does not give it space to be appreciated (insufficient separation) and in bulk and scale it overwhelms Barrenjoey House.
4. A Section 4.6 report from Boston Blyth Fleming was provided which only deals with height, not any other breaches of planning standards. It does not deal with the impact

of the development on any other “surrounding or nearby developments”. The report is based on the principle enunciated in *Merman Investments Pty Ltd v Woollahra Council* which requires the height to be based on the extant excavated ground level (emphasis added). The report must be based on “environmental planning grounds”, not economic grounds. The phrase “environmental planning grounds” is not defined in the legislation or by the Court but the use of the word “environmental” clearly requires that attention must be paid to the environment in which the development is taking place, including the physical environment. The modifications do not. As a result, the Blyth Boston Fleming report is in essence only one person’s opinion and does not establish that compliance with the planning controls is “unreasonable or unnecessary” on environmental planning grounds – no evidence is quoted to back up the opinion. The report is also based partly on the argument that the breach was “validated” by the approval of the previous D/A 119/14 – this is not in accordance with the Court rulings in the *Rocla* and *Milne* cases and does not recognise that the current proposal cannot be described as substantially the same building as the 2014 D/A.

5. The depth of the building is increased in the modifications, resulting in additional excavation at the rear of the block and the removal of the existing hedge. The LEP requires a buffer between commercial and residential developments and the hedge would have provided part of a buffer. There is still no buffer between the proposed development and the residential property at 1100 Barrenjoey Road, which is required.
6. Moving the building further to the rear also reduces the solar access of the residential units on the first floor which would now be below ground level - the extent cannot be determined but it is likely to be in breach of the LEP standard of a minimum of 3 hours of sunlight every day of the year.
7. There is now no Geotech report on the website but the presence of two significant boulders within both the development site and 1100 Barrenjoey Road is well-known and disturbance will pose considerable risks to adjoining owners. This issue must be properly and specifically addressed before the development is approved and not left to chance at some later date or dealt with as a condition of approval.
8. Prior consent to the development from at least three adjoining owners is required because the proposal affects those properties directly in term of interference with the substrate and retaining walls. Again this should be dealt with before approval, not as a condition of approval.
9. The proposed parking under the building does not comply with the DCP requirements Cl. B6.3.
10. The amount of glazing on the northern and southern walls clearly causes privacy problems for the neighbours on either side.

The consent authority - the Council – needs to be satisfied that the applicant has adequately addressed the matters required to be demonstrated under Section 4.6(3) and that the proposed development will be in the public interest because it is consistent with the objectives for development within the relevant zone. As pointed above, there are a number of breaches other than height and these include the development not being consistent with the desired character

of Palm Beach, as reflected in the Pittwater DCP. There has been no demonstration that there are sufficient environmental planning grounds to justify the breaches.

A/Professor Richard West AM MBBS FRCS FRACS President Palm Beach & Whale Beach Ass