



The Palm Beach & Whale Beach Association Inc.

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SUBMISSION

OBJECTION TO DA2021/2362

Demolition works and construction of a shop top housing development
at 1105 Barrenjoey Rd & 43 Iluka Rd Palm Beach.

The Community relies on the legislated planning instruments and Northern Beaches Council (NBC) to ensure that DAs comply with the current Pittwater LEP2014 and DCPs, particularly landscaping, preservation of tree canopy, building height, bulk, scale, privacy and design which enhances the streetscape and complements the Palm Beach seaside village feel.

NBC states its goal is to protect and enhance our natural and developed environment and to preserve our quality of life for future generations and that they do this by using appropriate development and planning controls.

To quote the NSW Government Architect, Abbie Galvin, in the foreword of the new Design and Place State Environmental Planning Policy (DP SEPP) 2022 "our places and buildings are for the long term. Their impacts are far-ranging and our joint responsibility to make a positive contribution to these places is more significant than ever before".

In this submission we are mindful of the statements above and guided by the following -

1. **The LEP** is a State Government document, approved by the State Government and agreed to by the Council on behalf of the ratepayers/residents/business owners and other interested parties of (then) Pittwater, now Northern Beaches. It contains provisions designed to regulate developments in the LGA and to preserve a balance between various competing interests – the developers, the residents/ratepayers, the environment and other interested parties. It is part of the law of the State and needs to be treated as such – i.e. **enforced**.
2. **The DCP** is a policy statement of the Council, outlining the detailed requirements for development in the LGA. It is legally binding.
3. Importantly the DCP contains the **Locality Statements** which describe the current and expected future characteristics of each suburb. These have been finalised in each case with the input of the ratepayers/residents/business owners and other interested parties of each of those suburbs and they represent the only public statement of the desired characteristics of each suburb – they represent an agreement or compact with the ratepayers/residents/business owners and other interested parties and they are contained in a legal document. The terms of the compact require the Council to protect the agreed present and future character and to ensure that all developments are in accordance with the agreed character.

4. The purpose of Section 4.6 as set out in the Planning Act is to provide an appropriate degree of flexibility. The requirement for flexibility does not mean that it should be used to override the development standards of the LEP or DCP. For the Section to apply at all, the developer must produce a written justification for the proposed contravention of the development standards, demonstrating that (a) the compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and (b) there are sufficient environmental planning grounds to justify contravening the development standard.

Given the above guidelines, The PBWBA objects to the Development Application submitted to NBC on several grounds of non compliance with the PLEP2014 and DCP controls.

HEIGHT, BULK, SCALE & CHARACTER

We believe the design, scale and treatment of future development particularly within the B1 & B2 commercial centres of Palm Beach should reflect a 'seaside-village' character but we find this proposed development's bulk and scale jarring, overbearing and unsympathetic in the existing streetscape context, having no regard to the built form characteristics of development within the site's visual catchment.

We engage with Council on Place Planning regularly, in particular most recently with Avalon Village. Residents and Council embrace the need to retain a village feel. What is a village feel if it is not scale and character? This is so important to the residents of and visitors to Palm Beach. What is sought to be preserved in Palm Beach village is the character of the area – its unpretentious retail outlets which meet the need of their markets, the modest building heights, the absence of bulk and the use of traditional materials such as timber and sandstone.

The bulk and scale of the proposed development is overwhelming and overbearing as it dominates the site.

This proposal blatantly breaches the PLEP2014 height control of 8.5m. According to the Statement of Environmental Effects (SEE) it has been determined that the proposed works have a building height measured to the top of the lift overruns of 10.96 metres representing a variation of 2.46 metres or 28.9% with the roof parapet having a maximum height of 10.5 metres representing a variation of 2 metres or 23.5%.

As stated in the PLEP14 building height must **not** exceed 8.5 metres. The objectives of the height 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, (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development, (c) to minimise any overshadowing of neighbouring properties, (d) to allow for the reasonable sharing of views, (e) to encourage buildings that are designed to respond sensitively to the natural topography, (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items. The proposed development fails to achieve these objectives.

The subject site is completely flat. We do not believe that there are any environmental planning grounds to justify the height variation sought. The clause 4.6 variation requested in the SEE is **NOT** well founded. In particular we note the NBC Officer comments that the site is not affected by the 1% AEP flood extent (including with consideration for climate change). There are no applicable flood related development controls and thus no justification for a breach of height control. This appears to contradict the statement in the SEE justifying the height breach "given

the significant floor level constraint imposed by flooding and the desirability of roof top communal open space in a mixed-use development effected by flooding where occupants will need to "shelter in place" during a flooding event".

LANDSCAPING & TREE CANOPY

We are very concerned to note that ALL existing trees within the site will be removed. The loss of the well established robinias, which soften the current built form and provide delightful leafy amenity, shade and privacy would be tragic. The existing five watergums which are council street trees on the public footpath will not provide adequate softening and screening of the development. The Pittwater DCP requires 20% or 35m² per dwelling, (whichever is the greater), deep soil area with provision of tree canopy. The proposed development only achieves 11% or 150 sqm of landscaping and is therefore non compliant.

The extensive pavement planned for the Barrenjoey Rd side will prohibit the deep soil planting required for suitable canopy trees and other significant planting. For shop top housing, a minimum 4m² planter or landscaped area is to be provided as a feature at the ground level of the front building facade (Barrenjoey Rd). It is difficult to accurately ascertain the dimensions of the deep soil planting on the landscape plans as they are not indicated. We believe increased landscaping would contribute greatly to the streetscape and amenity of Barrenjoey Rd.

SETBACK

The 3.5m setback control required on the Barrenjoey Road boundary is not achieved. The pleasantly treed plaza which exists at present and is highly valued by the Community as it benefits retail and community interaction will be lost.

BUILDING ENVELOPE

Planes are to be projected at 45 degrees from a height of 4.2 metres above ground level (existing) at the side boundaries to the maximum building height (refer to *Pittwater Local Environmental Plan 2014*). As no plans have been submitted to show these side boundary envelopes it is not possible to ascertain compliance in this respect.

PARKING & TRAFFIC

We note that the oversized one (?) bedroom serviced apartments unusually include two bathrooms and a separate "media" room with window/external door. There is one car space required and provided for a one bedroom dwelling. However a two bedroom dwelling requires two car spaces. We believe the provision of this "media" room is an obvious attempt to circumvent the DCP parking requirements.

We question the traffic and parking modelling as we believe it underestimates the real parking and traffic impacts particularly during the summer months at holiday periods.

The site occupies the corner position of this important local centre in the village. Parking is already very difficult in this area and there will certainly be an increase in traffic entering and exiting Iluka Rd and general congestion at this corner which will be of great concern. At the corner is the Australia Post letterbox, the post office boxes, The Palm Beach Wine Co which is a well patronised "corner store", other retail outlets and a bus stop. The montage suggests a restaurant/cafe in the NE corner retail space. This alone will certainly generate traffic and put even more pressure on already limited street parking.

SERVICED APARTMENTS & SHOP TOP HOUSING

This proposal is for a "shop top" housing development. We understand this to mean provision of retail and business premises on the ground floor level with residential dwellings on the floor/floors above.

The proposed serviced apartments are residential dwellings. They should not be located on the same level as the retail/business premises.

The retail/business component of a shop top housing development should be 25% of the gross floor area of the building. It has been determined that the total GFA of the proposed development is 2253m².

The five retail/business spaces planned are a total of 262 m² (this does not include the shared toilet facilities for the shops or the commercial garbage area) which is 11.63% of GFA - far less than the 25% required by the control.

We do not consider that the one (?) bedroom serviced apartments constitute retail/business premises but rather are residential dwellings and should not be included in the calculation to achieve the required retail/business component.

EARTHWORKS

We share the neighbours' (in the Iluka Apartments) concerns re earthworks and possible detrimental effects to their property. It is a great deal more than the statement in the SEE suggests "*some excavation is required to provide a basement level carparking area*".

Excavation will be required to depths of up to about 4m below surrounding ground levels.

The main geotechnical issues associated with the proposed development are the high water table and the weak soil and bedrock profile which provide somewhat limited support potential for footing systems. As a result, dewatering will be required during construction, the basement will probably have to be tanked and designed to resist uplift forces, an impermeable shoring system such as a secant pile wall will be required and piled footings will have limited capacity.

Excavation will require the removal of somewhere between 4000 to 5000 cu m of earth (approx 8000 tonnes). This is hardly "some" excavation.

OTHER IMPACTS

We share the concerns of the owners of The Iluka Apartments and neighbouring residents in Iluka Rd and Barrenjoey Rd regarding loss of sunlight, privacy, views, overshadowing and noise impacts. In our opinion the shadow diagram submitted does not appear to be accurate and does not show the full impact of the overshadowing of the adjacent Iluka Apartments.

We are concerned to note that one of the eight apartments in the proposed development is not compliant with solar access requirements.

All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties. The SEE states that due to the flat nature of the surrounding topography the proposed development will not give rise to adverse scenic view impacts. We disagree and we find the inclusion of photos of views taken from the heights of Mackay Reserve (opposite) are completely irrelevant. The views of neighbouring properties on the eastern side of Barrenjoey Rd and in The Iluka Apartments will be adversely impacted.

OTHER CONCERNS

The notification period for this DA commenced on Christmas Eve 2021 which we consider a most inappropriate time to advertise such a significant development. This is peak summer holiday season with many residents away or with no time to consider a development application as significant as this one.

CONCLUSION

The proposed DA plans represent an overdevelopment of the site with unacceptable amenity impacts on the community and should be refused by Council.

Further, should this DA be supported in its current form by Council it would make a mockery of the Pittwater LEP and DCPs and pave the way for further non-compliant development particularly in other B1 and B2 zones in Palm Beach.

Prof Richard West

President
8th February 2022