
From: [REDACTED]
Sent: 7/11/2024 9:28:05 AM
To: Council Northernbeaches Mailbox
Cc: Ted Campbell; VC; Adam Rytenskild; Brendon Barry
Subject: TRIMMED: OBJECTION: DA 2023/1289: 1112 - 1116 BARRENJOEY ROAD
PALM BEACH NSW 2108; NSWLEC
Attachments: 1112 AMENDED PLAN SUBMISSION.pdf;

Att: NBC DEVELOPMENT ASSESSMENT: STEVEN FINDLAY

LAND & ENVIRONMENT COURT PROCEEDINGS NO. 2023/00465007

PROPERTY [1112 - 1116 BARRENJOEY ROAD PALM BEACH NSW 2108](#)

APPLICANT: PALMDEV PTY LTD

RESPONDENT: NORTHERN BEACHES COUNCIL

PROPOSAL: CONSTRUCTION OF A SHOP TOP HOUSING AT 1112-1116 BARRENJOEY
ROAD, PALM BEACH

DA 2023/1289

Kind regards,

Bill Tulloch BSc[Arch]BArch[Hons1]UNSW RIBA Assoc RAIA
DA Objection Pty Ltd
Director
[REDACTED]

SUBMISSION

a written submission by way of objection
Bill Tulloch BSc [Arch] BArch [Hons1] UNSW RIBA Assoc RAIA
prepared for

TED CAMPBELL, 21A PALM BEACH ROAD PALM BEACH
BRENDON BARRY, BARRENJOEY HOUSE, 1108 BARRENJOEY ROAD PALM BEACH
ADAM RYTENSKILD, 1110 BARRENJOEY ROAD PALM BEACH
TONY MATTOX, 1110B BARRENJOEY ROAD PALM BEACH

6 NOVEMBER 2024

NORTHERN BEACHES COUNCIL
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ROAD, PALM BEACH
DA 2023/1289

Dear Sir,

I have been instructed by my clients to prepare a submission on this LEC Appeal, relating to the re-notification as outlined within NBC's letter dated 17 October 2024.

The proposed development as identified within the applicant's amended plans and associated documents remain totally unacceptable to my clients.

I have been engaged by my clients to critically review the plans and documentation prepared in support of the above LEC Appeal and to provide advice in relation to policy compliance and potential residential amenity impacts.

Having considered the subject property and its surrounds and the details of the development application currently before the Court, I am of the opinion that the proposal, in its present form, does not warrant support.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, my clients ask the Commissioner to DISMISS this Appeal.

The design of the proposed development does not ensure that the existing high levels of amenity to my clients' property are retained.

Having reviewed the documentation prepared in support of the application and determined the juxtaposition of adjoining properties I feel compelled to object to the application in its current form.

The proposal is considered to be inappropriate within the streetscape.

The bulk, scale, density and height of the proposed development is excessive and inconsistent with the established and desired future streetscape character of the locality.

The proposed development represents an overdevelopment of the site and an unbalanced range of amenity impacts that result in adverse impacts on my clients' property.

- The proposal fails to achieve an acceptable view sharing outcome,
- The proposal fails to achieve an acceptable acoustic and visual privacy outcome
- The proposal fails to achieve an acceptable visual bulk and scale outcome,
- The proposal fails to achieve an acceptable landscape outcome,
- The proposal fails to achieve an acceptable engineering outcome

My client's individual specific concerns are:

- Height, bulk and scale still need to be addressed and more attention should be given to landscaping to soften the impact of the building from the street and side boundaries.

The proposed development adjoins neighbour's driveway to the south and also substantially impacts the streetscape of Barrenjoey House that is on the other side of the driveway to the south. As those neighbours drive down their driveway they will be directly confronted with the south facade of the proposed development and at night the occupants of the proposed units will directly receive the headlights of their cars exiting their properties. All existing neighbours and future residents on the subject site would all be better served by more attention to the south boundary setback and landscaping.

- The building should be further setback from the south boundary. A dense planting to a tree-top height of RL12m, with a dense and deep understory should be planted, on this boundary.

Traffic flow, congestion and safety is a serious consideration for this development as the area is already busy and will get busier even before this is built. There are new

neighbouring dwellings already approved and there is a substantial development proposed for 1102 Barrenjoey Road on the other side of Barrenjoey House.

a) The bus shelter is in an appropriate location now and any relocation would negatively affect traffic flow in the area.

b) Barrenjoey House attracts substantial traffic, both foot and vehicle, to the front of the building.

c) My client's driveway, in between the developments proposed driveway and Barrenjoey House, will provide for vehicle and foot traffic for 3 homes and visitors.

d) There is another proposed development to the south of Barrenjoey House that will substantially increase foot and vehicle traffic in the area. This is already a busy area. Congestion and safety will be a real issue once these developments are built.

e) The location of the bin area will determine where the bins will be placed on the street. There is not adequate room in the current location and they will add to traffic flow and safety issues if placed on the street in their proposed location.

- Relocate the driveway and entrance to the other northern side of the development. This would substantially enhance flow and safety for the development and for the surrounding area.

The bus stop must stay in the current location, there would be a better spread of foot and vehicle traffic congestion across the street from 1102 Barrenjoey Rd to 1116 Barrenjoey Road. The many bins, when put on the street can then be placed away from the congestion of the neighbour's driveway, Barrenjoey House and the bus stop.

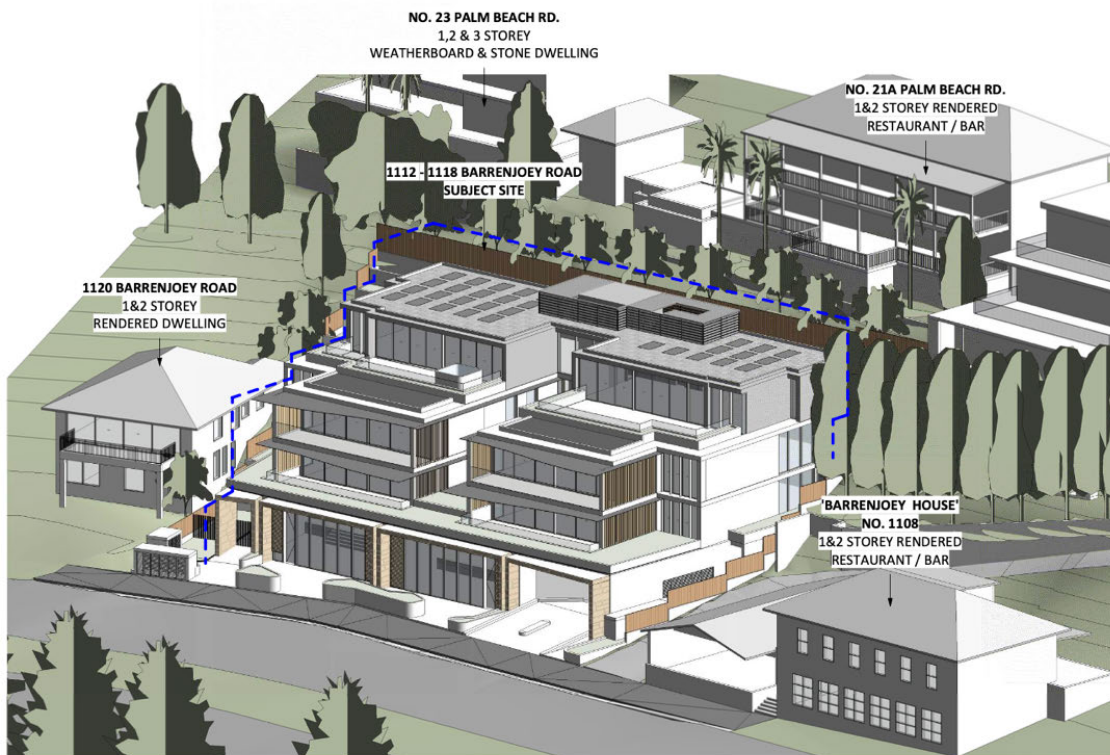
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2 AMENDED BUILT FORM ENVELOPE 01

[note: #21 Palm Beach Road incorrectly labelled as 1 & 2 Storey Restaurant/Bar - should read 2-Storey Dwelling]

REQUEST FOR AMENDED PLANS TO BE SUBMITTED TO BETTER ADDRESS IMPACTS

1. REDUCE BUILT FORM:

- **NO BUILT FORM BEYOND 8.5m HOB**
- SECOND FLOOR to be recessed by 17m from the front boundary, to accord with 8.5m HOB standards and 6m from side boundaries so as not to be substantially seen from the public domain, with roof at RL 12.75m, not to exceed RL 4.25 contour as presented by the EGL along the side boundaries
- THIRD FLOOR delete
- ROOF PLANT to be at a maximum height of RL 13.25

2. LANDSCAPE:

- All trees over 8.5m to be deleted from the landscape plan, and replaced with trees 8m high. No trees to exceed the approved wall heights, and canopy to be maintained below those heights.
- Increase landscaping along southern boundary with screening plants to 8m high

3. PRIVACY:

- Privacy devices to all windows and decks facing side and rear boundaries
- AC Units be to located away from the roof, and into zones away from highly used zones of my client's property.
- All Solar Panels and PV systems are to be treated with antireflective glass. Solar glass is to be stippled and light-trapping, with photon-absorbent solar cell attached to the rear side. Angle of reflectivity to neighbours must be considered within final detailed design at construction certificate stage, considering the view from neighbours from above the subject site.

4. CAR PARK ENTRY & BUS STOP:

- Car Park Entry to be repositioned to the northern boundary
- Bus Stop to be maintained in front of proposed development

A. CONTENTIONS THAT THE APPEAL BE DISMISSED

1. CONTRARY TO AIMS OF LEP

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the aims under the LEP.

2. CONTRARY TO ZONE OBJECTIVES

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the objectives of the zone of the LEP.

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
- To encourage investment in local commercial development that generates employment opportunities and economic growth.
- To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.

3. INCONSISTENT WITH THE PROVISIONS OF CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

The applicant's Clause 4.6 variation request to contravene the LEP standard has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances or that there are sufficient environmental planning grounds to justify contravention of the development standard.

Highly disturbed with levels artificially modified through previous excavation activities has no impact to the HOB non-compliance

The applicant states that the site has been heavily excavated.

The levels to the south along the neighbour's driveway show the land falling from RL 5.0 Contour to the SW corner of the subject site at RL 2.31. The land might have been reduced along the southern corner, but equally the land may well have originally stepped down into the lower levels of the site. There is no certainty either way. The applicant has not provided evidence to this claim.

The levels to the north on the neighbouring site at #1120, shows heights which are indeed lower than the corresponding location on the subject site. It appears that the zones on the subject site are indeed filled zones behind log walls, and not heavily excavated at all.

The geotechnical boreholes show this lower area of the site actually has been 'filled' between 300mm in BH101M and 500mm in BH102. There is therefore stronger evidence that EGL of the site was naturally lower than it currently sits at the front of the site. The site has had 'fill' added to the natural marine sands along the front, and in other areas up to 1000mm deep.

I disagree with the premise of the argument that is offered by Clause 4.6 that the proposed non-compliant height is a result of massive excavation and prior disturbance. The opposite could be true in that the original EGL may indeed be considerably lower in many locations.

Flood Planning Level has no impact to the HOB non-compliance

The Clause 4.6 makes an argument that the Flood Planning Level (FPL) of RL 3.12m causes a direct uplift of the proposed development. The Commissioner will note that the storey height at Ground Floor is 4.15m, which is a standard height for a commercial zone. The Flood Planning Level (FPL) plays no part in an elevated ground floor, or in HOB non-compliance.

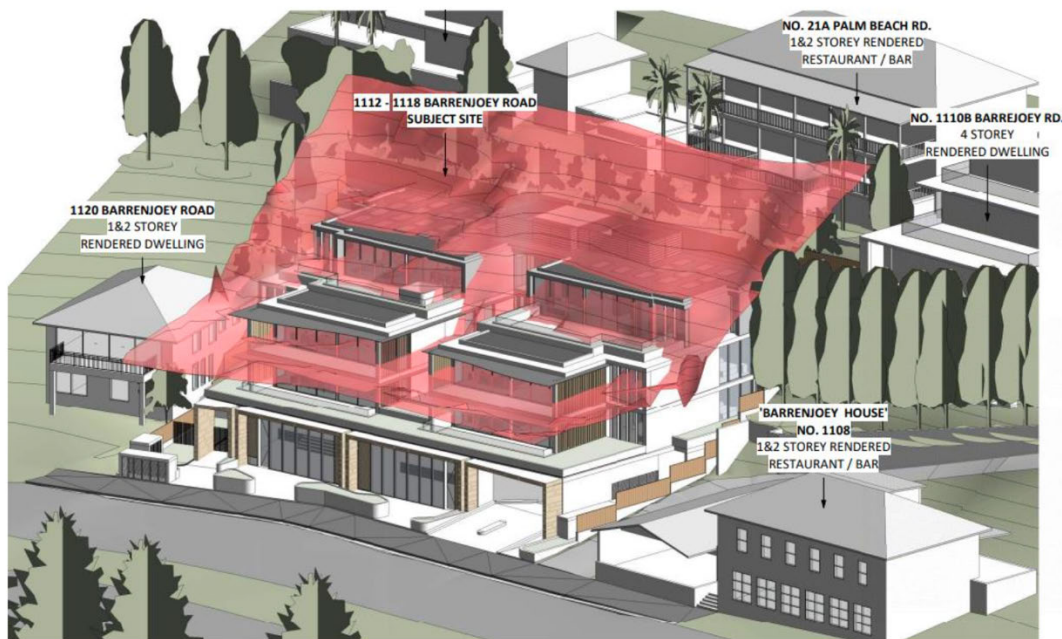


Figure 1 – Building height blanket diagram showing the location and extent of building elements located above the 8.5 metre building height standard calculated in accordance with Merman

[note: #21 Palm Beach Road incorrectly labelled as 1 & 2 Storey Restaurant/Bar - should read 2-Storey Dwelling]

Figure 1 from the Clause 4.6 shows the substantial non-compliances to the 8.5m HOB standard. A compliant built form requires the proposed Second Floor to be substantially setback from the front boundary, as the non-compliance runs some 17m deep into the site at this level. The Third Floor equally has further non-compliance, and my clients asks for the deletion of this level, due to HOB non-compliance and to the inappropriate massing adjacent Barrenjoey House and the neighbour at #1120. The character of the area does not present built form to four levels on either site at #1108 Barrenjoey House or #1120.

Council cannot be satisfied that under clause 4.6 of the LEP seeking to justify a contravention of the development standard that the development will be in the public interest because the proposed development is inconsistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

- The applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, or that there are sufficient environmental planning grounds to justify contravening the development standard to the extent proposed.
- The proposed development will not be in the public interest because it is inconsistent with the objectives of the height of buildings development standard or the objectives in the zone to provide for residential development of a low density and scale integrated with the landform and landscape.

There is nothing in the written request's consideration of the relationship between the proposal and the zone objectives which might provide sufficient environmental planning grounds for the breach.

The test is concerned with establishing sufficient environmental planning grounds to justify a contravention, something more than compliance or consistency with zone and development standard objectives must be sought.

My clients contend that:

- The written request does not establish that the development is consistent with the objectives of the standard as the proposal does not reasonably share public and private views.
- The written request does not establish that the development is consistent with the character compatibility objectives of the height standard in terms of FSR, maximum building height, number of storeys and wall height.

Furthermore, and in simple terms, I contend that:

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact
- the impacts are not consistent with the impacts that may be reasonably expected under the controls;
- the proposal's height and bulk do not relate to the height and bulk desired under the relevant controls;
- the area has a predominant existing character and are the planning controls likely to maintain it;
- the proposal does not fit into the existing character of the area;
- the proposal is inconsistent with the bulk and character intended by the planning controls;
- the proposal looks inappropriate in its context

The objectives of the standard have not been met.

The bulk and scale of the proposed development is inappropriate for the site and locality.

Strict compliance with the maximum building height is reasonable and necessary in the circumstances of this case.

In summary, the proposal does not satisfy the requirements of clause 4.6 of LEP 2014.

The variation of the standard would not be in the public interest because it would set a precedent for development in the neighbourhood, such that successive exceedances would erode the views enjoyed from other similar properties.

The proposed development is inconsistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

4. NON-COMPLIANCE WITH SEPP (HOUSING) 2021 (HOUSING SEPP) – DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

SCHEDULE 9 DESIGN PRINCIPLES FOR RESIDENTIAL APARTMENT DEVELOPMENT

The proposal is inconsistent with the design quality principles of the HOUSING SEPP; Schedule 9 Design Principles for Residential Apartment Development. I contend that the proposed development fails to accord with:

Context and Neighbourhood Character

The resultant bulk, form and scale of the amended proposal will be inconsistent with and unsympathetic to the adjacent sites and neighbourhood. The proposal fails to respond to the surrounding context and neighbourhood character.

Built Form and Scale

The bulk and scale of the proposed new building are excessive. The proposal will not achieve an appropriate built form that fits into its context.

Density

The density is inappropriate to the site and its context.

Landscape

The proposed development does not present a positive image and contextual fit of well-designed development by contributing to the landscape character of the streetscape and neighbourhood. The proposed development does not enhance the development's environmental performance by retaining positive natural features

Amenity

The proposed development does not present good amenity outcomes for neighbours, including loss of solar, view, and privacy

Aesthetics

The proposal does not respond to or reinforce the existing local context and results in a built form which is excessive in bulk and scale.

The proposed development is contrary to principles 1 to 9 of the design principles for residential apartment development in Schedule 9 of the Housing SEPP. The proposal provides inadequate amenity to apartments and neighbouring residential buildings.

APARTMENT DESIGN GUIDE

The proposed development does not accord with the *Apartment Design Guide*. Concern is expressed relating to the non-compliance to the controls, the objectives, and the failure to reduce the amenity impacts to neighbours on privacy, solar, view, and visual bulk.

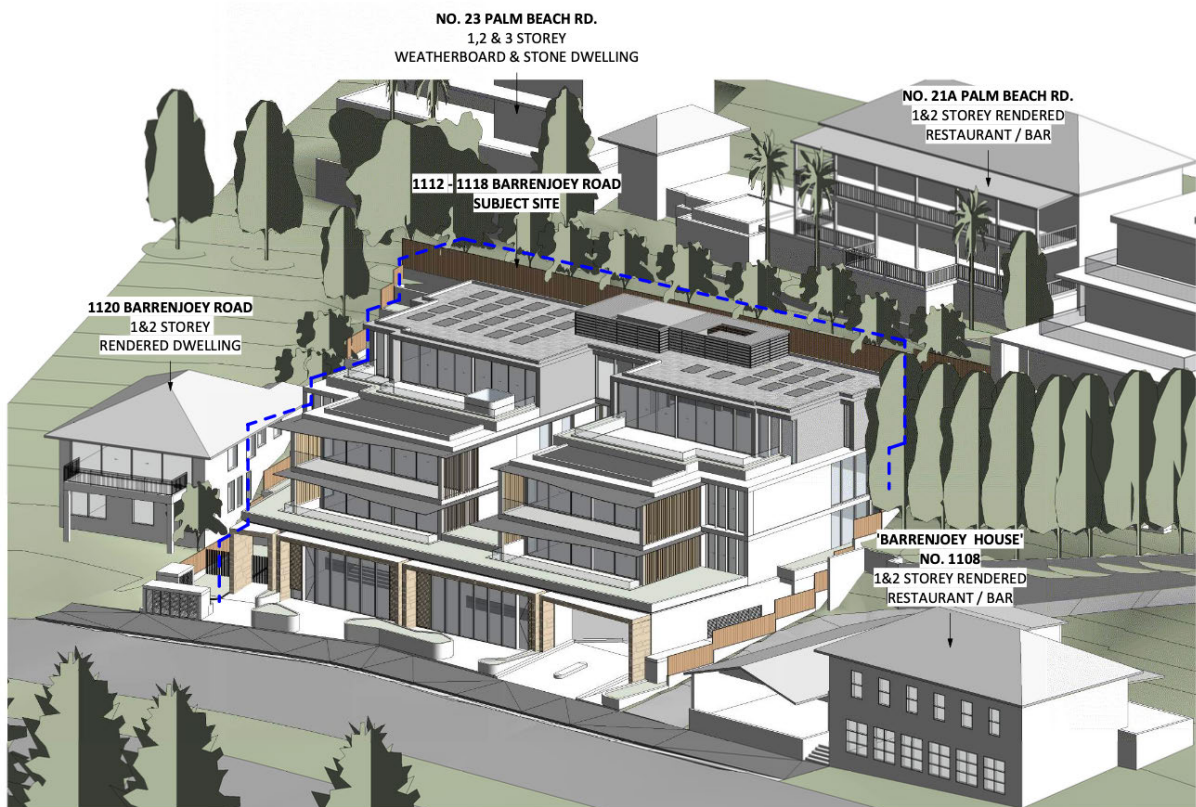
5. HERITAGE CONSERVATION CONCERNS

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate heritage conservation outcomes, presenting non-compliant envelope controls that are visible from the heritage item.

The proposed development does not respond to or complement adjoining heritage and contributory buildings, does not respond to the topography of the site and is not in keeping with the unique character of the locality.

The proposal is inconsistent with the objectives of the LEP and DCP.

- The development application should be refused because approval of the proposal will have an adverse and unacceptable impact on the heritage significance of Barrenjoey House;
- The application results in a built form which is not subservient to the heritage item. The proposed development has multiple non-compliances to numerical standards and controls.
- The proposed development would have a detrimental impact upon the characteristics features of the heritage item resulting in a massing that is likely to overwhelm the heritage item contrary to the following provisions within the LEP and DCP.
- The overall bulk of the proposal is not sympathetic to the proportions and architectural character of the neighbouring heritage item.



2 AMENDED BUILT FORM ENVELOPE 01

[note: #21 Palm Beach Road incorrectly labelled as 1 & 2 Storey Restaurant/Bar - should read 2-Storey Dwelling]

The proposed development does not respond to or complement adjoining heritage, does not respond to the topography of the site and is not in keeping with the unique character of the locality.

6. BUILDING BULK & SCALE

The proposed development should be refused due to its excessive bulk and scale and its failure to comply with the numerical standards and controls.

The application will result in an unacceptable loss of visual amenity from adjoining private properties, and from the public domain including the foreshore.

The loss of visual amenity is due to the excessive bulk and scale of the proposed development.

The breaches of the building envelope will result in both an adverse visual impact when viewed from private and public domains.

The numerical non-compliances result in a cumulative impact, that increases the built form, resulting in an overdevelopment of the site.

The proposal will present excessive bulk and scale that is not representative of the type of development anticipated by the zone or the applicable controls.

The proposal will result in unreasonable bulk and scale for the type of development anticipated in the zone.

The proposal does not step down with the topography of the site.

The proposal does not allow for enough landscaping to suitably reduce the bulk and scale of the development.

The proposal does not provide adequate articulation of the built form to reduce its massing.

The proposal fails to encourage good design and innovative architecture to improve the urban environment.

The proposal fails to minimise the visual impact of development when viewed from adjoining properties and streets.

7. CHARACTER & STREETScape

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate streetscape outcome, presenting non-compliant envelope controls that are visible from the street.

The proposed development is inconsistent with the provisions relating to the desired future character. The proposal, due to its excessive bulk, its impact on the amenity of adjoining properties and users of the public domain, its poor relationship with the subject property and the environment is inconsistent with the objectives with the desired future character provisions of the locality.

The proposed development will have unacceptable impacts upon the amenity of neighbours' property, specifically with regard to visual bulk impact.

The proposed development should be refused due to its excessive bulk, scale and resulting impacts upon the amenity of adjoining properties and the character of the surrounding locality.

The proposal does not meet the streetscape character and key elements of the precinct and desired future character.

The proposal is excessive in scale, has adverse impacts on the visual amenity of the environment, does not positively contribute to the streetscape in terms of an adequately landscaped setting. The proposal is visually dominant, and is incompatible with the desired future townscape area character.

The development has excessive bulk and scale and fails to comply with development standards set out LEP, resulting in a building which has unacceptable adverse impacts on neighbouring properties and the locality.

The non-compliant building envelope will lead to unacceptable visual bulk impact to neighbours.

The multiple non-compliances arising from the proposed upper floor level and the non-compliant setbacks indicates that the proposed development cannot achieve the underlying objectives of this control, resulting in an unacceptable building bulk when viewed from adjoining and nearby properties.

The development presents an inappropriate response to the site and an unsatisfactory response to the desired future character of the area.

The proposed development should be refused because it is incompatible with the desirable elements of the current character of the locality and is inconsistent with the standards and controls:

- The design of the proposal does not recognise or complement the desirable elements of the subject site's current character.
- The proposal does not employ a building form that relates to the landform as it does not step down with the slope of the site.
- The proposal offers little visual relief of the resultant building bulk. Such building bulk is not compatible in scale with adjacent and surrounding development.
- The proposal will present as a large building with insufficient building articulation and landscaping to break up and visually reduce the building bulk.
- The proposal will not appear as low density and, therefore, does not achieve consistency or compatibility with the general built form within the locality or the zone. The development does not present as detached in style with distinct building separation and areas of landscaping.

8. EXCESSIVE BUILDING HEIGHT

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to comply with the building height development standard under the LEP.

The proposed development should be refused due to its excessive height and failure to comply with the *Height of Buildings* set out in the LEP, and in particular:

- The proposed development, by virtue of its height and scale, will not be consistent with the desired character of the locality
- The development will not be compatible with the height and scale of surrounding and nearby development.

The development application should be refused because the proposed building height is excessive and does not comply with the objectives or controls in the LEP in circumstances where the written request made pursuant to clause 4.6 of the LEP in relation to the contravention of the development standard is inadequate and should not be upheld. The submitted written variation request under cl.4.6 of the LEP seeking to justify the contravention of the height of buildings development standard is not well-founded having regard to the requirements of cl.4.6(3) and 4.6(4)(a)(i) of LEP.

The proposal is inconsistent with the objectives of the Height of Buildings development standard pursuant to LEP.

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact
- The development is not compatible with the desired future character of the locality in terms of building height and roof form.
- The development does not minimise the adverse effects of the bulk and scale of buildings

The adverse impacts of the proposed development, including on the amenity of neighbouring property and public property, are directly attributable to the exceedance of the height of buildings development standard.

The proposal is inconsistent with the LEP as there is a public benefit in maintaining the Height of Buildings development standard in this particular case.

The proposed portion of the building above the maximum height is not 'minor'. The building does not adequately step down the slope.

In respect of the overall height control, I have considered the applicant's Clause 4.6 and I consider that, in this instance, they have not been able to establish an argument to support their assertion that it is unreasonable and unnecessary to comply with the control.

My clients submit that the submission fails on the basis of the assessment against the objectives of clause 4.3, as well as the environmental planning grounds set out. Additionally, I consider that the development does not comply with the land use objectives.

In respect of the proposed development, I submit that the built form, which also incorporates other substantial non-compliant breaches will have negative impacts on the amenity of neighbours as well as have significant impacts in respect of visual intrusion. Additionally, there is nothing provided for in this development that seeks to minimise the adverse effects of bulk and scale of the building.

My clients have reviewed the responses to these objectives in the applicant's Clause 4.6 and do not consider they satisfy the objectives. My clients strongly refute their arguments.

In respect of the compatibility test, unsurprisingly the applicant completely ignores multiple considerations dealing with the understanding of the site in respect of its

topography, how it is viewed from neighbouring properties as well as the lack of compatibility with its form and articulation.

My clients contend that the proposal fails to adequately demonstrate that compliance with each standard is unreasonable or unnecessary nor that there are sufficient environmental planning grounds to justify contravening each of the standards. Variation of the development standards is not in the public interest because the proposed development is not consistent with the objectives of each development standard nor the objectives of the zone. The proposed development has not sought adequate variations to development standards. The proposal is excessive in bulk and scale, and is inconsistent with the desired future character of the area resulting in adverse impacts on the streetscape. The proposal results in an unacceptable dominance of built form over landscape. The proposal fails to minimise the adverse effects of bulk and scale resulting in adverse amenity impacts.

The proposed development should be refused due to its excessive visual impact and impacts on the character of the locality, adjoining properties and the surrounding environment.

The form and massing of the proposal does not appropriately respond to the low-density character of the surrounding locality

The form and massing of development is also inconsistent with the provisions of the DCP which prescribe that new development should complement the predominant building form in the locality.

The proposal would not recognise or protect the natural or visual environment of the area, or maintain a dominance of landscape over built form. The proposal has not been designed to minimise the visual impact on the surrounding environment.

In *Veloshin*, [*Veloshin v Randwick Council* 2007], NSW LEC considered Height, Bulk & Scale. *Veloshin* suggest that Council should consider:

"Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified."

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

In *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, NSW LEC considered character:

"...whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site's visual catchment".

The non-compliant elements of the proposed development, particularly caused from non-compliant excessive heights would have most observers finding *'the proposed development offensive, jarring or unsympathetic'*.

The planning controls are not limited to preventing offence and the like; and are concerned with establishing a certain physical and landscape character. In this instance I am not convinced that there are strong environmental planning grounds to justify a contravention of the scale proposed.

The proposed development should be refused due to its excessive bulk and scale and its failure to comply with the LEP development standard

The main LEP standards that control bulk have been exceeded;

- The written request is not well-founded as it does not satisfactorily demonstrate: *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case* because it does not achieve consistency with the objectives of the zone or the objectives of the equivalent development standard contained within clause 4.4 of the LEP; and *that there are sufficient environmental planning grounds to justify contravening the development standard* because the provided justification is insufficient and disagreed with.
- The proposal will present excessive bulk and scale that is not representative of the type of development anticipated by the zone or the applicable controls.
- The proposal does not comply with requirement set out within the DCP, as it does not step down with the topography of the site
- The proposal does not comply with requirement set out within the DCP as it does not allow for enough landscaping to suitably reduce the bulk and scale of the development.
- The proposal does not comply with requirement set out within the DCP as it does not provide adequate articulation of the built form to reduce its massing.
- The proposal is inconsistent with the following objectives of the DCP: *To encourage good design and innovative architecture to improve the urban environment; and To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

9. EXCESSIVE NUMBER OF STOREY

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to be constrained by the expectation of a two-storey outcome within the 8.5m HOB standard.

The proposed development should be refused due to its excessive number of storey, in that the number of storey contribute to poor character outcomes, and poor relationship with the heritage item.

This non-compliance, as well as the other non-compliances, arising from the proposed upper levels indicates that the proposal cannot satisfactorily achieve the underlying objectives of this control, ultimately resulting in an unacceptable building bulk that creates a severe amenity impact.

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact
- The development is not compatible with the desired future character of the locality in terms of building height and roof form.
- The development does not minimise the adverse effects of the bulk and scale of buildings

The impacts are very similar to the HOB impacts raised in the section above.

10. INSUFFICIENT SETBACKS

The proposed development should be refused as it is significantly non-compliant with setback of the DCP.

- Side
- Rear

These boundaries are to very sensitive C3 Zones, and an additional 3m should be considered as a minimum requirement.

The proposed development does not provide appropriate setbacks. This leads to inconsistency with the character of the area and unreasonable amenity impacts.

The proposal is inconsistent with the objectives of the DCP.

The non-compliance fails:

- To reduce amenity impacts on neighbours
- To provide opportunities for deep soil landscape areas.
- To ensure that development does not become visually dominant.
- To ensure that the scale and bulk of buildings is minimised.

The proposed development results in an encroachment beyond the prescribed building envelope. This non-compliance is indicative of an unacceptable built form and contributes to the severe amenity loss.

11. FORESHORE SCENIC PROTECTION

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it is inconsistent with the provisions of Foreshore Scenic Protection Area, as the built form and scale of the proposed development exceeds the expected form of new development in the foreshore scenic protection area.

The proposal does not achieve the normal outcomes expected to achieve the desired future character of the locality, and maintaining bushland or landscape as the predominant feature with the built form being the secondary component of the visual catchment.

The proposal does not achieve the normal control that development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.

The proposal detrimentally effects the visual or aesthetic amenity of land in the foreshore scenic area. The proposal similarly effects the views of that land, including ridgelines, tree lines and other natural features viewed from the water foreshore and adjacent public open space.

12. TRAFFIC, ACCESS, PARKING & BUS STOP/SHELTER RELOCATION

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as traffic, access and parking issues do not accord with the DCP provisions.

My clients ask for amendments to provide a safer outcome, as well as to ensure that the bus stop is maintained in front of the subject site.

- Car Park Entry to be repositioned to the northern boundary
- Bus Stop to be maintained in front of proposed development

13. IMPACTS UPON ADJOINING PROPERTIES: VIEW SHARING BY POOR STRATEGIC POSITIONING OF TREE CANOPY

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to strategically locate new tree canopy to ensure view sharing and avoid amenity loss.

The proposal is inconsistent with the objectives of the DCP.

My clients are concerned that new trees are positioned within the Tenacity Viewing Corridors to my clients' view, and those new trees are unreasonable as they will severely affect my client's view.

There are over 60 proposed trees over 10m in height and concern is expressed that the applicant's view impact montages have not assessed the view loss impact from the proposed canopy. The applicant's original set of montages were incorrect, and therefore we have no confidence as to the accuracy of what has been presented within this set of amended plans.

HONG V MOSMAN MUNICIPAL COUNCIL [2023] NSWLEC 1149

At the recent NSWLEC case, *Hong v Mosman Municipal Council [2023] NSWLEC 1149* decision dated 31 March 2023, view loss caused by excessive landscape was a key issue. Commissioner Walsh summarised the matter in cl 30 of his decision:

In regard to landscaping and tree protection, I note again that in Court and to some degree of detail, I worked through with the experts the various points of concern raised. This resulted in a number of further agreed alterations to the landscape plan. The Revision C drawings, based on the evidence of the experts but also in my own reading, now provide that appropriate balance between retaining and sometimes enhancing Middle Harbour views, while also providing for a valuable local landscape contribution.

The Revision C drawings required 9 high canopy trees to be deleted and replaced by 3m high species. The condition of consent required a further four transplanted palms to be deleted from the Landscape Plans.

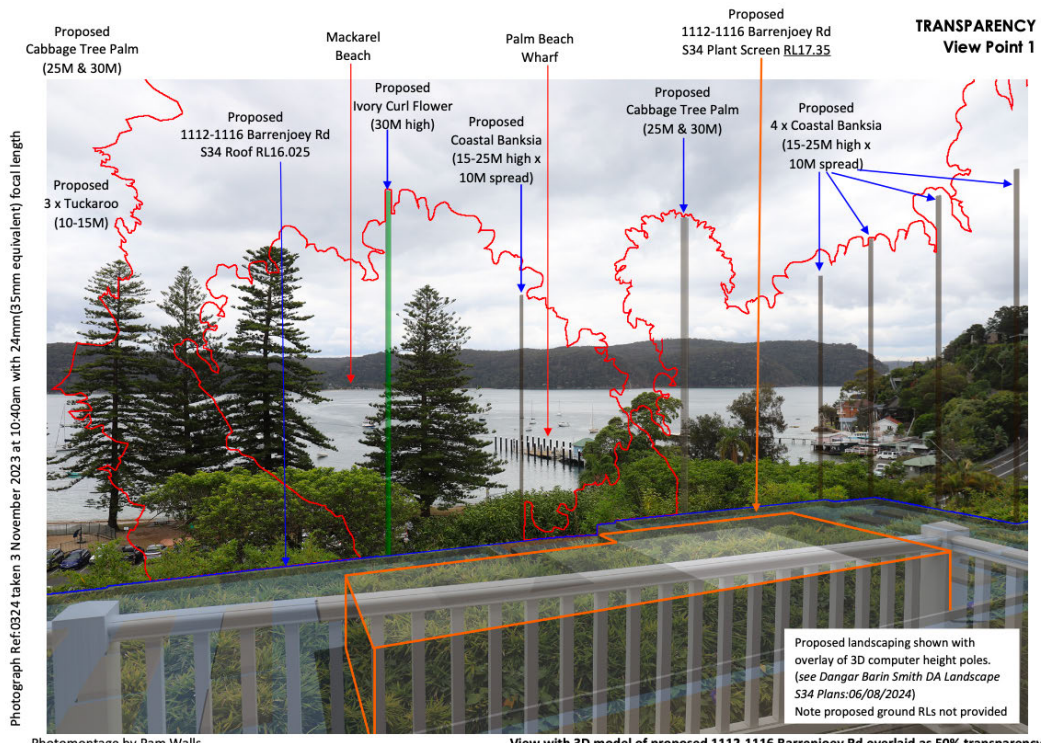
My client has instructed Pam Walls to update the view impact montages. I attach those montages that clearly show a severe view loss caused from potential excessive canopy.

The montages also show the concerns on the location of the AC Units, and Solar Panel issues:

- AC Units be to located away from the roof, and into zones away from highly used zones of my client's property.
- All Solar Panels and PV systems are to be treated with antireflective glass. Solar glass is to be stippled and light-trapping, with photon-absorbent solar cell attached to the rear side. Angle of reflectivity to neighbours must be considered within final detailed design at construction certificate stage, considering the view from neighbours from above the subject site.

My clients ask that:

- To maintain view sharing, the proposed trees and plants **over 8.5m in height** shall be deleted in the landscape plan and replaced with trees less than 8m in height. Tree planting shall be located to minimise impacts on view loss, with no trees or landscape species removing water views



Photograph Ref:0324 taken 3 November 2023 at 10:40am with 24mm(35mm equivalent) focal length

Photomontage by Pam Walls
 Based on Beveridge Williams Surveyors: Survey Ref:2101343 Rev:E-3/06/2024
 Koichi Takada Architects S34 Drawings Rev:F-23/09/2024

View with 3D model of proposed 1112-1116 Barrenjoey Rd overlaid as 50% transparency
View from 21A Palm Beach Rd, Palm Beach main living deck area
 Objection to 1112-1116 Barrenjoey Rd, Palm Beach-DA2023/1289

14. IMPACTS UPON ADJOINING PROPERTIES: ENGINEERING; GEOTECHNICAL, EARTHWORKS, STORMWATER, FLOOD CONCERNS, AC UNITS & SOLAR PANELS

My clients remain very concerned on the very deep excavation of over 15m.

My clients ask that Council's Expert Engineering Consultants review all matters submitted by the Developer, and ensure all matters meet the expectations of those Experts and of Council.

My clients request that all AC Units be located from the roof, and into zones away from highly used zones of my client's property.

My clients request that all Solar Panels and PV systems are treated with antireflective glass. Solar glass is to be stippled and light-trapping, with photon-absorbent solar cell attached to the rear side. Angle of reflectivity to neighbours must be considered within final detailed design at construction certificate stage, considering the view from neighbours from above the subject site.

15. PUBLIC INTEREST

Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not within the public's interest.

The proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest.

The proposed development is contrary to the provisions of relevant environmental planning instruments, development control plans and design guidelines. The proposed development represents numerous non-compliances and inconsistencies with State and Council policy. No circumstances exist that would justify the non-compliances and inconsistencies with these policies.

B. REQUEST FOR AMENDED PLANS TO BE SUBMITTED TO BETTER ADDRESS IMPACTS

1. REDUCE BUILT FORM:

- **NO BUILT FORM BEYOND 8.5m HOB**
- SECOND FLOOR to be recessed by 17m from the front boundary, to accord with 8.5m HOB standards and 6m from side boundaries so as not to be substantially seen from the public domain, with roof at RL 12.75m, not to exceed RL 4.25 contour as presented by the EGL along the side boundaries
- THIRD FLOOR delete
- ROOF PLANT to be at a maximum height of RL 13.25

2. LANDSCAPE:

- All trees over 8.5m to be deleted from the landscape plan, and replaced with trees 8m high. No trees to exceed the approved wall heights, and canopy to be maintained below those heights.
- Increase landscaping along southern boundary with screening plants to 8m high

3. PRIVACY:

- Privacy devices to all windows and decks facing side and rear boundaries
- AC Units be to located away from the roof, and into zones away from highly used zones of my client's property.
- All Solar Panels and PV systems are to be treated with antireflective glass. Solar glass is to be stippled and light-trapping, with photon-absorbent solar cell attached to the rear side. Angle of reflectivity to neighbours must be considered within final detailed design at construction certificate stage, considering the view from neighbours from above the subject site.

4. CAR PARK ENTRY & BUS STOP:

- Car Park Entry to be repositioned to the northern boundary, to avoid two heavily loaded carriageways adjacent to each other
- Bus Stop to be maintained in front of proposed development



Concept of a two storey, highly articulated E1 scheme, with a heavily setback upper level. A landscaped edge is provided to provide a better screen of the upper level built form to the streetscape. The setback on this proposal needs to be setback further – but the concept is clear.

CONCLUSION

The proposed development is not consistent with the intent of the LEP standards and DCP controls as they are reasonably applied to the proposal.

The variations to LEP standards and DCP controls are considered unreasonable in this instance. The cumulative effect on these non-compliances causes considerable amenity loss to my clients' property.

The development will not sit well within the streetscape with non-compliance to LEP standards and DCP controls causing considerable concern. In this regard, the proposal is considered excessive in bulk and scale and would be considered jarring when viewed from the public domain.

My clients contend that the proposed development severely impacts my clients' property, and in terms of amenity, there is excessive sunlight, view or privacy loss. The loss is unreasonable. My clients' property is not vulnerable to the loss that is presented. The loss arises out of poor design, either through non-compliance to envelope controls or poorly located built form.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the DCP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the EPAA1979

The proposed development does not satisfy the appropriate controls. Furthermore, the proposal would result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community, and is therefore not in the public interest.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have not been satisfactorily addressed.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, my clients' ask the Commissioner to DISMISS this Appeal. My clients request that any amended material is provided to them and that any decision on such material by Council should only occur after a consideration of any comments received following such notification.

Yours faithfully,

Bill Tulloch

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