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**Sent:** 25/04/2019 11:56:31 AM  
**Subject:** Submission to DA/2019/1309 257 Whale Beach Road  
**Attachments:** Submission to DA2019-0309 -final.pdf;

Attention:

Phil Lane

Submission attached.

*Dan Brindle*

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24 April 2019

DHB:18-197

The General Manager  
Northern Beaches Council  
PO BOX 82  
Manly, NSW 1655

Dear Sir,

**Attention: Mr Phil Lane**

**Re Submission to Development Application DA/2019/0309 for the demolition of the existing dwelling and construction of a new dwelling house at 257 Whale Beach Road, Whale Beach**

## **1. INTRODUCTION**

We write on behalf of the owners of the following properties:

- 228 Whale Beach Road,
- 230 Whale Beach Road,
- 232 Whale Beach Road, and
- 255 Whale Beach Road

who have instructed us to prepare a submission in relation to DA/2019/0309 ("the DA") which seeks development consent for '*New – Demolition works and construction of a new dwelling house with car stacker garage, swimming pool, front fencing and associated driveway and landscaping works*' ("the proposal") at 257 Whale Beach Road, Whale Beach ("the site").

This letter is also submitted on behalf of any resident who refers to this letter in their individual objection lodged with Council (whether or not the residents raise other objections).

The DA purports to be for the same development as that approved by consent to DA/2018/0797 determined on 28 November 2018 with the exception of changes required by conditions 18 and 19 of that consent.

This submission provides a merits-based assessment of the proposal against key statutory planning considerations, including Pittwater Local Environmental Plan 2014 ("the LEP"), Pittwater 21 Development Control Plan 2014 ("the DCP"), and other relevant matters for consideration under Section 4.15 of Environmental Planning and Assessment Act 1979 ("the EP&A Act").

Accordingly, the owners individually raise objections to DA/2019/0309 on the following grounds.

## **2. PHOTOGRAPHIC REVIEW**

The following provides a visual indication of the expected loss of views which will result from the proposal taken from the primary living area at 232 Whale Beach Road. As indicated, this property's of a 'full view' of the sand and water interface will be obstructed. This has been interpolated from the height poles erected on the site. We have been advised that the height poles have been erected for some time and therefore we have made the assumption that they represent the height of part of the proposed development prior to the consent. Our representation of the envelope have been adjusted accordingly.

The photograph was taken from a standing position on the outdoor private open space off the living room at No 232. The impact from a sitting position or the terrace or in the living room would be greater. Views from other levels of No 232 would be impacted also. **See image overleaf.**

View impacts from Nos 228 and 230 Whale Beach Road would also be affected in a similar manner to varying degrees.





### 3. PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

The DA is inconsistent with the following objectives and clauses listed in the LEP.

#### **3.1 The proposed development is inconsistent with the objectives of the zone in which the site is located**

The objectives of Zone E4 are as follows:-

- “• To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- To ensure that residential development does not have an adverse effect on those values.*
- To provide for residential development of a low density and scale integrated with the landform and landscape.*
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors”*

Council is required to consider these objectives in the determination of the DA. In our opinion, the bulk, and scale and extent of the proposed development is inconsistent with the above objectives and as a consequence will have an adverse impact on the special aesthetic values of the locality. The proposed built form is poorly integrated with the landform and landscape qualities of the site, will be visually dominant (because of its length, height) when viewed from adjoining and adjacent sites and from the public realm at Whale Beach. The proposal cannot be said to be “low impact” because of its dominant bulk and length.

For the above reasons, we submit that the proposed development should be redesigned to reduce its overall bulk and footprint on the site and better respond to the site’s landform and the surrounding natural environment. A more restrained bulk and scale, would in our opinion, result in a better outcome for surrounding development and would be more in keeping with the low density scale and built form within the locality.

#### **3.2 The proposal is inconsistent with the particular aims of the LEP and with the desired future character of the locality**

A particular aim of Pittwater LEP 2014 is: -

*“(b) to ensure development is consistent with the **desired character** of Pittwater’s localities” (our emphasis)*

The site is in the Palm Beach Locality, the locality statement for which is contained in Section A4.12 of Pittwater 21 DCP. The locality statement sets out the “desired character” for the locality and includes the following statements: -

*“The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations; and*

*Future development will maintain a building height limit below the tree canopy and minimize bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise façade modulation and/ or incorporate shade elements, such as pergolas, verandahs and the like. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape and minimize site disturbance; and*

*A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.” (our emphasis)*

There is thus a direct link between the aims of Pittwater LEP and the locality statement from which the above extracts are drawn.

The proposed development is inconsistent with the locality statement, particularly those underlined in the above extract. The proposal exceeds two storeys in a number of locations and at some points is three to four storeys in scale. This has the effect of creating an excessive bulk and scale which is inconsistent with the desired future character of the Palm Beach locality.

### **3.3 The proposal is inconsistent with the controls and objectives listed in Clause 4.3 of the LEP**

We provide the following comments in relation to the developments consistency with objectives of Clause 4.3 of the LEP.

Objective	Comment
<i>a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,</i>	As discussed In sections 3.1 and 3.2 of this letter, the proposal is of an excessive bulk and scale, and is thus inconsistent with the prevailing desired character of the locality.
<i>(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,</i>	The proposal’s height and scale is excessive when compared to nearby development. For example the proposal will be of a much greater bulk and scale compared to 259 Whale Beach Road.
<i>(c) to minimise any overshadowing of neighbouring properties,</i>	The proposal will result in overshadowing to 255 Whale Beach Road affecting the amenity of the existing dwelling and compromising the development potential of this site.

(d) to allow for the reasonable sharing of views,	The proposal is inconsistent with this objective. The proposal will result in the obstructing of beach views from adjacent properties.
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The applicant submits (pursuant to Clause 4.3(2D)) that the maximum building height be 10 metres. However, Clause 4.3(2D(b)) states that the 10 metre height control only applies if the application is consistent with the objectives of Clause 4.3 of the LEP (which it does not as stated above). Therefore the application relies on the Clause 4.6 request (submitted on 26 September 2018). We provide comments to this request in section 3.4 of this letter below.

### **3.4 The Clause 4.6 request to vary the height control should not be accepted**

The Clause 4.6 request to vary the height control should not be accepted for the following reasons:

- The proposal does not meet the objectives of Clause 4.3 of the LEP as stated in section 3.3 of this report.
- The proposal is of an excessive bulk and scale in relation to adjoining properties along the eastern side of Whale Beach Road. 259 Whale Beach Road is of a much more reserved bulk and scale when compared to the proposal.
- There are insufficient planning grounds for the contravening of the development standard. The exceedance of the 8.5 metre height limit results in further obstruction of views, overshadowing and sense of overbearing development.

## **4. PITTWATER 21 DEVELOPMENT CONTROL PLAN**

The proposal is inconsistent with the following controls listed within the DCP.

### **4.1 The proposal is inconsistent with Control C1.3 'View Sharing' of the DCP**

Control C1.3 'View Sharing' of the DCP states the following:-

*"The proposal must demonstrate that view sharing is achieved though (sic) the application of the Land and Environment Court's planning principles for view sharing."*

Land and Environmental Court ("LEC") principles of view sharing are stated in *Tenacity Consulting v Waringah [2004] NSWLEC 140*. This judgement states four step process to decide whether or not view sharing is reasonable. The proposal's consistency with these steps is outlined in the below table in relation to 232 Whale Beach Road.

Principle	Comment
1. <i>The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views</i>	The view from 232 Whale Beach Road, as displayed in Section 2 of this report, is of the interface between the water and the sand at Whale Beach. The view extends further along the beach to the headland.

<p><i>without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.</i></p>	
<p>2. <i>The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.</i></p>	<p>The view from 232 Whale Beach Road is obtained from their primary living area being the balcony off the living area.</p>
<p>3. <i>The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.</i></p>	<p>The extent of the obstruction of the view from 232 Whale Beach Road primary living area is displayed in section 2 of this letter. The extent of view obstruction is also evident at 230 and 228 Whale beach Road, The obstruction of view could be considered as moderate to severe when assessed in relation to the principles for view sharing.</p>
<p>4. <i>The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be</i></p>	<p>The proposal exceeds the maximum building height control listed in Clause 4.3 of the LEP and thus relies on a Clause 4.6 objection to vary the standard. The proposal is also inconsistent with the objectives of Clause 4.3 as discussed in section 3.3 of this letter.</p> <p>This principle states that even moderate impacts on views are considered unreasonable as a result of a non-</p>



<p><i>considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.</i></p>	<p>compliance with a planning control (in this case being Clause 4.3 'Height of Buildings').</p> <p>The proposal's exceedance of the maximum building height control and its objectives are therefore result in unreasonable obstruction of views from 232 Whale Beach Road, 228 Whale Beach Road and 230 Whale Beach Road.</p> <p>A building that complies with the controls and is in keeping with the character of the area would have less impact on views.</p>
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#### **4.2 The proposal is inconsistent with Control D12.8 'Building Envelope' of the DCP**

Control D12.8 'Building Envelope' of the DCP states the following for:

*"Development other than residential flat buildings and multi dwelling housing:*

*Planes are to be projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height (refer to Pittwater Local Environmental Plan 2014).*

***Variations***

*Where the building footprint is situated on a slope over 16.7 degrees (ie; 30%), variation to this control will be considered on a merits basis."*

The proposal's non-compliance with the above control results in an adverse outcome in terms of overshadowing, loss of privacy and view sharing and thus should not be supported on merits. The development does not minimise the bulk and scale of the built form, particularly for 255 Whale Beach Road, the property to the south where the setback is 1.0m.

The proposed terraces extend beyond the building at 255 and allow direct back viewing and subsequent loss of privacy.

These terrace have no screening, extend beyond the 8.5 building height and in places extend beyond the defacto building line.

The proposal is inconsistent with Control C1.5 'Visual Privacy' of the DCP

The proposed development has the potential to overlook the existing development at No 255 Whale Beach Road and to overlook private open space and living areas of any reasonable redevelopment of this site in accordance with the development controls in the LEP and DCP. This compromises the amenity of existing and future development on this adjoining site. There is the potential for overlooking from the balconies of the upper (master) level, the bedroom level, the living level and the lower level. The development has been located close to the southern boundary to retain the pine tree on the property to the north. In doing so it results in potential overlooking of the property to the south. Light weight yet effective privacy screens or other suitable measures should be provided to the southern edge of all balconies and terraces to prevent overlooking the adjoining property to the south now and in the future. Views from

the master level southern window (W3.31) should be similarly screened or fixed translucent glazing provided to 1.6 metres. Alternatively access to the side balcony at this level should be denied.

#### **4.3 Overshadowing**

Overshadowing of the adjoining property to the south is accentuated by the limited setback to the southern boundary relative to the height of the development being at least 3 storeys, the requirement for privacy screening from south facing balconies and windows and the size of the development on the southern façade. The existing overshadowing is noted and will be made worse by the proposed development which will affect the limited existing shadows to living rooms of the adjoining development at No 255. Overshadowing could be reduced by a lower building form. The extent of overshadowing would impact on the amenity of any reasonable future development of the site to the south.

#### **4.4 Inconsistency with locality statement**

The locality statement refers to the two storey character of the area. The proposed development includes 5 storeys when viewed from the waterfront and extend forward more than any other development in the immediate vicinity that maintain some consistency in setback from the beach (particularly relative to height). The development will be dominant in views from the public domain and out of character. The development could do more to integrate with the existing character of the area with a more modest bulk and scale and footprint. This would also minimise impacts on existing and future development in the area.

### **5. SUMMARY**

On behalf of our clients, we make submissions to DA/2019/0309 on the following grounds:-

- The proposal is inconsistent with the objectives of the zone with which it is situated;
- the proposal is of an excessive bulk and scale and is incongruous with the Palm Beach locality which envisages low density residential area consisting of two storey dwelling houses;
- step 4 of the judgement for *Tenacity Consulting v Waringah [2004] NSWLEC 140* states that even moderate impacts on views arising from non-compliance with planning controls (in this case Clause 4.3 of the LEP) are unreasonable;
- the Clause 4.6 request submitted to vary the maximum building height control should not be supported in the circumstances of the case for the reasons listed in section 3.4 of this letter;
- in its current form, the proposal presents non-compliances with the DCP and the LEP which results in unreasonable impacts to neighbouring properties from loss of privacy, overshadowing, sense of overbearing development and impacts on views.

In conclusion, based on a detailed review of the proposal and the DA documentation, we submit that the proposal does not warrant approval by Northern Beaches Council in its current form.

## 6. FURTHER ACTION

We trust that this submission assists Council's assessment and determination of the DA. We request to be notified in advance of any Council meeting at which the DA is to be determined in order that our clients can make appropriate arrangements to present their concerns or be represented. We also request to be notified of any amendments to the DA.

Council's assessing officers are invited to inspect the site from within our clients' properties in order to ensure that adverse amenity impacts are fully understood and considered.

We thank Council for the opportunity to provide comment on the application, and should any clarification on the above be required, please do not hesitate to contact the undersigned

Yours faithfully

**BBC Consulting Planners**



**Dan Brindle**

**Director**

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