



The Palm Beach & Whale Beach Association Inc.

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SUBMISSION

Land and Environment Court Proceedings 2023/00465007

Development Application No. DA2023/1289

Construction of shop top housing 1112 – 1116 Barrenjoey Road, 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.

We have reviewed the amended documentation dated 15 October 2024, submitted by the applicant, which responds to the issues raised in the Statement of Facts and Contentions (SOFAC) filed by Council. We are pleased to note that the 5th storey has been removed, apartments reduced in number from 7 to 5, a different facade treatment applied to level 3 to break up the visual mass, external finishes updated, curved elements removed from the facade and that additional landscaping and native groundcovers, shrubs and trees have been added.

However we still consider the proposal to be inappropriate within the streetscape, the bulk, scale and height of the proposed development is still excessive and inconsistent with the established and desired future streetscape character of the locality and there are still adverse acoustic and visual privacy impacts on neighbouring dwellings.

Other breaches are the shortfall of parking and retail space at less than 25% of the gross floor area of the building.

Relocation of the Bus Stop & Bus Shelter

We strenuously object to the proposed relocation of the existing bus stop and shelter from its current location in the E1 Zone close to the driveway beside Barrenjoey House to a location outside the residential properties in an E4 Zone at 1124, 1126, 1128, 1130 and 1134 Barrenjoey Rd in order to accommodate the proposed access driveway for the development.

In this location is a major sewerage pit which often overflows and requires Sydney Water servicing and maintenance (hence the current NO PARKING zone outside 1126). This area is also prone to flooding and water pooling owing to runoff along and across Barrenjoey Road. The proposed relocation will impact 5 residential residences and add to congestion across both entrances to Pittwater Park North and South and the Palm Beach Wharf pedestrian flow. This area is already very congested, especially at weekends and holidays.

We support the Council Engineer's report dated 10th January 2024 which states that "the relocated bus shelter should be sited as near as possible to the existing location potentially just north of the proposed driveway but it shall remain on the frontage of the development site."

Around 2017 the Pittwater Park Parking Demand Management Strategy (PPPDS) was developed and implemented by Council after lengthy community consultation. One of its priorities was to maintain pedestrian, cyclist and traffic safety for road users at all times. This area was designated a high pedestrian activity zone and a 40km speed limit was introduced.

The southbound bus stop has always been located outside 1112 - 1116 Barrenjoey Rd close to the driveway beside Barrenjoey House.

The pedestrian crossing was moved from the southern end of Pittwater Park (opposite 1102 Barrenjoey Rd) to the north to be close to the entrance of Pittwater Park and the Wharf, to make crossing the road to reach the southbound bus stop (and the shops that were located there) safe and accessible for all. Sightlines for traffic heading south from the ocean beach down the hill were assessed carefully prior to its relocation. The original exit and entrance to Pittwater Park were "swapped" again for safety reasons. The bus stop and shelter are both very well used by visitors, locals and commuters some of whom have luggage after visiting the Central Coast, the Basin and Currawong Cottages.

We note that under TfNSW guidelines bus stops should be placed on the downstream side of a pedestrian crossing to reduce the risk of passengers crossing the road in front of a stopped bus and that requirements of the elderly; the mobility, vision and hearing impaired; people with young children, strollers and prams; people with large or heavy luggage or shopping are a priority.

We believe that people arriving via the ferries will not use the pedestrian crossing to access the proposed relocated bus stop as it will be too far away but rather they will cross the road (jaywalk) in a straight line from the Wharf. This will be very dangerous particularly as vehicles speed down the hill from the beach and the Wharf entrance is often very congested with vehicles.

Pedestrian safety is of the utmost importance and the bus stop should **not** be relocated to satisfy the whim of the developer. We support the location of the driveway/entrance in the original approved DA NO102/10 2010 which is located at the northern end of the development. This would mean that the bus stop and shelter can remain where they are in the E1 Zone and the safety of pedestrians is prioritised.

Excavation

We are also very concerned that the extensive excavation proposed will pose a significant risk to the neighbouring properties all of which are in the highest rated slip zone (H1). We are concerned that there has been insufficient geotechnical examination of the hillside which will be heavily excavated to a maximum depth of 17 metres, back to a line 3 metres inside the eastern boundary of the site. The report does not deal with the

possibility of 'floaters' which are known to exist in this hillside and measures to deal with them if they are found. Any movement of 'floaters' in the hillside at the rear of the site would place the adjoining neighbours at considerable risk. In these respects, the report may not give a comprehensive picture of the risks of construction on this site.

Height

It is not correct to describe the proposed development as "stepping down the site in response to the topography". The proposed development is constructed on a flat base covering the entire excavated area at ground level of RL2 400. On this flat base is constructed a four-storey building where the top of the building is at RL17 350. The building therefore has a height of 14.95 metres, compared to the height control of 8.5 metres and it therefore breaches the height control by 75.9% from ground level, not the 32.9% quoted in the D/A. This is excessive and a long way away from the Merman Case quoted where the Court granted consent to a development beside a heritage item where the height variance was 19%.

What the development does is increase the level of setback from the street frontage at Level 2 and again at Level 4, in an attempt to reduce the visual impact of the building. This is not "stepping down in response to the topography" which minimises excavation, as required by the Pittwater DCP, Section B8.1. The drawings quoted demonstrate that the attempt at minimisation of visual impact does not achieve its aim.

Scale

It is necessary to point out that Drawings A0201 and A0203 refer wrongly to No 21A Palm Beach Road, immediately behind the proposed development, as a "Restaurant and Bar". It is a private residence. Next door to it is Barrenjoey House and to the north east is "Winten" which are both heritage items under Schedule 5 of the Pittwater LEP. The proposed development therefore must be designed not to impact on it – its bulk and scale make this impossible.

Both of these Drawings demonstrate graphically that the proposed development is substantially out of scale with the residential houses adjoining it to the east and north and with the heritage item, Barrenjoey House. Its height and scale, as required by Pittwater LEP, Clause 4.3.1(b) must be consistent in height and scale with surrounding and nearby development and this D/A is not in compliance.

The development is clearly not in accordance with the desired character of the locality under any of the criteria and objectives of the development controls in the LEP for this locality.

Disturbed Nature of Site

More recent investigation of the site reveals that one of the causes of the disturbed nature of the site is new fill, not excavation, with the result that height calculations based upon the theoretical undisturbed nature of the site are likely to understate the extent of height breaches – vide submission of Bill Tulloch. The proper response is to look at the construction as a whole, based on the proposed excavation to ground floor level.

Flooding

The western part of the ground floor of the proposed development at RL 2 400 is below the Flood Planning Level of RL 3 120. The argument appears to be that this causes difficulty in meeting the height control and therefore an increased height breach should be approved. With respect, this is illogical – if the flood control causes the height control breach to be increased, then the height must be reduced. There is no planning necessity for this building to be four storeys high and the solution to the problem caused by the Flood Plan is reduce the building to three storeys high.

Other Relevant Cases

Although each case stands on its own, the case of Forest Developments Pty Ltd v Northern Beaches Council (2023 NSWLEC 1042) at 1105 Barrenjoey Rd Palm Beach, involving a similar but much less ambitious shop-top housing development, casts a significant light on development in this zone and within the same precinct. It was refused on the grounds of height and scale and because the Commissioner could not be satisfied that the grounds for non-compliance were established.

Summary

In short, the proposal represents an overdevelopment of the site with numerous breaches of the Pittwater LEP and DCP and does not meet the objectives of the relevant controls as set out in the LEP. In view of the substantial quantum of the breaches, the Commissioner cannot be satisfied that sufficient environmental planning grounds to make compliance unnecessary or unreasonable have been established.

We respectfully request the Court to consider the strongly held views of our Community when making a decision on this Development Application and that the rules and regulations of the Pittwater 2014 LEP and Pittwater 21DCP be adhered to.

We believe this DA should not be supported in its current form.

Prof Richard West AM
President

20 November 2024