

From: [REDACTED]
To: [Council Northernbeaches Mailbox](#)
Subject: TRIMMED: PROPERTY: 1112 - 1116 Barrenjoey Road PALM BEACH NSW 2108 DA NUMBER: DA2023/1289
Date: Monday, 2 September 2024 4:31:57 PM
Attachments: [1112 BR PB WS S34.pdf](#)

My clients wish for this objection to be posted against DA 2023/1289 onto the DA Tracker

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

25 JUNE 2024

THE COMMISSIONER NSWLEC

LAND & ENVIRONMENT COURT PROCEEDINGS NO. 2023/00465007

PROPERTY: 1112 - 1116 Barrenjoey Road PALM BEACH NSW 2108

DA NUMBER: DA2023/1289

APPLICANT: PALMDEV PTY LTD

RESPONDENT: NORTHERN BEACHES COUNCIL

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

Dear Commissioner,

I have been instructed by my clients to prepare a submission on this LEC Appeal.

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

COUNCIL'S SOFAC

I agree with Council's SOFAC, prepared by Peter Robinson, NBC's Executive Manager Development Assessment dated 22 January 2024. The main contentions are:

1. Building Height
2. Character & Built Form
3. Setbacks
4. Ratio, Use & Design of Commercial Tenancies
5. Neighbouring Amenity
6. Design Quality & Internal Amenity
7. Inadequate Landscape Amenity
8. Geotechnical & Earthworks
9. Flooding
10. Traffic, Access & Parking
11. Heritage Impact
12. Aboriginal Heritage
13. Bus Stop/Shelter Relocation
14. Waste Management
15. Water NSW
16. Public Interest
17. Survey Plan
18. Section Plans
19. Drainage Cavity Location
20. Driveway Section Plan Dimensions
21. Excavation & Fill Plan
22. View Sharing
23. Acoustic Treatment

I will not repeat the detailed matters raised within the SOFAC, as the SOFAC identifies the main matters of contention. I agree with the main contentions.

I bring to the Commissioner's attention the recommendations of the Design & Sustainability Advisory Panel Meeting Report of 26 October 2023 states:

"The proposal as presented does not demonstrate adequate residential amenity and that the built form does not respond appropriately to the site's unique context.

The Panel consider that the proposal does not adequately respond to the context and future desired character due to the following: The proposal's height, number of storeys and tiered form contribute to it having a comparatively overbearing prominence and bulk. This is further emphasized by the singularity and uniformity of expression and the predominant horizontality of its western facade.

Recommendations

- 1. Reduce bulk and interrogate form, character and landscape to achieve greater consistency with context;*
- 2. Preserve natural vegetation and topological features such that the proposal, particularly any parts above its second storey, may more effectively integrate (in a less impactful way) with the natural environment;*
- 3. Consider ways to diminish the horizontality of the building's address (especially to the west) and to better respond to the dominant pitched-roof forms and deep verandahs of neighbouring dwellings/buildings;*
- 4. Provide more compatible transition into adjacent low-density zoning through careful built form/landscape/set-back relationships;*
- 5. In considering streetscape and built form impact, respond to and give prominence to Barrenjoey House;*
- 6. Consider and implement strategies to greatly reduce site disturbance and excavation.*
- 7. Reduce height /number of storeys of building and undertake to achieve a prominence of lower 2 storeys;*
- 8. Consider how through breaking up and manipulating the form, the impact of parts of the building(s) above 2 storeys could be greatly reduced;*
- 9. Consider articulations/breaks in built form of far greater magnitude than proposed to assist with scale and presentation of built form.*

I bring to the Commissioners' attention two further submissions that I made to Council in 2023 regarding:

GEOTECHNICAL & EARTHWORKS:

A Geotechnical Peer Review Report was carried out by **Troy Crozier** dated 31 October 2023 on behalf of my client, Ted Campbell, 21a Palm Beach Road Palm Beach

I attach the Report in the Appendix. Disturbingly, the Crozier Report states: *The geotechnical report provided for DA submission does not meet the requirements of the Councils policy and is not even based on the submitted architectural design drawings.*

My client asks for a new Geotechnical Report that responds positively to the Crozier Report, and to Council's Contentions.

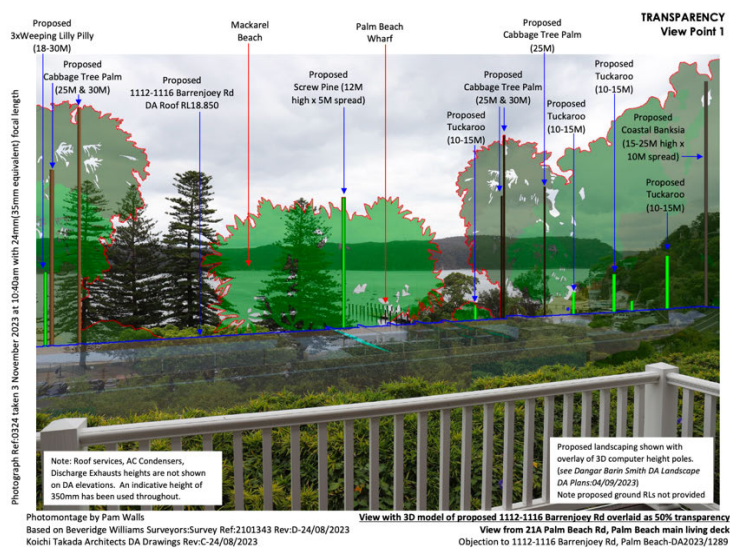
VIEW SHARING:

A series of View Loss Photomontages was carried out by **Pam Walls [RAW]** dated 18 November 2023 on behalf of my client, Ted Campbell, 21a Palm Beach Road Palm Beach.

I attach the Photomontages in the Appendix. The photomontages show SEVERE view loss caused by non-compliant built form and excessive landscape canopy.

My client asks for a reduction in the non-compliant height of built form over 8.5m HOB to ensure the land/water/beach interface is not obscured.

My client asks for the deletion of all proposed trees over 8m in mature height. My client asks for a full consideration of Council's contentions.



One of the View Loss Photomontages was carried out by **Pam Walls [RAW]** dated 18 November 2023 on behalf of my client, Ted Campbell, 21a Palm Beach Road Palm Beach. Severe View Loss. Full pack of montages within appendix.

I refer the Commissioner to a recent LEC Case:

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

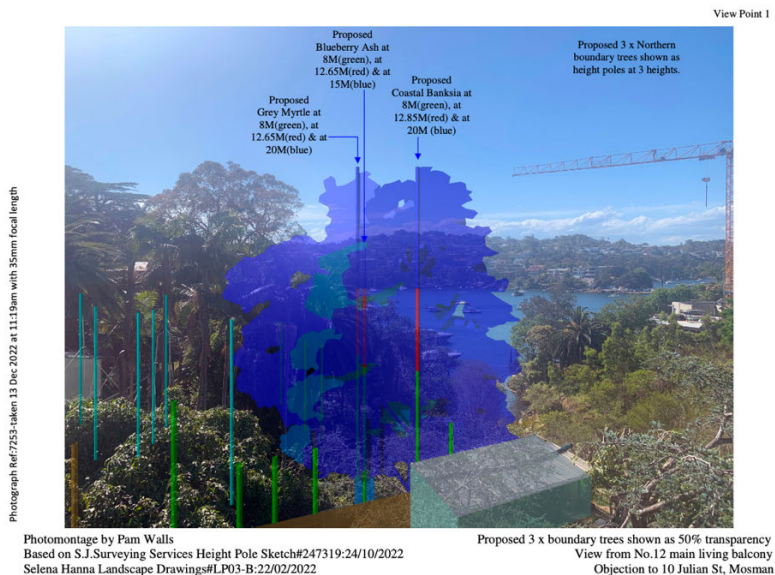
concern raised. This resulted in a number of further agreed alterations to the landscape plan. The Revision C drawings, based on the evidence of the experts but also in my own reading, now provide that appropriate balance between retaining and sometimes enhancing Middle Harbour views, while also providing 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.

I represented the neighbour in this matter.

I include within this submission the view loss montages prepared by Pam Walls as a part of my submission to Council and the Court on this Appeal.

I add the montage prepared to support the neighbour's submission in these respects.



Hong v Mosman Municipal Council [2023] NSWLEC 1149 View Loss caused by excessive landscape in the harbour viewing corridor zone

A compliant building design would reduce the amenity impacts identified.

My clients agree with Roseth SC in NSWLEC Pafbum v North Sydney Council:

"People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime."

The 'legitimate expectation' that my clients had as a neighbour was for a development that would not result in very poor amenity outcomes caused directly from the non-compliance to building envelope controls.

Council's development controls relating to managing building bulk and scale are designed to ensure that buildings are consistent with the height and scale of the desired character of the locality, are compatible with the height and scale of surrounding and nearby development, respond sensitively to the natural topography and allow for reasonable sharing of views and visual amenity.

Council's DCP with respect to the locality, requires that development respond to the natural environment and minimise the bulk and scale of buildings. The proposed development in its current form does not achieve this and provides inadequate pervious landscaped area at ground level.

The proposal does not succeed when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, does not succeed on merit and is not worthy of the granting of development consent.

The proposed development fails the fundamental principles of design excellence in terms of:

- Context and local character
- Built form, scale and public domain, urban design response
- Density
- Landscape integration
- Architectural expression, in terms of excessive built form
- Amenity impacts on neighbours

My clients ask the Commissioner to seek modifications to the proposal as the proposed development does not comply with the planning regime, by non-compliance to development standards, and this non-compliance leads directly to my clients' amenity loss.

I turn to the list of amendments that my client's seek.

AMENDMENTS

1. Reduction of all built form to 8.5m HOB;
2. Fully compliant Setbacks;
3. Wall Heights to match the heights of Barrenjoey House
4. Roof Forms not to exceed the ridge height of Barrenjoey House
5. All trees over 8m in height to be deleted from the Landscape Plan, with no new trees exceeding the height of the consented roof profiles.
6. New Geotechnical Report to address Council's Contentions and the Crozier Report. No excavation or fill in the setback zones. No Anchoring under neighbours' property will be allowed.
7. Privacy Devices on all Windows & Decks facing side and rear boundaries
8. A/C Condensers relocated away from roof

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 EPAA 1979

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

Bill Tulloch BSc [Arch] BArch [Hons1] UNSW RIBA Assoc RAIA