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**Sent:** 8/02/2022 4:45:03 PM  
**Subject:** DA 2021/2362 1105 BARRENJOEY ROAD PALM BEACH  
**Attachments:** 1105 BARRENJOEY RD PALM BEACH LETTER TO COUNCIL.pdf;

Please find attached, submission on behalf of the Owners Corporation of Strata Plan 69534, 1097 – 1101 Barrenjoey Road Palm Beach in response to the notification of the above DA for forwarding onto Adam Mitchell.

Kind regards

**LANCE DOYLE**

B.AppSc (UWS), M.Plan (UTS), RPIA, EPLA

**REGISTERED PLANNER**

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8th February 2022

The General Manager

Northern Beaches Council

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ATTN ADAM MITCHELL

**DA2021/2362**

**ADDRESS - 1105 BARRENJOEY ROAD AND 43 ILUKA ROAD PALM BEACH**

Dear Sir,

I am writing to you on behalf of the Owners Corporation of SP 69534, 1097-1101 Barrenjoey Road Palm Beach (39 Iluka Road Palm Beach - Iluka Resort) a property that is located directly adjacent to and to the south of, the subject site.

The owners of Iluka Resort have significant concerns over the proposal, primarily short term impacts of demolition and construction and long term impacts upon amenity and structural soundness of the site(s).

The current use of my client's property is as an approved development comprising Serviced Apartments together with some ground floor retail and commercial uses.

The demolition of the existing structure on the subject site and its replacement with a significantly larger structure with substantially reduced setbacks to both street frontages together with additional non-compliant overall height will result in significant adverse impacts upon the amenity and subsequent enjoyment of my client's property.

The proposal raises a number of issues as follows –

## **PROPOSAL DOES NOT SATISFY THE DEFINITION OF SHOP TOP HOUSING**

I note the supporting Statement of Environmental Effects for the proposal on pages 12 and 13 advises that the proposal satisfies the definition based on a decision handed down by the NSWLEC in 2014 and, based on this decision, all residential apartments are not located entirely above the level of the permissible ground floor retail floor space on the ground floor.

Council have consistently advised that the entire ground floor area of a Shop Top Housing development must comprise commercial and/or retail uses with residential uses over in order to satisfy the definition under the PLEP 2014.

As the proposal incorporates residential uses on the ground floor (Plan DA101), I am of the view that the proposal does not satisfy the definition of shop top housing and is therefore not a permissible use.

## **POTENTIAL IMPACTS ON AMENITY**

The proposal, by virtue of its substantially increased height and footprint together with the fact that the subject site is located to the north of my clients site will result in impacts on the available solar access to private open space and living areas of the serviced apartments and the scale of this impact is deemed unreasonable due to the enlarged footprint and non-compliant height of the proposal.

Although non-compliance with a development standard is not, in itself, a reason for refusal, the impacts associated with this non-compliance are deemed unreasonable and do not warrant support for the proposal.

The contrast in scale of my client's site and the proposal are illustrated in the following extract from the architectural plans.



## Extract from architectural plans showing elevation from Barrenjoey Road

### VIEW LOSS

The proposal, due to its extended footprint to Barrenjoey Road and Iluka Road coupled with the proximity of the proposal to balconies and associated living areas of my client's property will result in a loss of views from these areas. The potential view loss is exacerbated by the substantial reduction in setbacks to the front boundary of both streets.

It is therefore requested that the applicant be directed to provide height poles certified by a registered surveyor that clearly indicate the horizontal and vertical extent of the proposal and its juxtaposition with the northern boundary of my client's site.

This is a critical component for a suitable assessment to be carried out to establish the extent of view loss likely to occur because of the proposal.

### INADEQUATE SETBACKS TO STREET FRONTAGE

The provisions of the PDCP, *D12.5 – Front building line* are clear in that the front building line should be 3.5 m or the established building line, whichever is the greater.

I note the submitted Statement of Environmental Effects on page 24 claims that the setbacks to the Iluka Road frontage are variable and respond to the geometry of the site. The Statement is silent on the requisite setbacks to the Iluka Road frontage and seeks to rely upon a “highly articulated façade with varying setbacks”.

The Iluka Road frontage requires an unencumbered setback of at least 3.5 m to the front boundary to seek to achieve the critical outcomes sought by the control particularly the spatial characteristics of this part of Iluka Road which is typified by setbacks in excess of 3.5 m. This will also assist in reducing the perceived building bulk and reducing impacts upon the living areas of 39 Iluka Road.

### **INSUFFICIENT CAR PARKING SPACES PROVIDED**

The provisions of B6 .3 – *off-street vehicle parking requirements* of the Pittwater 21 DCP are specific in that the minimum number of vehicle parking spaces to be provided for off – street parking (table 1) requires a minimum of two spaces per dwelling for dwellings containing 2 or more bedrooms.

The proposal seeks to nominate floor areas to some units as “media rooms”, thereby seeking to avoid the provision of adequate car parking spaces to serve the development.

A viewing of the Ground Floor Plan for example indicates 3x1 bed serviced apartments (which as previously noted should be retail space) containing one bedroom and one media room in each unit. The media rooms are such that these rooms have light and ventilation, are of bedroom size and for the purposes of car parking generation must be regarded as potential bedrooms thereby identifying a shortfall of at least three car parking spaces on the subject site.

### **INADEQUATE SURVEY INFORMATION**

The submitted survey information, whilst comprehensive, does not provide levels of the balcony/deck areas of my client’s property. It is critical that this be provided to enable a proper assessment of the proposal and to understand the juxtaposition of the new works to my clients site and to facilitate a satisfactory assessment of potential view loss and impacts upon solar access.

### **OUTDATED TRAFFIC REPORT**

I note that the Traffic Impact Assessment was completed in December 2020. This traffic report does not appear to have

considered the recent changes to the speed limit in this part of Palm Beach which has now been lowered from 50 km/h (as stated in the traffic report) to 40 km/hr.

It is therefore requested that the applicant revisit the Traffic Impact Statement to accurately assess the current traffic regime in the locality, particularly the speed limit and recent changes to parking restrictions.

The importance of ensuring that an accurate traffic assessment is carried out is reinforced by the fact that the current speed limit has been lowered to 40 km/hr.

### **CONSTRUCTION MANAGEMENT PLAN**

Further to my comments above, a Construction Management Plan is required, consistent with Council's recent request for developments in Palm Beach, to clearly describe staging areas for heavy vehicles, the provision of work zones, parking for tradespersons vehicles, hours of work and the like.

This aspect of the proposal is critical and must not be provided as a condition of consent. A comprehensive Construction Management Plan in a sensitive location such as this must be in the hands of Council, not a certifying authority.

As my client's property contains Serviced Apartments, the Construction Management Plan is a critical component as the proposal will impact upon the acoustic environment, air-quality, parking and the general appearance of the locality which could have long-term impacts upon the viability of the serviced apartments.

### **DILAPIDATION REPORT**

The Geotechnical Report (dated December 2020) by JK Geotechnics highlights the sensitivity of the subsurface area in this part of Palm Beach due to the shallow water table requiring dewatering and the method of dewatering will depend upon the adjacent basement level (my client's site) and the method of dewatering this site.

The subject report appears to be a thorough assessment of the soil mechanics of the site however the recommendations for determining the method of dewatering, shoring design and options for potential footings are of significant concern and due to the lack of certainty, do not warrant the current proposal being favourably considered without precise designs and dewatering programs being proposed, considered, and approved by Council, not a certifying authority.

Council should also consider requesting a re-examination of the subject site as the site sampling was carried out in November 2020 and it is highly likely that due to the recent climatic events, the extent of subsurface water may have changed in this time.

The Geotechnical Report rightly recommends the provision of dilapidation reports however my client requires precise wording for these dilapidation reports prior to the matter being further considered by Council.

### **UNCERTAINTY OF DESIGN**

The geotechnical engineer proposes, as an option, the provision of anchors to be incorporated within the proposal to maintain the structural integrity of the retaining structures along the common boundary with 39 Iluka Road.

To date, no approaches have been made to myself or my client seeking to provide an easement over my client's land for these anchors should this option be chosen.

This option will impose a substantial burden on my client's site and is unlikely to be favoured.

### **SUMMARY**

The proposal is supported by a Traffic Impact Assessment that does not currently reflect the traffic and parking regime in the locality and is based upon a plan that does not accurately reflect uses, a Geotechnical Report that is very comprehensive but brings a significant doubt as to the certainty of the design and the potential impacts upon my client's property and as such, these documents require revisiting prior to further consideration.

The long-term impacts upon view sharing and solar access require a detailed assessment which will be assisted by the provision of height poles whilst the short-term impacts of the construction on the viability of my clients' rental properties could be substantial and requires a detailed management plan approved by Council prior to any consent being issued.

Could you please advise of your initial thoughts on the provision of height poles so I may advise my client accordingly.

Should Council not agreed to the provision of height poles, I will provide you with a further submission.

Thank you for the opportunity to provide this initial submission on my client's behalf.

**LANCE DOYLE**

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