

SUBMISSION

a written submission by way of objection

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prepared for

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TONY MADDOX 1110B BARRENJOEY RD, PALM BEACH
EDWARD GLASFORD CAMPBELL 21A-B PALM BEACH ROAD PALM BEACH
BRENDON BARRY, BARRENJOEY HOUSE, 1108 BARRENJOEY ROAD, PALM BEACH

16 July 2024

THE COMMISSIONER NSWLEC

LAND & ENVIRONMENT COURT PROCEEDINGS NO. 2023/00242901
PROPERTY: 1102 BARRENJOEY ROAD, PALM BEACH
DA NUMBER: NBC DA2022/0469
APPLICANT: ASIA DIGITAL INVESTMENTS PTY LTD
RESPONDENT: NORTHERN BEACHES COUNCIL
PROPOSAL: DEMOLITION & CONSTRUCTION OF A SHOP TOP HOUSING AT 1102
BARRENJOEY ROAD, PALM BEACH

Dear Commissioner,

I refer to email correspondence received from Council's Lawyers, Storey & Gough, dated 2 July 2024.

The email attached the following documentation:

- Innovate Architects Drawings generally dated 18 June 2024
- JK Geotechnical [JK] Report dated 21 June 2024
- Van Der Meer [VDM] Drawings dated 18 June 2024

I refer to these documents as the 'June 2024 Amended Plan Documentation'.

I continue to be very concerned that the matters raised within Council's SOFAC dated 28 August 2023 have not been adequately addressed by the applicant.

The 'June 2024 Amended Plan Documentation' offers much the same outcomes as the 'March 2024 Amended Plan Documentation' set.

- Innovate Architects Drawings generally dated 22 March 2024, Revision C
- JK Geotechnical Report dated 22 March 2024
- Fifth Season Landscape drawings 15 March 2024
- Other documents: CI 4.6; ADG Analysis; Photomontage; Basix

The main changes are:

- modest alteration to courtyard details and minor roof detail amendments.
- internal arrangement amendments
- a set of DA drawings that are co-ordinated with the proposed VDM structural drawings – that the applicant was required to make to ensure the architectural design was co-ordinated with the structural design

The poor outcomes as I identified within the 'March 2024 Amended Plan Documentation' still prevail.

There is nothing in these amendments that reduces the unacceptable bulk and scale in terms of height or setbacks.

In the conclusion to this submission, I offer 14 further amendments that, if fully completed, would better respond the matters raised.

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 'June 2024 Amended Plan Documentation' has not addressed the full range of matters referred to in previous correspondence and in Council's SOFAC.

I am unconvinced that the proposed 4m high roof structure, along with multiple projecting extended dormer details is an appropriate outcome.



'June 2024 Amended Plan Documentation'

The applicant's 'view from the sun' solar diagram captures the unacceptable bulk and scale of the non-compliant development, compared with the smaller 'village' scale of Barrenjoey House, the neighbour to the south, and the neighbours to the east.

The proposals exceed all envelope controls – *Height* and all *Setbacks*. The *Density Controls* identify an outcome double the density expectation.

Although FSR is not a standard, the FSR represents a four time increase over neighbouring residential sites.

The proposed poor, shallow landscape zones to the street frontage, and to the north does not allow adequate landscape to screen the proposed non-compliant building.

There is no adequate setback and no landscape on the eastern boundary. This is unacceptable.

Together, this gives a clear indication of overdevelopment on the subject site.

A more compliant outcome to height, setbacks, density, and landscape surrounding the built form in deep soil zones, should be the 'base' position of acceptability.

The 4m high roof form with the Oversized Dormers is unacceptable. The roof is too high, exceeding HOB standards, and setback controls.

The Oversized Dormers are too extensive with massive openings of over 7.3m wide and 3m high forms facing the street. The Oversized Dormer facing south runs the full length of the roof forms. This presents outcomes that are unacceptable in scale and bulk, that are *jarring or unsympathetic*.

A reduction in roof form from 4.0m to 3.1m, and the use of much smaller Dormers would be the preferred design solution.

A successful outcome would be for the bulk of the second-floor accommodation to be largely 'unseen' from the longer street views surrounding the subject site, from Pittwater Waterway, Palm Beach Wharf and Pittwater Park zones, with the roof height to match the height of Barrenjoey House. The approved DA has a maximum height of RL 12.95, and I contend there is no reason this design cannot be restricted to the same RL height.

The Geotechnical Reports and drawings are being reviewed by my client's Geotechnical Engineer.

I remain concerned regarding the Geotechnical matters:

- The 18m high piling structure along the eastern boundary, presents unacceptable risks during the construction process to my client's properties;
- Fails to adequately identify how the works can be carried out safely. There is no detailed consideration as to how the enormity of the Enabling Works will be carried out to allow a substantial Piling Rig to position itself along the eastern boundaries and adjacent side boundaries to complete the engineering tasks, including the 18m deep piling;
- Fails to identify, within the assumptions, how the proposed works will support large concrete trucks on sites to the east, that are required, to build adjacent approved developments that are under construction;
- Fails to provide adequate side setbacks, with the proposals presenting zero setback to all boundaries, other than a 500mm side setback [referred to in the JK Report – no figured dimension on DA plans] to Barrenjoey House. I am concerned that the 500mm setback to the heritage item could easily be lost through the structural engineering detailed design phase stage, as the basement wall zone is shown as only 500mm wide, when the structural zone shown on the VDM structural drawings is 750mm wide. Parts of the heritage item are built on the common boundary to the subject site.

- Fails to provide adequate protection to my clients' property from excessive excavation and potential land slip and damage to my clients' property, including incomplete intrusive geotechnical investigations, incomplete geotechnical recommendations, incomplete extensive geotechnical monitoring plan to the heritage building, excessive vibration limits to the heritage item Barrenjoey House, lack of full-time monitoring of the vibration, incomplete dilapidation report recommendations, incomplete attenuation methods of excavation, exclusion of excavation in the setback zone, exclusion of anchors under my clients' property, and incomplete consideration of the substantial piling adjacent to the boundaries and how this can be safely achieved.
- Fails to identify that Ground Anchors to support the 18m high piled retaining walls under my clients' property will not be allowed or agreed to under any circumstances. The JK & VDM Reports will need to be altered to exclude ground anchors, and re-consider the design with internal propping and other measures. There is no design consideration how the 18m high piling works, will be supported by propping back into the subject site.

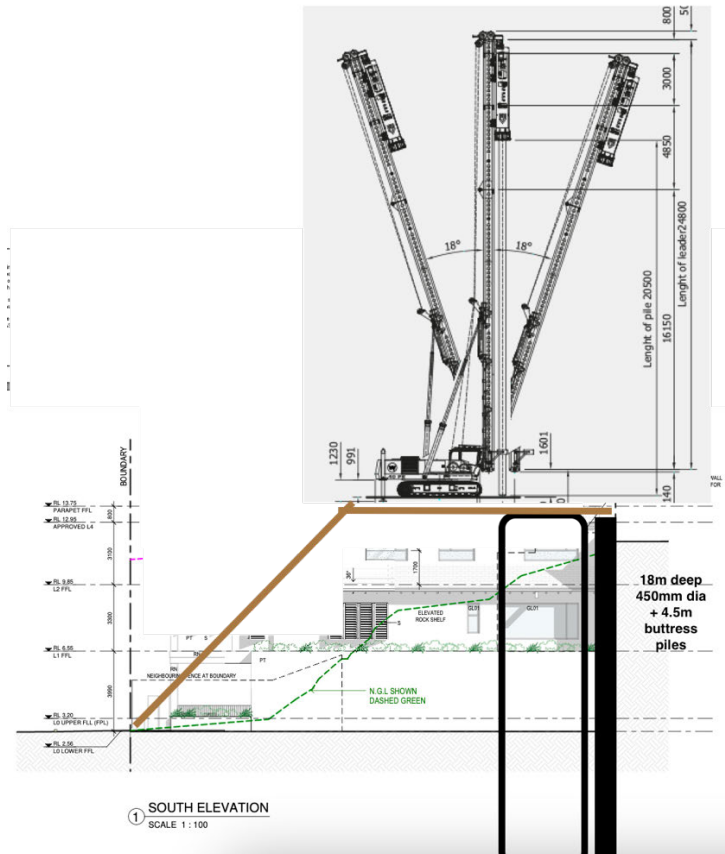
My client's Geotechnical Engineer will respond in due course.

I have significant concerns in 'how' the temporary works can actually be carried out safely to construct the proposed works defined within the Van Der Meer [VDM] Drawings dated 18 June 2024.

JK REPORT fails to define:

- The design of the temporary works that will be required to be built on the boundary, particularly to the east of the site, defined within the VDM drawings, where >18m deep piles will need to be positioned at an elevation >10m above the base of the existing slope. JK Report does not address this important matter.
- The Piling Mat will need to be positioned at a height at the top of the eastern piled wall, that is inaccessible from a normal sloped ramp approach for a Piling Rig, and appears to require an Elevated Piling Mat, perhaps a separate steel structure, that is >10m high, to support a >40-ton Piling Rig, and that Rig would be >30m high. The Piling Rig would be required to be craned into position. JK Report does not address this important matter.
- The Elevated Piling Mat would need to be built on the boundary of the heritage item, Barrenjoey House. JK Report does not address this important matter.
- It is uncertain how the Piling Mat would be piled in the zones to the east of the existing retaining wall on the subject site. JK Report does not address this important matter.
- The report does not identify the risks involved, nor how these risks will be mitigated. JK Report does not address this important matter.
- The development has not been designed, sited and has not been managed to minimise that risk or impact. JK Report does not address this important matter. Compliant rear setbacks and side setbacks would obviously significantly reduce the risks, to all neighbours and to the heritage item

- o The Report does not identify whether the substantial loads from concrete trucks on neighbouring sites, on the subject site's eastern boundary, has been considered within the design loads. JK Report does not address this important matter.



Sketch: The risks of positioning an Elevated Piling Mat, perhaps a separate steel structure, that is >10m high, to support a >40-ton Piling Rig >30m high has not been assessed by the JK Report.

I contend that the proposal is inconsistent with the provisions of Clause 7.7 'Geotechnical Hazards' of the PLEP, as previously defined within Council's SOFAC.

To better respond to Council's SOFAC, and to better accord with SEPP, LEP & DCP standards and controls, I raise the following concerns:

1. HEIGHT:

The 'June 2024 Amended Plan Documentation' still presents a non-compliant HOB, that fails to match the height of Barrenjoey House roof height, and exceeds the previous approval. The non-compliance is excessive, and coupled with the non-complaint setbacks and the non-complaint 45 deg building envelope controls present *jarring or unsympathetic outcomes*.

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 site is subject to a maximum building height of 8.5m pursuant to Clause 4.3 of the PLEP 2014.
- The proposal exceeds the maximum permitted building height.
- The entire top floor exceeds HOB standards
- The written request to CI 4.6 is not adequately demonstrated that the development is consistent with development standards, is not consistent with the objectives of the E1 Local Centre Zone, and that there are not sufficient environmental planning grounds to warrant the proposed departure from HOB development standard.
- The height non-compliance contributes to the unacceptable character, streetscape and amenity impacts and is reflective of an inappropriate and unsuitable development and an overdevelopment of the site
- The non-compliance causes an unacceptable relationship to Barrenjoey House, poor visual bulk concerns, and other amenity losses.

2. CHARACTER & BUILT FORM:

The ‘June 2024 Amended Plan Documentation’ has not improved the outcomes:

- I am unconvinced that the proposed 4m high roof structure, along with multiple projecting extended dormer details is an appropriate outcome, as that design decision creates a massive structure, over a relatively modest wall height base. If the roof height was reduced to a normal storey height [3.2m], I consider that outcome might be preferable. A considerable reduction of the size of the dormers is also necessary.
- The density control allows 1 dwelling per 150sqm area, and that allows 7.6 dwellings. The applicant is providing 5 dwellings however the combined GFA is 1056sqm at the two upper levels, averaging over 211sqm per unit. A mix of one-bedroom [50sqm], two-bedroom [70sqm] and three-

bedroom [95sqm] units within the 1056sqm GFA would deliver more units than the control at 7.6 units. Based on an average of 72sqm per unit, the GFA proposed would achieve 14.7 units – nearly double the expectation under the control. The entire upper level exceeds the expectation of the GFA to deliver 7.6 units at an average of 72sqm per unit. The expectation under the control would be 550sqm of residential GFA, not 1056sqm of residential GFA.

- There is no FSR control on the subject site. The FSR stated by the applicant exceeds 1.38:1, which exceeds the surrounding residential neighbours by a factor of three to four times – the FSR of neighbour's dwellings are c. 0.4:1.
- The LEP does not include floor space ratio standards to control building bulk and scale in this residential area. Managing building bulk and scale relies on the application of controls relating to landscaped area, building height and building setbacks and building envelopes. These are all non-compliant to 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. The proposal fails to consider the scale of neighbours, it is not compatible or consistent with height and scale;
- 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 essence of the 8.5m HOB standard in a E1 Zone, should have considered a 4.5m storey height for the Commercial Zone – to achieve a more compliant 3.6m ceiling height. This would allow for a 0.9m zone above the 3.6m ceiling zone for structure, transfer structures, transfer services from residential above, and service zones to the Commercial Zone. A 3.2m storey height at first floor would allow for one residential floorplate. This would create a 7.7m wall height. This would allow a 0.8m for roof detail, roof finishes and falls, lift motor over runs, and minimum roof top plant screens, maximising the HOB provision. The HOB standards define a two storey STH outcome, not a 3-storey STH outcome. This would have enabled a smaller provision for carparking, delivering a compliant setback below ground, to achieve a compliant deep soil planting zones around all four setbacks. The proposal simply does not accord with those expectations
- The communal open space for the residential occupants is a zone shared with the public and the external commercial zones. These zones have no deep soil planting areas, but shallow on-slab planting zones
- There are no deep soil zones surrounding the built form. The deep soil control is not distributed around the built form within the four setback zones
- The proportions and scale of the proposed building are incongruent with the established context and desired character of the area.
- The desired character of the locality describes two storey buildings in landscaped settings with minimal site disturbance.

- The proposed height, number of storeys, footprint and overall massing results in a comparatively overbearing prominence and bulk within the locality.
- The proposed built form represents a substantial building mass orientated across the site.
- The development provides insufficient separation contributing to its overall impression of bulk.
- The built form lacks sufficient breakdown of the bulk into separate 'pavilion-style' development with distinctive building modules rather than one mass of building across the site with tokenistic breaks in the floorplans.
- The proposal is located within a *Scenic Protection Category One* area, given its prominent location next to Pittwater Waterway, Palm Beach Wharf, Pittwater Park and Barrenjoey House.
- The proposed development is inconsistent with the requirements and objectives of Clause D12.14 which seeks to minimise any visual impact.
- The proposal fails to meet the controls and objectives of Clause D12.1 *Character as viewed from a public place* of P21 DCP, which requires the bulk and scale of buildings to be minimised and not dominate the streetscape.
- The extent of site coverage and overall proportions of the building result in small publicly accessible areas.
- The proposed development is inconsistent with the objectives of Zone E1 Local Centre.
- The proposed development is inconsistent with the design principles for residential apartment development set out in Schedule 9 of SEPP Housing 2021.

3. REAR SETBACK:

The 'June 2024 Amended Plan Documentation' has not improved the outcomes:

- On the **eastern boundary**, where there are habitable rooms, the setback is required to be 6.0m.
- The ADG further states: "*Apartment buildings should have an increased separation distance of 3m [in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density development to provide for a transition in scale and increased landscaping]*".
- The eastern boundary adjoins a low-density residential zone and, as such, **the required setback is 9m.**
- The proposed building will have a setback ranging from **Zero to 5.6m** which fails to meet this requirement.
- The objectives of DCP D12.6 *Side & Rear Building Line* of P21 DCP have not been met, including no landscape buffer zone, bulk and scale is not minimised, there is no substantial planting, privacy, amenity and solar access have not been maintained. A minimum 3m rear setback with deep soil planting would be the minimum acceptable outcome

- The non-compliance causes amenity loss from neighbours to the east of the subject site, solar loss to the southern neighbour, and poor privacy outcomes.
- The 18m high piling structure along the eastern boundary, presents unacceptable risks during the construction process to my clients

4. SIDE SETBACK:

The 'June 2024 Amended Plan Documentation' has not improved the outcomes:

- On the **northern boundary**, where there are habitable rooms, the setback is required to be 6.0m.
- The ADG further states: "*Apartment buildings should have an increased separation distance of 3m [in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density development to provide for a transition in scale and increased landscaping]*".
- The northern boundary adjoins a low-density residential zone and Barrenjoey House and, as such, **the required setback is 9m.**
- The proposed building will have a setback ranging from **3m to 6m** which fails to meet this requirement.
- The objectives of DCP D12.6 *Side & Rear Building Line* of P21 DCP have not been met, including an inappropriate on-slab landscape buffer zone that should be a minimum 3m deep soil.
- Bulk and scale are not minimised, there is no substantial planting in the on-slab zone,
- Privacy, amenity and solar access has not been maintained.
- The non-compliance causes potential view loss from neighbours to the east of the subject site, and poor privacy and visual bulk concerns

5. SIDE SETBACK:

The 'June 2024 Amended Plan Documentation' has not improved the outcomes:

- On the **southern boundary**, where there are habitable rooms, the setback is required to be 6.0m.
- The ADG further states: "*Apartment buildings should have an increased separation distance of 3m [in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density development to provide for a transition in scale and increased landscaping]*".
- The southern boundary adjoins a low-density residential zone and, as such, **the required setback is 9m.**
- The proposed building will have a setback ranging from **Zero to 2m to 3m** which fails to meet this requirement.

- The objectives of DCP D12.6 Side & Rear Building Line of P21 DCP have not been met, including an inappropriate landscape buffer zone that should be a minimum 3m deep soil, bulk and scale is not minimised, there is no substantial planting, privacy, amenity and solar access has not been maintained.
- The non-compliance causes view loss from neighbours to the east of the subject site, solar loss to the southern neighbour, and poor privacy and visual bulk concerns

6. FRONT SETBACK:

The 'June 2024 Amended Plan Documentation' has not improved the outcomes:

- Clause D12.5 Front Building Line of P21 DCP requires a front setback from all built form structures of 3.5m or the established building line, whichever is the greater. The neighbouring dwelling to the south has a setback **beyond 3.5m**.
- The proposed development has a **2.0m setback** to the front boundary, above ground and **zero setback** below ground. This limits potential for the deep soil planting to mitigate the bulk and scale of the building, particularly as viewed from the public domain. This does not achieve the objectives of the clause in respect to desired future character, landscape, attractive street frontages, improve pedestrian amenity, and sensitively relates to the characteristics of the existing urban environment

7. INSUFFICIENT SETBACKS:

The 'June 2024 Amended Plan Documentation' has not improved the outcomes:

- The non-compliant setbacks accentuate the building bulk, scale and massing, and contribute to amenity impacts to adjoining neighbours and result in a development which is inconsistent with the desired future character of the area.
- The proposal fails to make a suitable transition to the adjoining low-density residential zone, including 'Barrenjoey House' which is listed as an item of local heritage significance.
- The proposal fails to improve the amenity of the proposed apartments, particularly in relation to solar access, cross ventilation and visual privacy.
- The non-compliance causes view loss from neighbours to the east of the subject site, solar loss to the southern neighbour, and poor privacy and visual bulk concerns

8. POOR ROOFSCAPE:

The 'June 2024 Amended Plan Documentation' has not improved the outcomes:

- The parapet should be reduced to the height of the previous consented scheme
- The proposal does not minimise the elements within the non-compliant HOB.
- The three Clerestorey Roof 'pop-ups' are excessive, non-compliant to HOB, and should be deleted.
- The roof finishes are not shown. A non-accessible green roof, with a greater setback from the parapet edges should be considered, considering the highly visible nature of the roof to neighbours to the east, above the subject site.

9. HERITAGE IMPACT.

The 'June 2024 Amended Plan Documentation' has not improved the outcomes:

- The proposed development would have an unacceptable impact on the significance of Barrenjoey House through its excessive bulk and scale, breach of the HOB limit, breach of setback controls, lack of appropriate buffers, deep excavation on the boundary, poor landscape outcome in deep soil zones and failure to break down the massing of the building to a form more appropriate to its heritage context, settings and views.
- The proposed development does not conserve the environmental heritage of the local area and does not conserve the heritage significance of the adjacent heritage items including settings and views.

10. COMMERCIAL TENANCIES:

The 'June 2024 Amended Plan Documentation' has not improved the outcomes:

- Clause B2.6 Dwelling Density & Subdivision STH of the P21 DCP requires the commercial component of 3.6m ceiling height to be a minimum 25% of the gross floor area. This has not been achieved, as all the commercial component does not achieve the 3.6m ceiling height control.
- ALL commercial areas are below the ceiling height of 3.6m required under Clause 4C Ceiling Heights, and therefore those areas cannot be included within the 25% commercial component control. Considerable areas scale at a slab-to-slab height dimension of 3.35m. Once a structural and services zone is deducted from the 3.35m storey height for structure, a zone for the transfer of residential services from above, commercial MEP service zone, plus a zone for a ceiling/light fitting, along with tolerances and deflection, the proposed 3.35m storey heights will produce ceiling heights at c.2.4m in vast zones of the commercial areas
- The higher zones towards the street will be subject to flooding, and would struggle to provide an adequate floor to ceiling – more likely 3.0m.
- The design and restrictive use of the proposed tenancies would fail to meet the desired future character of the locality, objectives of the E1 Local centre which facilitates vibrant, diverse and active street fronts.

Ceiling heights of c.2.4m would not facilitate commercial outcomes of any quality.

- Restrictions on the hours of opening times for the Commercial Component has not been identified.

11. NEIGHBOURING AMENITY:

The 'June 2024 Amended Plan Documentation' has not improved the outcomes:

- The proposed development does not retain an acceptable level of amenity for surrounding properties, and it has not adequately demonstrated that there will be no unreasonable impact to views, solar access and privacy.
- The proposal has not adequately demonstrated that there will not be no acoustic, odour, or visual impacts on adjoining properties from the rooftop plant and exhaust ducts associated with the development.
- The multiple numerical non-compliances cause view loss from neighbours to the east of the subject site, solar loss to the southern neighbour, and poor privacy and visual bulk concerns

12. LANDSCAPE:

The 'June 2024 Amended Plan Documentation' has not improved the outcomes:

- The proposals do not provide adequate design, spacing and areas of landscape elements to enhance the landscape amenity of the streetscape and surrounding public domain, nor sufficiently reduce the bulk and scale of the building.
- There is next to zero deep soil planting along the setback zones. The narrow zones provided are incapable of supporting landscape species of the required height to screen the non-compliant development
- The only screening trees to the street frontage are 4m high species. These species are incapable of screening the 11m high development, and are unlikely to survive in shallow soil zones. The on-slab soil depth appears to be incapable of supporting these trees. Tree species to the height of the upper windows are required to screen the built form.
- The on-slab planting depths are insufficient to support screening of the built form in all areas. Species are too small to have any effect at all. The built form will dominate.

13. GEOTECHNICAL & EARTHWORKS:

The 'June 2024 Amended Plan Documentation' has not improved the outcomes. My clients Geotechnical Engineer, Troy Crozier, will comment further:

- The proposed development is inconsistent with the provisions of Clause 7.7 Geotechnical Hazards of the PLEP and Geotechnical Risk Management Policy of the P21 DCP.

- The proposals present zero setback to all boundaries, other than a 500mm side setback [referred to in the JK Report – no figured dimension on DA plans] to Barrenjoey House. The 500mm setback could easily be lost through the structural engineering detailed design phase stage, as the basement wall zone is shown as only 500mm wide, when the structural zone shown on the VDM structural drawings is 750mm wide. Parts of the heritage item are built on the common boundary to the subject site.
- The Applicant has not provided adequate protection to my clients' property from excessive excavation and potential land slip and damage to my clients' property, including incomplete intrusive geotechnical investigations, incomplete geotechnical recommendations, incomplete extensive geotechnical monitoring plan to the heritage building, excessive vibration limits to the heritage item Barrenjoey House, lack of full-time monitoring of the vibration, incomplete dilapidation report recommendations, incomplete attenuation methods of excavation, exclusion of excavation in the setback zone, exclusion of anchors under my clients' property, and incomplete consideration of the substantial piling adjacent to the boundaries and how this can be safely achieved.
- Ground Anchors to support the piled retaining walls under my clients' property will not be allowed or agreed to under any circumstances. The JK & VDM Reports will need to be altered to exclude ground anchors, and re-consider the design with internal propping and other measures

14. FLOODING:

The 'June 2024 Amended Plan Documentation' has not improved the outcomes.

- The proposals have not been designed to appropriately reduce the impact of flooding and flood liability on communities and individual owners and occupiers of flood prone land, referring to LEP Clause 5.21 2 a-e, DCP B3.11 & B3.12.
- My clients are concerned that there is no adequate Overland Flood Study to include: Hydrological data Hydraulics data; Catchment plan showing sub-catchments (where applicable); Computer model such as HEC-RAS showing the 1%; AEP stormwater flow over the subject site; Cross sections detailing the 20% and 1% AEP water surface levels traversing the site; Extent of water surface levels to extend upstream and downstream of the subject property; Any overland flow mitigation measures to protect the proposed development from stormwater inundation must not exacerbate flooding for adjoining properties by diverting more flows to adjoining properties.
- My clients asks that the applicant is to address the following: the applicant is to ensure that the works proposed on the site are capable of accommodating all storm events including the 1 in 100 year design storm with no adverse impacts to my clients' property; the applicant is to ensure that the overland flow path provided is capable of accommodating all reasonable development and redevelopment in the

catchment draining to the proposed overland flow path; the applicant is to ensure that the development will not result in a net loss in flood storage or floodway in 1% AEP flood. These calculations must be provided and mapping of the floodway in relation to the proposed building must also be provided; the applicant is to ensure that my clients' property will have no increase in PMF levels and PMF peak velocity on neighbouring properties. Barrenjoey House is a heritage item and this is of significant concern

- The proposals show that vast areas of the ground floor are below FPL.

15. TRAFFIC, ACCESS & PARKING:

The 'June 2024 Amended Plan Documentation' has not improved the outcomes.

- A one-way ramp with traffic lights is considered inappropriate for such a large carpark, consisting of commercial, residential, visitors and servicing.
- The proposals do not show an adequate and safe pedestrian path across the garage entry zone. Waiting cars will block the footpath zone, requiring pedestrians to move into the street to maintain access. This is unsafe.
- Cars in the waiting bay will obscure a line of sight to cars travelling from the north. This is unsafe.
- if the waiting bay is occupied, cars will require to stop in the carriageway. This is unsafe.
- Basement ramps and basement zones are considered not to fully comply with AS2890. No sweep path analysis has been provided.
- Commercial Carparking at C4, C5, C6, C7, C8, C9, & C10 will be required to reverse across the driveway ramp to achieve access. Cars entering the garage under a green traffic light will be confronted with reversing cars. This is unsafe.
- A large number of car spaces have low headroom – it is uncertain how high sided SUV & 4x4 will be able to safely be parked. Disabled car headroom is compromised
- The proposals do not provide an adequate amount of off-street parking to meet the parking needs of the development.
- DCP requires one space per 30sqm of Commercial GLA, and the number of spaces is considered insufficient. 13 spaces are required for the proposed GLA, only 10 spaces are provided. Only two visitor's spaces have been provided. This will put additional pressure on on-street parking that already is over committed.
- The development proposes no service bay to serve the three commercial spaces. This is considered unacceptable, as service vehicles will be required to find a location on the street. This will put additional pressure on on-street parking that already is over committed. Delivery trucks may be forced to stop in the Barrenjoey carriageway. This is unsafe.
- 20% of dwellings must be capable of being modified to comply with adaptable housing provisions, including adaptable parking. It is uncertain if the basement car parking proposals fully comply.
- It is uncertain how the pump out of the Grease Trap will be resolved

16. ACOUSTIC TREATMENT.

The 'June 2024 Amended Plan Documentation' has not improved the outcomes.

- There is insufficient information to determine the potential acoustic impacts caused by the development on nearby residential receivers.
- The noise from the kitchen exhaust and carpark exhaust at the roof, immediately adjacent has not been assessed. Barrenjoey House and all adjoining neighbours have not been assessed.

CONCLUSION

It is considered that the proposal is inappropriate on merit and unless amended plans are submitted, this appeal must be dismissed for the following reasons:

- The application has not adequately considered and does not satisfy the various relevant planning controls applicable to the site and the proposed development.
- The proposed dwelling is incompatible with the existing streetscape and development in the local area generally.
- The proposed dwelling will have an unsatisfactory impact on the environmental quality of the land and the amenity of surrounding properties.
- The site is assessed as unsuitable for the proposal, having regard to the relevant land use and planning requirements.

It is considered that the public interest is not served.

The proposed development does not follow the outcomes and controls contained within the adopted legislative framework.

Having given due consideration to the matters pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended, it is considered that there are multiple matters which would prevent Council from granting consent to this proposal in this instance.

The proposed development represents an overdevelopment of the site and an unbalanced range of amenity impacts all of which would result in adverse impacts on my clients' property. Primarily,

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact

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

- Inconsistent with the SEPP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the DCP

- o Inconsistent with the objectives of the relevant EPIs
- o 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. The appeal therefore must be dismissed.

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

My clients trust that the Commissioner will support my clients' submission.

My clients ask for the following amendments;

1. Reduce Level 1 Storey Height from 3300mm to 3200mm, to reduce bulk & scale
2. Reduce the top of the roof mansard height not to exceed 3.2m above Level 2 FFL, to reduce bulk & scale
3. Reduce each dormer opening to a maximum of 2m wide with 2.4m head heights, to reduce bulk and scale of the proposed dormers and reduce the numbers of dormers with one per room.
4. Increase setbacks to all boundaries to SEPP & DCP controls, with a minimum 3m wide deep soil planting to all boundaries, to provide an appropriate landscape setting, and to reduce bulk & scale
5. Relocate basement retaining wall with a 3m side setback and rear setback to provide deep soil planting zones.
6. Relocate the basement retaining wall with a 3.5m front setback to provide deep soil planting zones, and increase the species heights to match the head heights at the upper level, to better screen the proposed building, to provide an appropriate landscape setting,
7. Delete three Clerestorey Roof structures, and install a non-accessible 'green' landscaped roof, setback from the revised parapet height
8. All north facing windows to have obscure glazing to a height of 1.7m above FFL, with privacy screens over opening components of the window
9. All north facing decks to have privacy screens to a height of 1.7m above FFL,
10. All east facing windows to have privacy screens
11. Update Geotechnical Report to accord with earlier comments, and comments from Troy Crozier
12. Resolve Flooding issues
13. Resolve Traffic, Access & Parking issues
14. Resolve Acoustic issues

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

The essence of the 8.5m HOB standard in a E1 Zone, should have considered a 4.5m storey height for the Commercial Zone – to achieve a more compliant 3.6m ceiling height. This would allow for a 0.9m zone above the 3.6m ceiling zone for structure,

transfer structures, deflection and tolerances, transfer services, service zones, and false ceiling zone, to the Commercial Zone.

A 3.2m storey height at first floor would allow for one residential floorplate.

The FBL provision is approximately 0.7m above the EGL.

This would create an 8.4m wall height.

Roof finishes, parapets and falls, lift motor over runs, and roof top plant screens would exceed the HOB by a marginal amount, however this outcome would obviously maximise the HOB provision, allowing for the FBL provision.

The 8.5m HOB standard defines a two storey STH outcome, not a 3-storey STH outcome.

This two-storey outcome would have enabled a smaller provision for carparking, delivering a more compliant setback below ground, to achieve compliant deep soil planting zones around all four setbacks.

The proposal simply does not accord with those expectations.

There are design solutions that are available to the applicant to resolve all non-compliances to SEPP, LEP & DCP standards and controls.

The proposal in its current form should not be supported, and the Appeal dismissed.

Yours faithfully,

Bill Tulloch

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