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**From:** Richard West [REDACTED]  
**Sent:** Tuesday, April 9, 2024 11:39 AM  
**To:** Scott Phillips [REDACTED]; Council Northernbeaches Mailbox  
<[Council.Northernbeaches@northernbeaches.nsw.gov.au](mailto:Council.Northernbeaches@northernbeaches.nsw.gov.au)>; Catherine Kerr [REDACTED]  
Councillors [REDACTED] Chris Gough [REDACTED]  
**Subject:** 1102 BARENJOEY RD

GOOD MORNING SCOTT, ATTACHED IS A LETTER TO YOU AND OUR SUBMISSION –  
TO THE LAND AND ENVIRONMENT COURT REGARDING 1102 BARRENJOEY ROAD, PALM BEACH

A/Professor Richard West AM  
President Palm Beach Whale Beach Association  
[REDACTED]



The Palm Beach & Whale Beach Association Inc.  
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8 April 2024

Mr Scott Phillips  
Chief Executive Officer  
Northern Beaches Council

Dear Mr Phillips

1102 Barrenjoey Road, Palm Beach  
Modifications 2022/0469

We would like to draw to your attention substantial reservations the community have built up over the handling by the Council of this application and its predecessor, Mod2021/0203. The Council has appeared to be determined to approve this development despite substantial and ongoing breaches of numerous planning controls and despite vociferous and wide-spread community concern about the proposed development on this site.

The development is inappropriate, not because we or our members dislike it but because it does not conform to the Council's own planning principles and rules and controls and there has been no apparent reason to approve it.

The site itself is a key site in what might be described as Palm Beach Village. It was formerly a long-standing and popular Fish & Chip Shop. It is next door to the 100-year old, heritage listed Barrenjoey House and within the curtilage of the historic and heritage listed Winten House. Development on this site has the potential of changing the entire character of Palm Beach Village and it will set a precedent for the proposed over-development of the empty site the other side of Barrenjoey House. It is quite simply the most critical development for decades in Barrenjoey Village.

Examples of matters giving rise to our concerns: -

- Repeated ignoring of multiple breaches of various planning controls, including height, bulk and scale, appropriateness in its context, lack of setbacks, non-compliance with shop top housing rules, disregard of SEPP65 and the Apartment Design Guide;
- Substantial risk and hazard for adjoining owners due to the steepness of the hillside, the need for additional excavation, the presence of large "floaters" in the site and overlapping into adjoining sites, including failure to produce detailed plans to secure the hillside and the floaters to prevent potential damage to adjoining properties, failure by the developer to engage with adjoining owners directly and failure to accept responsibility for agreeing a solution;
- Disregarding heritage advice from the Council's own heritage adviser for the protection of Barrenjoey House. That report has disappeared from the Council's website but fortunately we have copies. The second heritage report has no name on it
- Unofficial meetings with the Local Planning Panel about the proposal. The Local Planning Panel subsequently rejected the Modifications in the most trenchant terms.

The developer provided amended plans for the property on the Thursday before Easter, with only 14 days allowed for comment. The plans were not released publicly, meaning that the public is totally

uninformed about the amended plans which are for a larger development than the Modifications rejected by the LPP last year.

The community was vehemently opposed to the Modifications rejected by the LPP; those who have been able to inform themselves about the amended plans remain similarly opposed to the latest version.

The latest version of the plans were accompanied by a quote from the Council's solicitors as follows: - *"Council's experts are of the opinion that the final set of plans (Revisions B and C provided in the link below) addresses the issues raised by the Council"*. We find that statement astonishing in view of the ongoing breaches of the controls and the failure of the developer to take any reasonable steps to mitigate. The statement illustrates perfectly the concern this Association has about the way this application has been handled by staff - to get it through without responding to the community's concerns and without respect to the applicable planning controls.

The Council has every reason to refuse both these Modifications but at every stage it has supported them. The only reason we and the Council are in the current position is because the LPP rejected the previous Modification.

We would be happy to meet with you to discuss further.

Yours truly

A/Prof Richard West AM  
President

## LOGO

### OBJECTIONS TO 1102 BARRENJOEY ROAD, PALM BEACH MODIFICATIONS

#### Land & Environment Case No. 2023/242901

#### Asia Digital Investments Pty Ltd v Northern Beaches Council

The Palm Beach & Whale Beach Association (PB&WBA) is a community-based group, founded in 1918, and with a membership of over 450 representing the interests of both owners and tenants resident in Palm Beach and Whale Beach, as well as local businesses. We are grateful for the opportunity to put forward our views on the proposed Modifications.

We believe that the Modifications are in breach of a number of planning controls and standards as listed in this submission and in their present form should not be approved.

#### HEIGHT, BULK AND SCALE

1. The Height of Buildings controls in the Pittwater LEP2014 have the objectives set out in Clause 4.3(1) of the LEP. The relevant objectives in this case include: -
  - (a) *To ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality;*
  - (b) *To ensure that buildings are compatible with the height and scale of surrounding and nearby development;*
  - (c) *To minimise any overshadowing of neighbouring properties;*
  - (d) *To allow for reasonable sharing of views;*
  - (e) *(Not relevant)*
  - (f) *To minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*
2. In relation to objective (a) above, the desired character of the locality is set out in Clause A4.12 of the Pittwater DCP, as follows: -

*Future development will maintain a building height limit below the tree canopy and minimise 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 facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.*

*The design, scale and treatment of future development within the commercial centres will reflect a 'seaside-village' character through building design, signage and landscaping, and will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.*

3. Although the DCP is a Council document and therefore does not have statutory effect, one of the consequences of objective (a) above (which does have statutory effect) is that the description of the desired character in the DCP is translated into the LEP and thereby acquires statutory effect. Therefore the Palm Beach character statement is not just a matter of "guidance"; compliance with it is required. This development does not comply in relation to building height, bulk and scale, respect for the existing built form, integrated landscaping, or façade modulation (CHECK).
4. The prescribed height limit is shown in the Pittwater Height of Buildings Map and for this site is 8.5 metres. The height of the proposed development, as per Drawing DA10 is 11.09 metres to the ridge of the roof (AHD13.75 minus ground level AHD2.66 = 11.09 metres). The excess height is therefore 2.59 metres which is a breach of the limit by 30.47%
5. The breach, from Drawing No. DA10 is 2.59 metres from ground level AHD2.66 to ridge AHD13.75 which equals a breach of 30.47%. This is not a minor breach.
6. The whole of the third floor breaches the height control and it should be removed.
7. The development breaches the Pittwater Development Control Plan (DCP) (still currently in force) and SEPP 65 and the Australian Design Guide (ADG) in relation to setback from adjoining properties and the roadway. Because the development adjoins an C4 low-density residential zoning on part of its north side (against Barrenjoey House), the whole of its east side (rear) and the whole of the south side, setback is required to be 9 metres, instead of 0-3 metres on the north, 0-5.5 metres at the rear and 0-2 or 3 metres on the south.
8. Excavation for the car park on the Barrenjoey Road frontage goes right to the front boundary so that no landscaping is possible at the front of the building; the ground floor setback is 2 metres but Clause D12.5 of the DCP requires a setback at the ground floor level of 3.5 metres.
9. The height of the roof is 4 metres which is out of scale with the rest of the proposed building and with surrounding developments and results in an unbalanced design which does not meet the objectives of the LEP, DCP and the ADG.
10. These breaches demonstrate why the height, bulk and scale of the proposed development are unacceptable.
11. The developer is trying to incorporate too much into the development; as a result, the height, bulk and scale are not appropriate in this location. (Drawing DA71.1)

## APARTMENTS OR SHOP TOP HOUSING?

12. The site is not zoned to allow apartments to be built – they are not permitted under E1 zoning – Pittwater LEP. The only way that the zoning will permit apartments to be built is if the development qualifies as shop top housing under the LEP and DCP and at present it does not. Without further modification to include the required minimum amount of commercial development, the development should be refused.

## INTERFERENCE WITH VIEWS

13. The development will interfere with the prime views from the adjoining immediate residential neighbours at 1100 Barrenjoey Road, 1110A, 1110B and 1110C Barrenjoey Road and other properties on the eastern side of the proposed site
14. The damage to views is exacerbated by the failure to relocate plant from the top of the roof of the development, despite requests to do so.

## DENSITY

15. The bulk and scale of the proposal breaches the DCP density control for a block of this size. The control allows a maximum of 7.6 dwelling units for the site but the proposal provides for 14.7 dwelling units as calculated in accordance with the control.

## SHADOWING

16. The development will cause substantial and completely unacceptable shadowing of the adjoining property at 1100 Barrenjoey Road. (Drawings DA50, DA50B, DA51, DA51B, DA52, DA52B)

## SCALE

17. The scale of the building is too large – it is too high and it is too wide and it is too deep. If allowed, it will block views from the neighbouring houses behind it, some of which were built with knowledge only of the original 2014 D/A. These changes from the original D/A are excessive and should not be approved.

## AMENITY

18. For all these reasons, the development will cause damage to the amenity of the surrounding neighbourhood by totally changing its character.

## LANDSCAPING

19. The DCP requires planting of vegetation to minimise bulk and scale of the built form. It also requires canopy trees between the building and its front boundaries where the property faces a waterfront reserve as this does. The modifications do not comply with the DCP in these respects. There is little deep soil remaining available for landscaping purposes and it also restricts the ability to plant local canopy trees.
20. The breaches of the setback requirements mean also that the development cannot meet the landscaping requirements of the DCP.

#### COMPATIBILITY WITH NEIGHBOURHOOD

21. The design of the building is not compatible with the design of the immediate surrounding area. It is between Barrenjoey House, an historic building, and 1100 Barrenjoey Road, a classic Palm Beach weekender, and opposite a number of classic houses. It should be rejected.
22. The DCP requires new developments to respond to, reinforce and sensitively relate to the spatial characteristics of the existing urban environment. The modifications do none of these.

#### CHARACTER AS VIEWED FROM A PUBLIC PLACE

23. The provisions of Clause D12.1 of the DCP are as follows inter alia: -

*To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)*

*To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.*

*The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)*

*Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum. (S)*

The proposed development achieves none of these things

#### PARKING

24. The provision of parking within the building does not comply with the requirements of the DCP, partly because the building is too big. For the retail space, 14 spaces are required vs the 10 provided. The developer cannot use Pittwater Park South to make up the short fall. This use would be contrary to the conclusions of the Council's parking demand study for Pittwater Park South and to its Plan of Management. Redesign of the building to make it smaller would fix this problem. (SEPP Analysis, p14, Cl. 3J)

## COMMERCIAL SPACE

25. The commercial space provided in the building fails to reach the required 25% of the gross floor space, partly because the low ceiling heights in part of the "commercial" space is below the statutory minimum and cannot be included as commercial space (DCP Cl. B2.6 and SEPP).
26. The commercial units are designed so that they cannot be used for food-related activities, thus ruling out a significant proportion of likely tenants.

## CLAUSE 4.6 REQUEST

27. In our submission, the development results in non-compliance with five of the six objectives of the height control in the LEP. The Clause 4.6 Request therefore needs to demonstrate that this level of non-compliance still enables the development to meet the objectives of the height planning control before it can argue that compliance with the planning controls is unnecessary or unreasonable. It totally fails to do this. It also has to show that the development meets the objectives of the relevant planning act and other relevant regulations and it does not do so.

## HERITAGE

28. The building is in the conservation precinct of Pittwater Park South and it is not in keeping with the conservation principles of the LEP (particularly Clause 5.10 or the precinct generally).
29. The building is beside the 100-year-old Barrenjoey House (Item No. 2270076) and close to Winten House (Item No. 2270037), both heritage listed. Because of its increase in height and width, it overwhelms Barrenjoey House which is an historic building and is incompatible with Winten House and therefore damages their setting and curtilage. It should not be approved.
30. The DCP provisions for the protection of heritage items are found in Clause B1.2 as follows: -

*Developments in the vicinity of a heritage item, heritage conservation area, archaeological site or potential archaeological site are to be designed to respect and complement the heritage significance in terms of the building envelope, proportions, materials, colours and finishes, and building alignment.*

*Developments in the vicinity of a heritage item, heritage conservation area, archaeological site or potential archaeological site are to minimise the impact on the heritage significance by providing an adequate buffer zone, and maintaining and respecting significant views to and from the heritage item, heritage conservation area, archaeological site or potential archaeological site.*

31. The lack of appropriate setback on the northern boundary of the development means that an adequate buffer zone does not exist and the



development does not maintain or respect significant views of the heritage item when approaching it on Barrenjoey Road from either the north or the south nor from the public place opposite the development, Pittwater Park south. The photomontages supplied by the applicant appear to be manipulated and do not provide an accurate representation of the impact of the development. This development does not comply (with the DCP Cl12.1 (Drawing DA78)).

32. This part of Palm Beach is the central and historic heart of Palm Beach. It has a special character of low-scale buildings and informal design. The proposed building at 1102 Barrenjoey Road would seriously and forever damage this special character.

#### GEOTECHNOLOGY

33. Given that the proposed excavation is to a depth of 12.5 metres, well below any of the test drilling at 9 metres, and the nature of the underlying geology, sand, clay, extremely weathered sandstone and the underlying water flows, the risks of disturbance of the hillside to the east of the site is real and appear to be under-played in the JK Geotechnics report: - *"Where boulders are present upslope in 1110 Barrenjoey Road, the responsibility for managing this risk such that it poses an acceptable risk to 1102-1106 Barrenjoey Road is the responsibility of the upslope owners"*. This statement from p.15 of the Geotech Report is most unhelpful, given that the developer proposes to remove the existing retaining upslope retaining wall, excavate a further 6.5 metre cut across the entire upslope and build a new retaining wall twice as high as the existing retaining wall and secured into the hillside under 1110 Barrenjoey Road. If there is any disturbance of the upslope area as the result of this process, the developer needs to acknowledge that it is its responsibility entirely. The concern of the owners of 1110 is absolutely justified.
34. The position regarding the rock shelf underlying the proposed driveway and the presence of the boulders (?floaters?) on the boundary between 1100 and 1102 Barrenjoey Road is also not resolved but is capable of solution.
35. These issues need to be fully resolved before the Modifications can be approved by the Court. It does not help that the developers have made little effort to engage with adjoining owners to discuss the risks and hazards from the geotechnical aspects of this site.
36. The protection of the fabric of Barrenjoey House should be part of the orders of Court dealing with the development.

#### COUNCIL'S PREFERRED CONCLUSION

37. *"Council's experts are of the opinion that the final set of plans (Revisions B and C provided in the link below) addresses the issues raised by the*

*Council*". That is, in the opinion of the Association, an extraordinary conclusion in view of the numerous breaches listed in this submission.

#### CONDITIONS FOR APPROVAL OF DEVELOPMENT

38. In our view, the conditions for approval of these Modifications or any other version of them should have been part of the submissions to the Court and available for public comment. They will be critical to the final shape of this project and far too important to be slipped in, as it were, at the end of the Court's orders.

We are very appreciative of the opportunity of providing the Court with our views on the Modifications.

A/Professor Richard West AM

President

Palm Beach & Whale Beach Association