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**Sent:** 1/11/2019 11:20:22 AM  
**Subject:** Amendments to DA/2019/0309  
**Attachments:** Submission to amendments to DA2019-0309.pdf;

Attention: Phil Lane.

Submission to notification of amendments to above DA attached.

*Dan Brindle*

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31 October 2019

DHB:18-197

The General Manager  
Northern Beaches Council  
PO BOX 82  
Manly, NSW 1655

Dear Sir,

**Attention: Mr Phil Lane**

**Re Submission to Development Application DA/2019/0309 (as amended) for the demolition of the existing dwelling and construction of a new dwelling house at 257 Whale Beach Road, Whale Beach**

## **1. INTRODUCTION**

We write on behalf of the owners of the following properties:

- 228 Whale Beach Road,
- 230 Whale Beach Road,
- 232 Whale Beach Road, and
- 255 Whale Beach Road

who have instructed us to prepare a submission in relation to DA/2019/0309 ("the DA") which seeks development consent for '*New – Demolition works and construction of a new dwelling house with car stacker garage, swimming pool, front fencing and associated driveway and landscaping works*' ("the proposal") at 257 Whale Beach Road, Whale Beach ("the site").

This letter is also submitted on behalf of any resident who refers to this letter in their individual objection lodged with Council (whether or not the residents raise other objections).

This submission provides a merits-based assessment of the proposal against key statutory planning considerations, including Pittwater Local Environmental Plan 2014 ("the LEP"), Pittwater 21 Development Control Plan 2014 ("the DCP"), and other relevant matters for consideration under Section 4.15 of Environmental Planning and Assessment Act 1979 ("the EP&A Act").

Accordingly, the owners individually raise objections to DA/2019/0309 on the following grounds.

## 2. PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

The DA is inconsistent with the following objectives and clauses listed in the LEP.

### **2.1 The proposed development is inconsistent with the objectives of the zone in which the site is located**

The objectives of Zone E4 are as follows:-

- “• To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- To ensure that residential development does not have an adverse effect on those values.*
- To provide for residential development of a low density and scale integrated with the landform and landscape.*
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors”*

Council is required to consider these objectives in the determination of the DA. In our opinion, the bulk, and scale and extent of the proposed development is inconsistent with the above objectives and as a consequence will have an adverse impact on the special aesthetic values of the locality. The proposed built form is poorly integrated with the landform and landscape qualities of the site, will be visually dominant (because of its length, height) when viewed from adjoining and adjacent sites and from Whale Beach. The proposal cannot be said to be “low impact” because of its dominant bulk and length.

For the above reasons, we submit that the proposed development should be redesigned to reduce its overall bulk and footprint on the site and better respond to the site’s landform and the surrounding natural environment. A more restrained bulk and scale, would in our opinion, result in a better outcome for surrounding development and would be more in keeping with the low density scale and built form within the locality.

Factors that contribute to the bulk of the development include:

- the extensive elevated outdoor terraces including the living level terrace and its planted edge, the childrens’ terrace and the master bedroom terrace accentuated by the necessary privacy measures;
- the extensive two level void above the living and dining area;
- the proximity of the building to the southern boundary and to the internal and external living areas of No 255;
- the position of the development forward (to the east) of the prevailing rear building line together with the height of the development.

The overbearing nature of the development from the most used areas of No 255 is significant. It is also likely to be significant when viewed from the beach in the context of adjoining development.

## **2.2 The proposal is inconsistent with the particular aims of the LEP and with the desired future character of the locality**

A particular aim of Pittwater LEP 2014 is:

*“(b) to ensure development is consistent with the **desired character** of Pittwater’s localities” (our emphasis)*

The site is in the Palm Beach Locality, the locality statement for which is contained in Section A4.12 of Pittwater 21 DCP. The locality statement sets out the “desired character” for the locality and includes the following statement: -

*“The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations; and*

*Future development will maintain a building height limit below the tree canopy and minimize 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 façade modulation and/ or incorporate shade elements, such as pergolas, verandahs and the like. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape and minimize site disturbance.” (our emphasis)*

There is thus a direct link between the aims of Pittwater LEP and the locality statement from which the above extracts are drawn.

The proposed development is inconsistent with the locality statement, particularly those underlined in the above extract. The proposal exceeds two storeys being three to four storeys. This has the effect of creating an excessive bulk and scale which is inconsistent with the desired future character of the Palm Beach locality.

## **2.3 The proposal is inconsistent with the controls and objectives listed in Clause 4.3 of the LEP**

We provide the following comments in relation to the developments consistency with objectives of Clause 4.3 of the LEP.

Objective	Comment
<i>a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,</i>	As discussed In sections 2.1 and 2.2, the proposal is of an excessive bulk and scale, and is thus inconsistent with the prevailing desired character of the locality.
<i>(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,</i>	The proposal's height and scale is excessive when compared to nearby development. For example the proposal will be of a much greater bulk and scale compared to 259 and 255 Whale Beach Road.
<i>(c) to minimise any overshadowing of neighbouring properties,</i>	The proposal will result in additional overshadowing to 255 Whale Beach Road affecting the amenity of the existing dwelling and compromising the development potential of this site.
<i>(d) to allow for the reasonable sharing of views,</i>	The proposal is inconsistent with this objective. The proposal will result in the obstructing of beach views from adjacent properties contributed to by non-compliance with height controls.

The applicant submits (pursuant to Clause 4.3(2D)) that the maximum building height be 10 metres. However, Clause 4.3(2D(b)) states that the 10 metre height control only applies if the application is consistent with the objectives of Clause 4.3 of the LEP (which it does not as stated above). Therefore the application relies on the Clause 4.6 request (submitted on 26 September 2018).

## **2.4 The Clause 4.6 request for vary the height control should not be accepted**

The Clause 4.6 request to vary the height control should not be accepted for the following reasons:

- The proposal does not meet the objectives of Clause 4.3 of the LEP as stated in section 2.3 of this report.
- The proposal is of an excessive bulk and scale in relation to adjoining properties along the eastern side of Whale Beach Road. Other buildings in this section of Whale Beach Road are of a much more reserved bulk and scale when compared to the proposal.
- There are insufficient planning grounds for the contravening of the development standard. The exceedance of the 8.5 metre height limit results in further obstruction of views, overshadowing and sense of overbearing development.

### 3. PITTWATER 21 DEVELOPMENT CONTROL PLAN

The proposal is inconsistent with the following controls listed within the DCP.

#### 3.1 The proposal is inconsistent with Control D12.8 'Building Envelope' of the DCP

Control D12.8 'Building Envelope' of the DCP states the following for:

*"Development other than residential flat buildings and multi dwelling housing:*

*Planes are to be projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height (refer to Pittwater Local Environmental Plan 2014).*

##### ***Variations***

*Where the building footprint is situated on a slope over 16.7 degrees (ie; 30%), variation to this control will be considered on a merits basis."*

The proposal's non-compliance with the above control results in an adverse outcome in terms of overshadowing, loss of privacy and view sharing and thus should not be supported on merits. The development does not minimise the bulk and scale of the built form, particularly for 255 Whale Beach Road.

The proposed terraces extend beyond the building at 255 and allow direct back viewing and subsequent loss of privacy.

These terrace have no screening, extend beyond the 8.5 building height and in places extend beyond the defacto building line.

#### 3.2 The proposal is inconsistent with Control C1.5 'Visual Privacy' of the DCP

The amendments to address privacy concerns of the neighbour to the south are acknowledged.

#### 3.3 Overshadowing

Overshadowing of the adjoining property to the south is accentuated by the limited setback to the southern boundary relative to the height of the development and its position forward (east) of the rear building line of adjoining development, the requirement for privacy screening from south facing balconies and windows and the size of the development on the southern façade. The existing overshadowing is noted and will be made worse by the proposed development which will affect the limited existing shadows to living rooms of the adjoining development at No 255. Whilst the privacy screen (slatted timber) on No 255 results in some overshadowing of the outdoor terrace, some sunlight permeates. The amendments have resulted in some reduction in overshadowing. However the situation could be improved by a reduction in the size of the master bedroom area and the extent of the roof over the childrens' bedroom level and a reduction in building form. The extent of overshadowing would impact on the amenity of any reasonable future development of the site to the south. The overshadowing is accentuated by the height and position of the development to the east relative to adjoining properties.

### 3.4 Inconsistency with locality statement

The locality statement refers to the two storey character of the area. The proposed development includes 5 storeys when viewed from the waterfront and extend forward more than any other development in the immediate vicinity that maintain some consistency in setback from the beach (particularly relative to height). The development will be dominant in views from the public domain and out of character. The development could do more to integrate with the existing character of the area with a more modest bulk and scale and footprint. This would also minimise impacts on existing and future development in the area.

## 4. VIEW IMPACTS

The council has the benefit of a detailed assessment of views from neighbouring properties. The following points are made:

- It is the trailing (eastern) edge of the roofs of each level that is visible from most viewpoints and results in the loss of beach view. The extent of view loss is accentuated by non-compliant height and building envelope control. A reasonable reduction in the extent of the trailing edge at the master bedroom/study and the southerly extent of the entry level/car park roof would result in a smaller impact on view loss and reduce the non-compliance with the building height control of 8.5 metres.
- Height poles were not erected to indicate the height of the building at the western end of the site above the car park. This makes it difficult to determine the extent of view loss particularly from properties where the view is oblique. In this regard, the view loss from No 232 requires closer consideration. There is the potential for a significant part of the current beach view to be lost.
- The view loss from No 255 is considered by Dr Lamb to be *a moderate impact on part of the view from the bedroom of 255 Whale Beach Road and moderate to severe impacts on the views from the living level looking directly across the side boundary*. This view should prevail over that of SJB which considers the impact minor. This view loss accentuated by the location of the development east of the rear building line of the No 255 and its consequential overbearing bulk and scale when viewed from the internal and external living areas.
- Consideration should be given by the Council to the impact on views from Nos 259 and 261 Whale Beach Road.

Although the applicant took photographs from surveyed vantage points on dwellings from 226 to 234 Whale Beach Road, only montages from 228 were prepared. This does not allow any assessment of impacts on oblique views or impacts on views from No 255 Whale Beach Road.

Tenacity Step 1 indicates that *Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured*. This includes highly valued views of the land-water interface and Whale Beach. The montages from 228 (note that this is incorrectly referred to as No 226 in the montages in Appendix 2 of the View Sharing Assessment by Dr Richard Lamb) and the photographs taken from No 232 Whale Beach Road indicate that a significant amount of the view of Whale Beach, and potentially land water interface would be lost as a result of the development. Beach views are limited and are therefore highly valued. Consequently, any

reasonable steps to reduce the impact on these views should be taken. This includes reducing the extent of the roof over the master bedroom level.

A similar situation would apply to No 255 Whale Beach Road. Of relevance to the assessment of impact on views from this property is the impact the structure would have on outlook from the outdoor terrace, internal living areas and main bedroom. These views are not directly over the side boundary but are to the north east (refer to photographs 1 to 6 in the SJB report). A more reasonable view sharing would be achieved by a development that is not set as far forward towards the beach than is proposed. That is a building that is more consistent with the prevailing rear building line in terms of position of building and height would be more appropriate. This would allow greater sharing of views to Little Head and more light and sky view from the outdoor terrace.

Of relevance to the assessment is the precedent effect on views from No 255, particularly from potential development on sites to the south. Other developments to the south similar to that proposed would significantly impact views from No 255.

It is submitted that greater consideration should be given to consistency with a rear building line in terms of position of building and height as this would result in a building that has less impact on views from all surrounding properties, has less impacts on privacy and require less screening to maintain privacy and less impact on overshadowing. The situation would be improved if the eastern extent of the master bedroom level was reduced.

## **5. SUMMARY**

On behalf of our clients, we make submissions to DA/2019/0309 on the following grounds:

- The proposal is inconsistent with the objectives of the zone with which it is situated;
- the proposal is of an excessive bulk and scale and is incongruous with the Palm Beach locality which envisages low density residential area consisting of two storey dwelling houses;
- the Clause 4.6 request submitted to vary the maximum building height control should not be supported in the circumstances of the case for the reasons listed in section 3.4 of this letter;
- in its current form, the proposal presents non-compliances with the DCP and the LEP which results in unreasonable impacts to neighbouring properties from loss of privacy, overshadowing, sense of overbearing development and impacts on views.

Factors that contribute to the bulk of the development include:

- the extensive elevated outdoor terraces including the living level terrace and its planted edge, the childrens' terrace and the master bedroom terrace accentuated by the necessary privacy measures;
- the extensive two level void above the living and dining area;
- the proximity of the building to the southern boundary and to the internal and external living areas of No 255;
- the position of the development forward (to the east) of the prevailing rear building line together with the height of the development.

Notwithstanding the amendments made the overbearing nature of the development from the most used areas of No 255 is significant. Impacts on No 259 Whale Beach Road are also significant. The impacts of the development are also likely to be significant when viewed from the beach in the context of adjoining development.

The non-compliance with built form controls and the position of the building east of any prevailing rear building line contribute to the bulk and scale and visual impacts of the development from adjoining properties and properties to the west of Whale Beach Road.

Further reasonable changes can be made to the development which would not result in a significant reduction in amenity but would have important amenity benefits for neighbours. This includes a reduction in the size of the master bedroom and its roof.

We thank Council for the opportunity to provide comment on the application, and should any clarification on the above be required, please do not hesitate to contact the undersigned

Yours faithfully

**BBC Consulting Planners**



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**Director**

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