
From: Robert Mackinnon
Sent: 13/05/2022 4:02:57 PM
To: Council Northernbeaches Mailbox
Subject: Submission in relation to DA DA2022/0469; 1102 Barrenjoey Rd, Palm Beach
Attachments: 2022_05_13_1102 Barrenjoey.docx;

I hereby attach my submission in relation to the above.

Kind regards,

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Robert Mackinnon



Development Application no. 2022/0469; 1102 Barrenjoey Road, Palm Beach

I write as a concerned resident, Secretary of the Palm Beach & Whale Beach Association (PBWBA) and student of local history. There are numerous issues with this DA, which if approved as is, will totally change the character of Palm Beach. As such, I urge the council to reject it in its present form.

Bulk and scale

The bulk and scale of the proposed building is totally inappropriate for Palm Beach. Also, compared to the previous submission, this development extends well in to bank of earth at the rear of the block. Visually, this building appears even larger than the in the previous DA.

It is out of context within the historic precinct around Pittwater Park

This is one of the most historic areas of Palm Beach and needs to be recognised and preserved as such with suitable signage. During the 1860s, a Chinese enterprise was involved in curing fish obtained from local fishermen. They carried out their work along Snapperman Beach in an area north of the present Ferry Wharf. Indeed, for a period of time Snapperman Beach was known as Chinaman's Beach. The area in which they operated is near the historic Gonsalves Boatshed, still operated by one of the descendants of this pioneering family, who, of Portuguese descent, are believed to have settled in Palm Beach in the early 1900s. They began as fishermen and also ran a diary in the area which is now the Palm Beach Golf Course.

This is the area is also where Palm Beach had its first general store. Known as Booth's Store, it commenced operation in 1914. Later, it became Ellis's store until taken over by two WWI ex-servicemen in Carl Gow and Reg Howlett. In the vicinity are a number of historic houses, such as 'Banksia' c. 1925 and of course Barrenjoey House, built by Albert Verrills in 1923 and still recognisable from early photos. It has served the public continuously since it commenced operation. Albert built the first house in Palm Beach, the so-called 'Surveyor's Cottage', with work commencing in 1911. It sat at the corner of Sunrise and Palm Beach Roads, but was subsequently demolished. Albert also built a number of heritage listed buildings in the area including Florida House and Kookaburra.

To summarise, this area is significant historically and shouldn't be dominated by a large commercial development.

It overwhelms Barrenjoey House and diminishes its aesthetic appeal

Further to the above, the proposed building completely diminishes the historic Barrenjoey House, which will celebrate its centenary next year.

Compared to Barrenjoey House, the proposed development is higher by half the height of the third floor plus the entire height of the roof. This means that even a flat roof (which would be even less desirable) would breach the development standard for height.

The photomontages taken from a spot to the north of Barrenjoey House give a misleading impression of the development because Barrenjoey House is in the foreground. The illustrations of the two properties from dead in front give a truer picture of the comparative scale and bulk. There are no drawings or photomontages from the southern side.

In short, the proposed development completely dominates Barrenjoey House being substantially higher and considerably wider. It is also far too close to Barrenjoey House, further emphasising the aggressive nature of the proposed development.

Numerous DCP breaches appear to have been made

The following issues are noted:

- Whilst there is some setback from Barrenjoey House on the northern side of the site, it is not clear by how much and whether it complies with the regulations;
- The setback on the southern side between the site and 1100 Barrenjoey Road appears to be occupied by the driveway to the underground carpark, raising the question as to whether the driveway actually counts as setback;
- Also in question is how the driveway relates to the two huge boulders on the southern side of the site which both stretch into the neighbouring property at 1100 Barrenjoey Road. Whilst there is reference to the boulders in the geotechnical report and the plans show a rock shelf in this area of the site, there is no explanation of how the boulders will be protected and whether they impinge on the driveway;
- There is a 3m setback to the rear of the property but the Pittwater DCP requires 6.5m.

Section 4.6 omissions and overreach

As originally ordained, Section 4.6 of the LEP was intended to provide developers with a degree of flexibility. This has been taken to extremes with this proposal.

The Section 4.6 report prepared by Boston Blyth Fleming deals only with a breach of the height requirement, which it minimises by referring to the possible slope of the land at some point in the past. This approach was accepted in a Land & Environment Court case but it is a synthetic concept, divorced from the reality of this site that has been mostly flat for many years with its original profile unknown. The proposal involves additional excavation to create a level ground floor. In other words, the building does not follow any theoretical past slope of the land so it does not comply with Section 4.3 of the LEP. There is also excavation for underground parking and plant.

The LEP provides in clause 4.6(1) a control on development designed (a) "to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality" and (b) "to ensure that buildings are compatible with the height and scale of surrounding and nearby development". The Boston Blyth Fleming report does not deal with scale or bulk. The report only compares the proposal with Barrenjoey House, not with any other "surrounding or nearby development", most of which is 2-storeys high, as required by the two to two and half storeys contemplated in the DCP. The proposal for 1102 is for three storeys in height, a clear breach.

Returning to 4.6(1)(a) and mention of "the desired character of the locality" takes us to the locality statements in the Pittwater DCP. The following direct quotes are relevant:

- "Village centres must retain their village feel";
- The desired character for the Palm Beach locality includes that "medium density housing to be located within and around commercial centres, public transport and community facilities" and "dwelling houses with a maximum of two storeys", "building height limit below the tree canopy", "minimise bulk and scale while ensuring that future development respects the horizontal massing of the existing built form" and "building colours and materials with harmonise with the natural environment";
- "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";
- "Outdoor café seating will be encouraged";

- Private open space for each unit must have some access to direct sunlight throughout the year - minimum area for shop-top housing = 10 square metres;
- Front building line should be 3.5 metres.

The above is not conclusive but suffices to show that this proposal suffers from other breaches of the planning standards as well as height and the Section 4.6 report does not deal with them.

There are other problems with the Boston Blyth Fleming report. Under Section 4.6(3), the applicant has to demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. It may be inconvenient that the applicant cannot add a third storey because it will affect the financial return on the project, but that does not make the standard unreasonable or unnecessary. The report does not address this.

The applicant also has to demonstrate that there are sufficient environmental planning grounds to justify the breach of the development standards. One of the cases cited says that the benefits of carrying out the project as a whole are NOT sufficient environmental planning grounds. Nor is the argument that the full project affords "better planning" than one which complies with the standard. The report complains that it is not possible to reduce the height of the building to comply with the height requirement because of another requirement that the ground floor be raised by 640 mm due to the flood-prone nature of the front of the property. This negates the case for a third storey.

To be clear, the word "demonstrate" requires evidence to prove or substantially establish what's being put forward. It is not sufficient just to opine something. All the Boston Blyth Fleming report can offer is an opinion, albeit a well-informed opinion. To quote the report "In my opinion, there are sufficient environmental planning grounds to justify" the breach of the standard.

The consent authority – Northern Beaches Council - needs to be satisfied that the applicant has adequately addressed the matters required to be demonstrated under Section 4.6(3) and that the proposed development will be in the public interest because it is consistent with the objectives for development within the relevant zone. As pointed out above, there are a number of breaches other than height and these include the development not being consistent with the desired character of Palm Beach, as reflected in the Pittwater DCP.

There has been no demonstration that there are sufficient planning grounds to justify the breaches. It is difficult to see any public interest being served by allowing the breaches. On the contrary, there is a lot of public interest in reducing the amount of over-development occurring in the Palm Beach/Whale Beach area at present.

Administrative matters that need to be addressed by Northern Beaches Council

This is not the first occasion where DAs have been lodged with insufficient documentation and/or an inadequate period for comment such as applies in and around listed public holidays.

This Development Application appeared on the Council's website on Friday, 8 April 2022 with no details, application, plans or reports. These were not lodged until 15 April 2022, which was Good Friday. The notification period is from 15 April 2022 to 13 May 2022, but this covers a holiday period that includes prescribed Easter holidays, school holidays and Anzac Day. These factors need to be accounted for when setting a closing date for comments. To do otherwise, reduces the opportunity for the public to fully inform themselves and study the DA with the diligence warranted by a significant proposal such as this one.