
Sent: 8/04/2019 5:40:55 PM
Subject: Att Phil Lane DA2019/0309 Submission Objection

Attn: Phil Lane

We write as two of the owners of **234 Whale Beach Road** in relation to [DA2019/0309](#) which seeks development consent for *'New – Demolition works and construction of a new dwelling house with double garage, swimming pool, front fencing and associated driveway and landscaping works'* at 257 Whale Beach Road, Whale Beach.

We are sorry that this DA has, again, been resubmitted, with no alteration or consideration to the visual impact on not only our property but 5 of our neighbours. We would be willing to meet with the owners and discuss our concerns which we believe are only a minor adjustment considering the size and scale of this proposal.

We were again, not notified by Council of the original DA for 257 Whale Beach Rd or the amended DA for this site nor this new application and only became aware of the development application when contacted by our neighbour at 232 Whale Beach Road. We are somewhat shocked by the scale of the proposed development and the likely impact this will have on our highly valued beach views. We would like to be added to the notification list henceforth.

In reading the submission to [DA2019/0309](#) placed by our neighbour, we would like Council to be aware that we believe our property will also be impacted in a similar manner to our neighbour by the proposed development at 257 Whale Beach Rd.

We would like to strongly state our objections to this development application based on:

1) PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

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

1.1 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 sites to the west in particular, and from the public realm at 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.

1.2 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 statements: -

“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; and

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.” (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 in a number of locations and at some points is three to four storeys in scale. This has the effect of creating an excessive bulk and scale which is inconsistent with the desired future character of the Palm Beach locality.

1.3 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 3.1 and 3.2 of this letter, 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 Whale Beach Road.
<i>(c) to minimise any overshadowing of neighbouring properties,</i>	The proposal will result in overshadowing to 255 Whale Beach Road.
<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 our beach views.

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). We provide comments to this request in section 1.4 of this letter below.

1.4 The Clause 2.6 request to vary the height control should not be accepted

The Clause 2.6 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 1.3 of this email.
- The proposal is of an excessive bulk and scale in relation to adjoining properties along the eastern side of Whale Beach Road. 259 Whale Beach Road is 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 to our client's property.

2. PITTWATER 21 DEVELOPMENT CONTROL PLAN

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

2.1 The proposal is inconsistent with Control C1.3 'ViewSharing' of the DCP

Control C1.3 'View Sharing' of the DCP states the following:-

"The proposal must demonstrate that view sharing is achieved though (sic) the application of the Land and Environment Court's planning principles for view sharing."

Land and Environmental Court ("LEC") principles of view sharing are stated in *Tenacity Consulting v Waringah [2004] NSWLEC 140*. This judgement states four step process to decide whether or not view sharing is reasonable. The proposal's consistency with these steps is outlined in the below table.

<p><i>2. The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.</i></p>	<p>Our client's view is obtained from their primary living area being the balcony off the living area.</p>
<p><i>3. The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.</i></p>	<p>The extent of the obstruction of the view from our client's primary living area is displayed in section 2 of this letter. The obstruction of our client's view could be considered as moderate to severe when assessed in relation to the principles for view sharing.</p>
<p><i>4. The fourth step is to assess the reasonableness of the proposal that</i></p>	<p>The proposal exceeds the maximum building height control listed in Clause 4.3 of the LEP and thus relies on a Clause 4.6 objection to vary the standard. The proposal is also inconsistent with the objectives of Clause 4.3 as discussed in section 3.3 of this letter.</p>

is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

This principle states that even moderate impacts on views are considered unreasonable as a result of a non-compliance with a planning control (in this case being Clause 4.3 'Height of Buildings').

The proposal's exceedance of the maximum building height control and its objectives are therefore result in unreasonable obstruction of views from our client's property. A building that complies with the controls and is in keeping with the character of the area would have less impact on views.

2.2 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 view sharing from our client's property and thus should not be supported on merits.

In summary, we make submissions to [DA2019/0309](#) 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;
- step 4 of the judgement for *Tenacity Consulting v Waringah [2004] NSWLEC 140* states that even moderate impacts on views arising from non-compliance with planning controls (in this case Clause 4.3 of the LEP) are unreasonable;
- 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 1.4 of this email;
- in its current form, the proposal presents non-compliances with the DCP and the LEP which results in unreasonable impacts to our property particularly with respects to obstruction of views.

In conclusion, based on a detailed review of the proposal and the DA documentation, we submit that the proposal does not warrant approval by Northern Beaches Council in its current form.

We also request to be notified in advance of any Council meeting at which the DA is to be determined and to to be notified of any amendments to the DA. Council's assessing officers are invited to inspect the site from within our property in order to ensure that adverse amenity impacts are fully understood and considered.

Kind regards

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