

18 October 2023

The Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
Dee Why NSW 2099

By e-mail: council@northernbeaches.nsw.gov.au

FAO: Gareth Davis

Dear Gareth

**Submission with regard to Development Application DA2023/1289
Demolition works and construction of Shop Top Housing
1112-1116 Barrenjoey Road, Palm Beach, NSW**

I write regarding the above Development Application DA2023/1289 (subject DA) to make a submission on behalf of the Palm Beach and Whale Beach Association (my clients). The Palm Beach and Whale Beach Association's (PBWBA) main function is, *'to preserve and enhance the natural beauty of the area and protect its residential amenity'*. The scope of this submission is to address the PBWBA's main function and set out to Council, in this objection letter, the significant detrimental impact that the subject DA will have on the character of the area, natural environment and residential amenity.

This submission is prepared further to the assessment of the plans, associated reports and Statement of Environmental Effects (SEE) submitted as part of the subject DA against the relevant Environmental Planning Instruments (EPI's), strategic planning documents and Planning Controls and with the benefit of a site visit to assess the impact of the proposed development on my clients.

The subject DA seeks consent for 'Alterations and additions to commercial development - demolition works and construction of shop top housing' at 1112-1116 Barrenjoey Road, Palm Beach (subject site). I have reviewed submitted DA plans and reports and considered the impacts on the character of the area and, surrounding scenic environment, which includes heritage listed items, against the

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au
www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

relevant planning controls and in accordance with Section 4.15 of the Environmental Planning & Assessment Act (the Act).

Additional information is required to fully assess the proposed development as detailed in this submission.

Additional information required.

- Revised description required to amend ‘Alterations and additions to commercial development’. The proposed DA should read, ‘Demolition and erection of a new structure ‘Shop Top Housing – Demolition works and construction of shop top housing’.
- Certified height poles to be erected to fully assess the overbearing impact on the character of the area and neighbouring occupiers. My client’s local technical expert cited concerns regarding the accuracy of the degree and percentage slope gradient. To quote, ‘*It is questionable if the 16.7 degree slope (30%) has been correctly calculated. It appears to be a flat site for most of the are and 14.7 slope averaged for the rest, thereby eliminating the availability to raise the height limit from 8.5m to 10.0m*’ (see attachment 2).
- Additional view perspective to include the view of the site from Palm Beach wharf, from Pittwater Park and from a north-south perspective along the Barrenjoey Road (all key entry points to the area).
- Clause 4.6 Variation Request (Clause 4.3 Breach to Maximum Height of Buildings).
- A building separation plan in accordance with SEPP 65 and the associated ADG – The building separation plan should include the distances between the elevation and windows of the proposed development and all neighbouring structures and windows, including from levels 3 and 4 to 21A Palm Beach Road (noting that the two highest levels have been set back to avoid additional breaches to Cl.4.3), 23 Palm Beach Road and the approved dwelling at 1110B Barrenjoey Road.
- Noted error in the Urbis Heritage Impact Statement incorrectly siting the proposed development on the western side of Barrenjoey Road. For accuracy, this should be amended to read, ‘to the eastern side of Barrenjoey Road’.
- Clarification from the Aboriginal Heritage Office is requested to determine whether there are any impacts on Aboriginal Heritage items on or in close proximity to the site. My clients have suggested that a Midden and Burial site may be on or near the site (see attachment 1 and 2).
- Amend the GFA calculations to remove retail storage areas.
- Clarification is required from Council regarding the floor area calculations in Flood Prone Land. Also amend to correctly include requirements of DCP Control B3.11 – C7 (Floor Area) which suggests that only the first 5 metres from the street front in the existing business zone may be

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au
www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

considered as usable business floor area. If this is the case, the GFA calculations also need to take into consideration the reduced GFA (potentially shop G02 being approx. 54 sqm and shop G01 being approx. 59 sqm. Amended GFA calculations need to be reflected in the assessment against the associated ratio to residential use under shop top housing.

- Details on the privacy screens proposed to enclose the balconies for visual privacy. Privacy screens are generally between 1.6-1.8 metres high and should be included the GFA calculations for residential development.
- A Construction and Demolition Waste Management Plan needs to be provided. As outlined in the WMP at page 2, only operational WMP has been reported. The Construction Management Plan & Methodology Report does not include a Construction and Demolition Waste Management Plan either. Waste Management for the removal of excavated material from a construction site with bulk excavation of 14.70 (or 16.7 metres) metres is required.
- Clarification of cited 14.70 metre bulk excavation. Does bulk excavation extend to 16.7 metres in the south-eastern corner?
- Provide rationale as to why none of the retail premises are food outlets. A food retail unit, could be well utilised given the location of the site opposite the Palm Beach Wharf and could have the added benefit that food premises add vibrancy to a streetscape. A food outlet could be more appropriate on the subject site than two non-food retail units.
- It is requested that the Cost Estimate Report for build cost at \$9.18m be verified by Council's appointed independent Quantity Surveyor.

A summary of the impacts and non-compliance of the subject DA as determined from the information submitted is set out below.

Summary of submission.

- Proposed development is a non-compliant development contrary to SEPP 65 and the associated Apartment Design Guide (ADG), Northern Beaches Local Housing Strategy (LHS), Pittwater LEP 2014 Objectives of the E1 zone – Local Centre; Clause 4.3 Height of Buildings, Clause 5.10 Heritage Conservation and Pittwater DCP 2014 Controls, A4.12 Palm Beach Locality; B1 Heritage Controls; B2.6 Shop Top Housing; B3.11 Flood Prone Land; B6 Access & Parking; D12.1 Character as viewed from a public place and D12.14 Scenic Protection Category One Area.
- Significant overbearing impact of a 5-storey built form and lack of appropriate building separation that is non-compliant with the above EPI's, LHS and planning controls.

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au
www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

- Wholly unacceptable impact on on-street car parking demand, and pedestrian safety.
- Unreasonable and unjustified reduction in required car parking spaces by 7 spaces contrary to DCP Control B6.
- Irreversible and demonstrable impact on the visual amenity and character of the area contrary to desire future character of the area and scenic values.
- Entirely contrary to the purpose, strategic direction and future character of the E1 zone in this location.

On the information submitted, it is recommended that the subject DA be refused or withdrawn for the reasons summarised above and provided in greater detail in this submission.

My clients express a clear objection to the proposed development in its current form. Should Council consider supporting the proposed development contrary to the clear objections set out in this submission, it is requested that recommended amendments are applied as set out on page 30.

Should additional information or amended plans be submitted, my clients request the opportunity to provide further comments.

Site details and character of the area

The subject site is located on the eastern side of Barrenjoey Road, Palm Beach. The boundary identification survey shows the site area as 1361.5 sqm. The front, western boundary facing directly onto the Barrenjoey Road, and opposite Pittwater Park and Pittwater Waterway extends to a total of 35.965 metres. The bus shelter is located at the southern section of the front boundary, in a suitably located position accessible to the pedestrian crossing and Palm Beach Wharf for pedestrian safety reasons (see Attachment 1).

The rear, eastern boundary abuts 21A Palm Beach Road, a separate, 2 storey dwelling house. A landscaped escarpment and steep gradient define the rear boundary of the site.

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au
www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

The side, southern boundary abuts Barrenjoey House which is a local heritage listed item. Barrenjoey House is a 2 storey restaurant and guest house, is of modest scale and forms an important visual, social and heritage context for the character of the area.

The side, northern boundary abuts 1120 Barrenjoey Road, which is a, detached 1 and 2 storey rendered dwelling house. 1120 Barrenjoey Road is sited just off the northern boundary of the site, in very close proximity.

The site is situated on a sloping site as it falls in a westerly direction towards the Barrenjoey Road. The site is level as it abuts the road, and the built structures shown on the boundary identification survey, to the front of the site, have been mostly demolished. The 1 & 2 storey weatherboard dwelling remains.

Surrounding development is predominantly made up of single and two storey detached dwellings and low scale commercial uses which generally complement the low density and well landscaped environment. The site is a limited E1 zone Local Centre, adjacent and surrounded by the C4 Environmental Living zone. The site directly abuts the C4 zone to the north, south and east. Transitional zoning is not applicable in the Pittwater LEP.

An important aspect of the surrounding environment is the low-density residential dwellings, heritage listed items (Barrenjoey House, Norfolk Island Pines and Winten), Palm Beach Wharf, views of and from Pittwater Waterway, canopy trees and landscaped environment. These local qualities are reflected in the desired character of the locality within the DCP and the LEP zoning of the subject site and surrounding environment.

The Palm Beach locality is clearly described in A4.12 of the Pittwater DCP 2014, with local specific control at D12. The following local context detailed is as follows:

'The Palm Beach locality gives the impression that much of the native vegetation has been retained. Bushland reserves predominate. Native plants proliferate in private gardens. The natural fall of the land has been preserved in most cases with retaining walls and terracing kept to a minimum. A few poor exceptions to this are located at the northern end of Ocean Road. The retention of the natural features and native plants within private gardens should be encouraged, and help to reinforce the natural beauty of the area the main characteristic of the locality.'

Photo 1 – View of the subject site from Pittwater Park – red outline defines approx. location and scale of proposed development. Heritage listed item Barrenjoey House can be seen just to the right of the shot and the 1-2 storey render neighbouring dwelling, just to the left of the blue building to be demolished.



Source: Site photo

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au

www.planningprogress.com.au

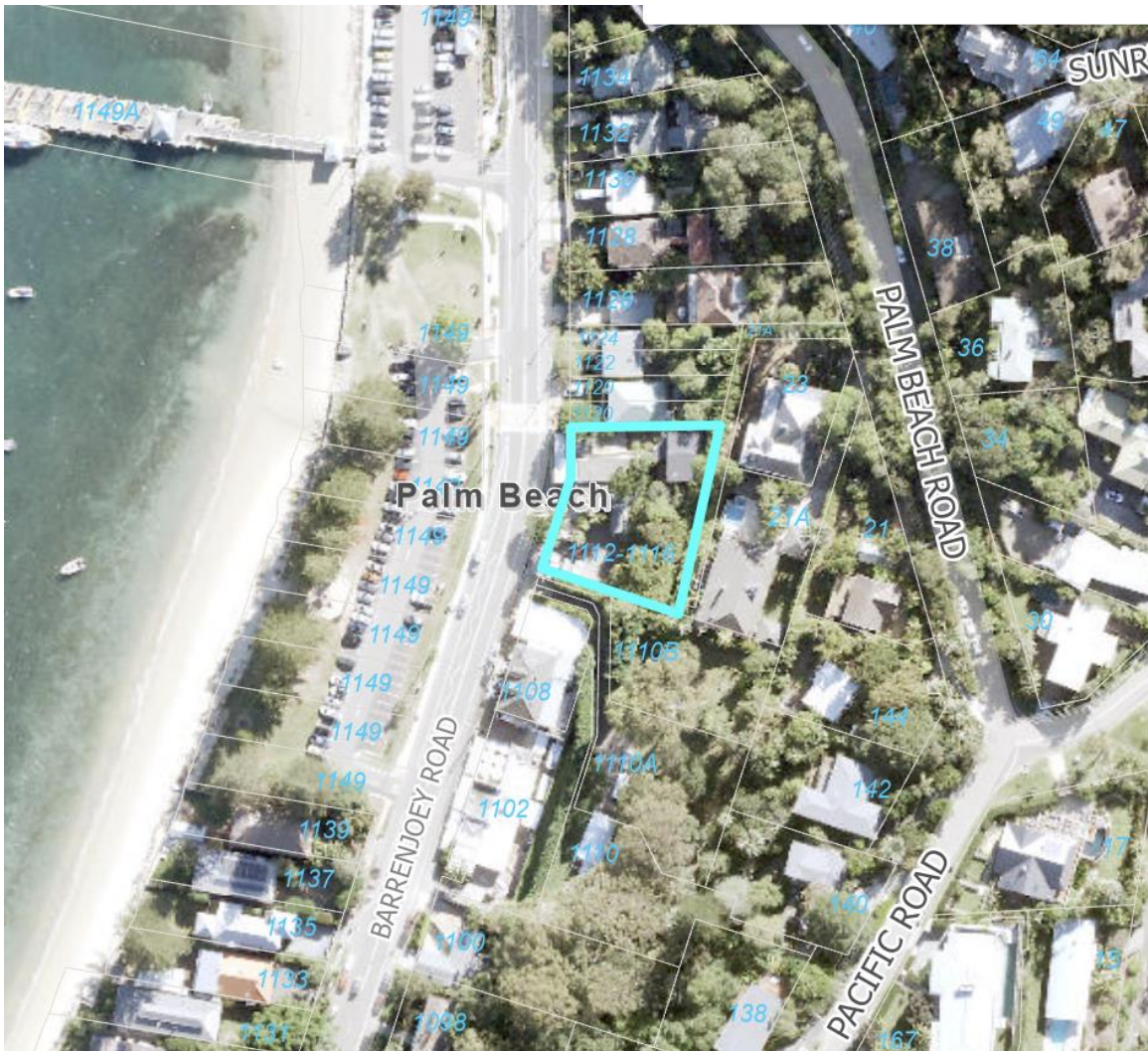
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Photo 2 – View of the subject site from Palm Beach Wharf – red line defines approx. location and scale of proposed development.



Source: Site photo

Figure 1 – Aerial photo of the subject site directly adjacent and in close proximity to local heritage items and the shores of Pittwater



Source: Northern Beaches Council Planning Maps – Aerial view

Proposed development

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au

www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

Development Application DA2023/1289 seeks consent for demolition works and construction of shop top housing at 1112-1116 Barrenjoey Road, Palm Beach which includes the following:

- Demolition of the existing residential dwelling house remaining on the site. All other structures have been demolished with consent DA N0102/10 considered the extant consent. It is requested that Council confirm whether extant consent applies to the subject site.
- Construction of a predominately 6 storey (5 above ground) shop top housing inc. basement level as follows:
- 7 units with the following residential mix:
 - 7 x 3 bedroom apartment*
 - 2 x shop (non-food premises) – 1 x 188 sqm and 1 x 190 sqm – Total 378 sqm. 68.5 sqm below the required commercial floor space for shop top housing.
- 23 car parking spaces in basement level – An under provision of 7 car parking spaces (6.3 cited but in accordance with stated DCP Control, this should be rounded up to 7) .
- Removal of a number of trees on the subject site.
- Built form development over existing landscaped embankment, which is out-of-character with adjacent landscaped embankment as shown on the site analysis plan.
- Existing bus shelter on land outside of subject site to be relocated to allow for driveway access to basement car park.
- Associated bulk excavation extending to 14.70 metres. Queried whether is its 16.7 metres.

*Total floor area of Apartments:

- Apartment 101 – 164.3 sqm excluding 20.2 sqm balcony.
- Apartment 102 – 133.1 sqm excluding 22.4 sqm balcony.
- Apartment 103 – 164.9 sqm excluding 18.2 sqm balcony.
- Apartment 201 – 164.3 sqm excluding 16.6 sqm balcony.
- Apartment 202 – 126.8 sqm excluding 18.9 sqm balcony.
- Apartment 203 – 164.9 sqm excluding 18.8 sqm balcony.
- Apartment 301 – 329.7 sqm excluding 215.4 sqm balcony.

Total floor area for 7 x 3 bed apartments = 1248 sqm excluding balconies.

Total floor area including balcony = 1578.5 sqm inc. balconies.

Impacts and non-compliance of proposed development

Relevant legislation and Planning Controls

In preparing this submission, I have carefully considered the following legislation, planning controls and guidance / policy documents:

Environmental Planning & Assessment Act 1979 (the Act)

Environmental Planning and Assessment Regulation 2000 (the Regulations)

State Environmental Planning Policy No. 65. – Design Quality of Residential Apartment Development (SEPP 65)

State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (BASIX) 2004

Northern Beaches Local Housing Strategy, 2021

Pittwater Local Environmental Plan 2014 (LEP)

Pittwater Development Control Plan 2014 (DCP)

Plan of Management for Pittwater Park

Parking demand study, Pittwater Park

SEPP 65 and associated ADG

SEPP 65 and the associated ADG, in the hierarchy of plans, supersede the setback controls of the Pittwater DCP.

ADG – Part 2F – Building separation.

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au

www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

The aims of the ADG building separation control Part 2F, is as follows:

Aims

- *ensure that new development is scaled to support the desired future character with appropriate massing and spaces between buildings*
- *assist in providing residential amenity including visual and acoustic privacy, natural ventilation, sunlight and daylight access and outlook*
- *provide suitable areas for communal open spaces, deep soil zones and landscaping*

Part 2F of the ADG sets the building separation controls to meet the above aims. For a development of up to four storeys, a minimum of between 6-12 metres is required. This has been detailed in the Pre-lodgement Meeting notes (PLM), as included at Attachment 1 of the SEE.

The consent authority, in its assessment will need to ensure compliance with the following, as per Part 2F of the ADG, including the key test of compliance with the building separation distances:

Design and test building separation controls in plan and section

Comment: A building separation plan has not been submitted as part of the subject DA and is required to fully assess the proposed development.

Minimum separation distances for buildings ... up to four storeys:

- *12m between habitable rooms/balconies*
- *9m between habitable and non-habitable rooms*
- *6m between non-habitable rooms*

Comment: The building separation of the proposed development is approx.3 metres from 1120 Barrenjoey Road, approx. 7 metres from 1108 Barrenjoey Road (Barrenjoey House) and approx. 5 metres from 21A Palm Beach Road. Building separation distances are not shown on the submitted plans or the window locations of adjacent buildings. The building separation

distances in this objection have been ascertained from the setbacks shown on the masterset plans and distances of separation of neighbouring structures, assessed at scale.

However, it is clear that the required separation distances are not complied with, as also confirmed in the PLM notes at Attachment 1. The building separation distance should be between a minimum of 6-12 metres between depending on which rooms /balconies are located along the associated elevations of the buildings.

A building separation plan has not been submitted with the subject DA but is required to fully assessed the proposed development. It is requested that my clients are supplied with the building separation plan and have the opportunity to provide additional comments.

Northern Beaches Local Housing Strategy, 2021

Council's strategic plan for residential development in the area is set out in the Northern Beaches Local Housing Strategy (LHS), which was approved by Council in April 2021 and by the NSW Department of Planning & Environment in December 2021. An extract from Table 24 of the LHS, is shown in figure 2 of this objection and details Council's potential framework for the statutory implementation of the LHS in the Northern Beaches LEP. Importantly, it should be noted that Palm Beach was excluded in the strategy for additional housing capacity in the 'Centres Renewal Framework' applied due to limited transport infrastructure, and development constraints, and is not an identified local centre suitable for low density additional housing.

The nearest local centre is Avalon, which is identified as a 'Coastal Village'. Given that proposed development within 400m of a location centre and zoned B1 or B2, now E1, is to permit lower density shop top housing with the scale of development restricted through height and FSR controls, the subject site, outside of a local centre should be additionally protected with strict compliance and greater protection to the existing character of the area.

Figure 2 – Extract from Table 24 of the Local Housing Strategy

Table 24:
A potential framework for statutory implementation of the LHS approach in LEPs

Area	Current land zone	Suggested land zone	Permitted residential land uses	Additional amendments needed	Timing for implementation
Environmental Living/ Large Lot Residential	E4 or R5	E4 or R5	Single dwellings and secondary dwellings		TBC
Rest of R2 zones (not including Centre Investigation Areas and not within 400m of centres)	R2	R2	Single dwellings and secondary dwellings	An additional LEP clause will be needed to restrict dual occupancy development in the R2 zone to the areas around local centres.	TBC
Within 400m of local centres (Residential areas)	R2	R2	Single dwellings, secondary dwellings and dual occupancies		TBC
Within 400m of local centres (Centres outside of centre investigation areas)	B1 or B2	B1 or B2	Lower density shop-top housing	The scale of development will be restricted through building height and FSR controls	TBC

Source: Extract from Northern Beaches Local Housing Strategy, 2021, Table 24, page 125.

Non-compliance with Local Environmental Plan (LEP)

Land use zone: The subject site is zoned E1 Local Centre under the Pittwater LEP 2014.

Zone E1 Local Centre

1 Objectives of zone

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*

Comment: The two retail units proposed at ground floor level are limited to two non-food premises (retail), measuring 188 sqm and 190 sqm. The ratio of retail use to residential use proposed in the subject DA fails to meet the required 25% of total Ground Floor Area (GFA). The degree of non-compliance and failure to meet the objectives of the control are discussed further in this letter under DCP Control B2.6 and highlight that the

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au
www.planningprogress.com.au
PO Box 213, Avalon Beach, NSW 2107

proposed development would not provide an appropriate range of commercial uses to meet the objectives of the E1 zone.

- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*

Comment: Two small retail units would not encourage investment in local commercial development to generate anything more than very limited employment opportunities, given the size of the units. The scale of retail development is dwarfed by the scale of residential development, as discussed under DCP Control B2.6.

- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*

Comment: The scale of residential development proposed in the E1 zone, outside of a local centre directly conflicts with the strategic direction of the Northern Beaches LHS. Furthermore, the clear lack of an appropriate dwelling mix fails to meet the needs of housing demand. Seven, 3 bedroom apartments, with one apartment occupying two stories and amounting to 329.2 sqm of floor area, is not consistent with Council's strategic planning needs for residential development in the local area.

- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

Comment: The limited retail uses proposed appear as a token use to justify residential development under shop top housing in the E1 zone.

- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse, and functional streets and public spaces.*

Comment: The active street frontage at the site would be limited to the frontage of the two small retail units. The access to the basement car parking and separate access for residential users would detract from a vibrant and active street frontage and provide

additional pedestrian safety hazards. The proposed relocation of the bus stop would further conflict with the existing restaurant use and vibrancy of the street frontage at Barrenjoey House.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

Comment: The proposed development clearly fails to relate favourably in scale, architectural form or landscape treatment. In scale, the proposed structure is a 5 storey building adjacent to modest 1-2 storey structures with hipped roofs, and would infill almost the entire site with built form. The site would be entirely devoid of any meaningful landscaping and the existing landscaped escarpment removed. The landscaped escarpment forms an important character feature for the area (as shown in site photos and the site analysis plan), would be removed.

It should be acknowledged that the proposed development is located on a visually sensitive site, directly adjacent to the C4 zone, adjacent to local heritage items, Pittwater waterway and in a scenic protection area. The submitted perspective drawings and analysis only include the view corridor from south to north along the Barrenjoey Road and the SEE cites the existing residential flat building (RFB) on Palm Beach Road as justification for the inappropriate scale of built form proposed. However, the existing RFB is totally out of scale, form and character with the surrounding environment and this argument should be discounted.

Additional view perspective should include the view of the site from Palm Beach wharf, from Pittwater Park and from a north-south perspective along the Barrenjoey Road (all key entry points to the area).

Clause 4.3 of the LEP - Height of Buildings

The proposed development does not comply with the 8.5 metre height limit as specified under Cl. 4.3 of the LEP.

The subject DA fails to comply with the objectives of Cl.4.3 (1) for the following reasons:

(1) The objectives of this clause are as follows—

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au

www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

(a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

Comment: The desired character of the locality is set out in DCP Control A4.12 Palm Beach Locality, which reads in part 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.

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.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded...

The proposed development directly conflicts with the desired character of the area and direction for future development, for the following reasons:

- Bulk excavation to a depth of 14.70m does not result in development that is *integrated with landform and landscape*.
- The removal of the escarpment landscaping to the rear of the site does not enable a development to be integrated into the landscape.
- The building height will exceed the height of the tree canopy – see drawing no. A0201.
- The bulk and scale of the development is at odds with the horizontal massing of the existing built form and would appear as an incongruous structure and entirely dwarf the neighbouring 1-2 storey dwelling houses and adjacent heritage listed Barrenjoey House (see figures 3 and 4 of this objection).

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au
www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

- The scale of development, level of excavation and lack of separation between buildings restricts any opportunity for deep soil landscaping.
- The proposed relocation of the bus shelter and introduction of a vehicular access into the basement carpark would result in pedestrian safety hazards.
- The ‘seaside-village character is defined under DCP Control A4.12 in the context and desired character description. The design, scale and treatment of the proposed development does not appropriately respond to its local context.
- The scale and siting of the proposed development would fail to conserve the curtilage of local heritage items (both Winton and Barrenjoey House) – see objection under Clause 5.10 of the Pittwater LEP.
- Vehicular access within the locality will be constrained by virtue of the lack of proposed retail car parking spaces proposed and the closed (roller shutter) access to the basement. Justification cannot be accepted for the use of Pittwater Park, particularly given the outcomes of the parking demand study and requirements of the Plan of Management.
- The offshore community will be impacted by the additional parking pressures to arise by the lack of onsite parking.

The SEE outlines that the proposed development meets the desired future character of the area as a 3-storey streetscape presentation and development within a commercial centre. It is important to be clear that the proposed development is a 5 storey development and the site is a neighbourhood centre, not a large scale commercial centre.

(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment: The proposed development fails to meet this objective, as already detailed in this objection and as shown in figures 3 and 4.

(c) to minimise any overshadowing of neighbouring properties,

Comment: This objection is prepared on behalf of the Palm Beach and Whale Beach Association and directly responds to the impacts of the proposed development on the character of the area.

(d) to allow for the reasonable sharing of views,

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au

www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

Comment: The proposed development would significantly diminish important view corridors when arriving at Palm Beach from the Palm Beach Wharf, from Pittwater Park, from the Pittwater Waterway and from either direction along the Barrenjoey Road.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment: The proposed development fails to meet this objective, as already detailed in this objection.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Comment: The proposed development fails to meet this objective, as already discussed in this submission and as expanded upon under failure to comply with Clause 5.10.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#). Clause 4.3 (2D) allows some limited exceedance, based on meeting the requirements of Clause. 4.3 (2D)

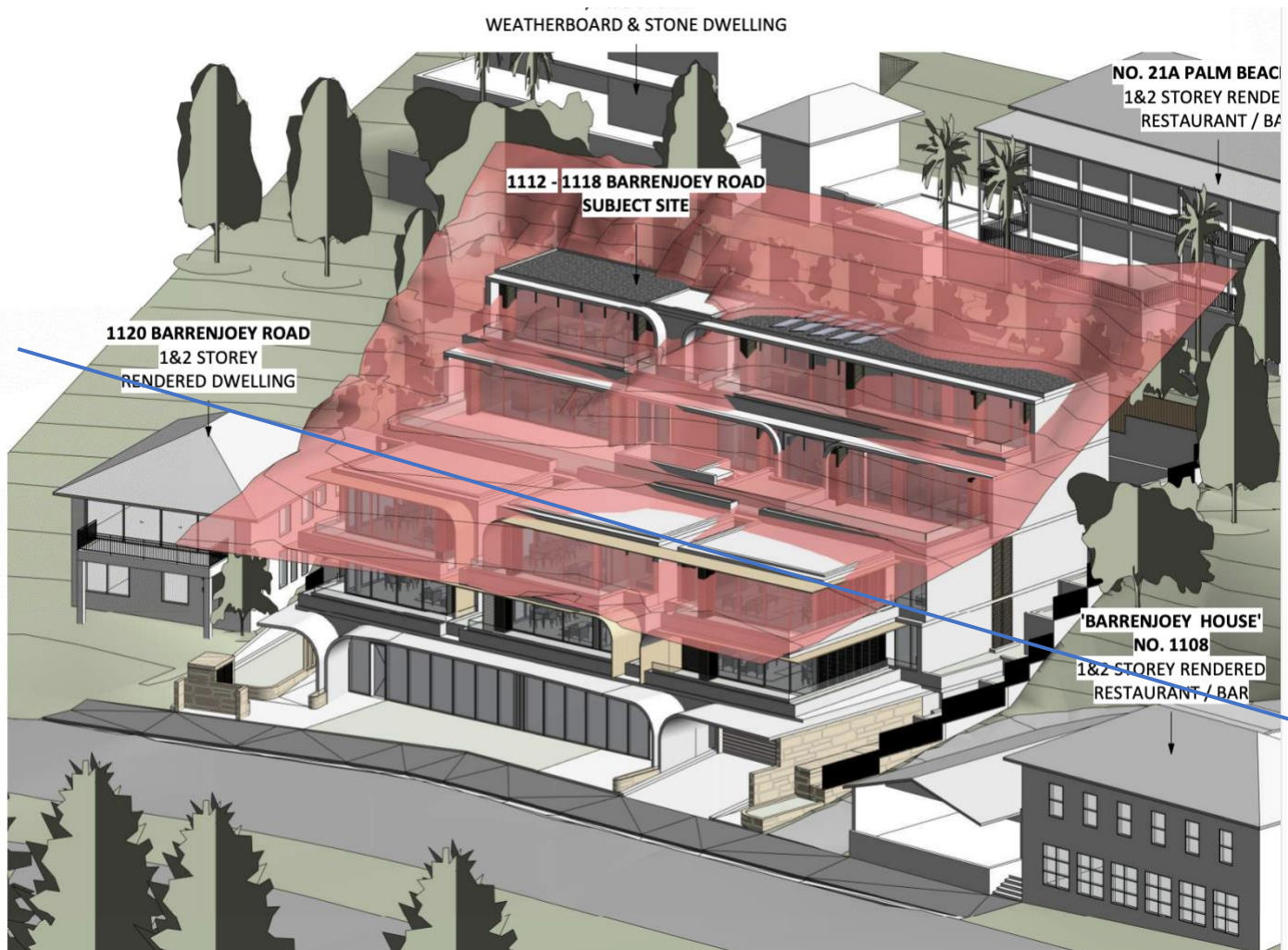
The proposed development does not meet the requirements of Clause 4.3 (2D) for the following reasons:

Clause 4.3 (2D) (a) - The height breach cannot be considered as minor. The submitted height plane diagrams demonstrate a breach of the maximum height limit at 3 of the 5 levels proposed (levels 2, 3 and 4). The top two levels have been recessed into the site and overhang the rear setback in an attempt to reduce the breach and give rise to additional impact on neighbouring amenity, visual impacts and building separation distances. A breach of the maximum height of buildings across 3 of 5 levels of a development cannot be considered as minor.

Clause 4.3 (2D) (b) - the objectives of Clause 4.3 are not achieved, as discussed. given the scale of development proposed and resulting impact on the character of the locality, surrounding occupiers, visual impact on the natural environment and failure to conserve the setting of adjacent heritage items.

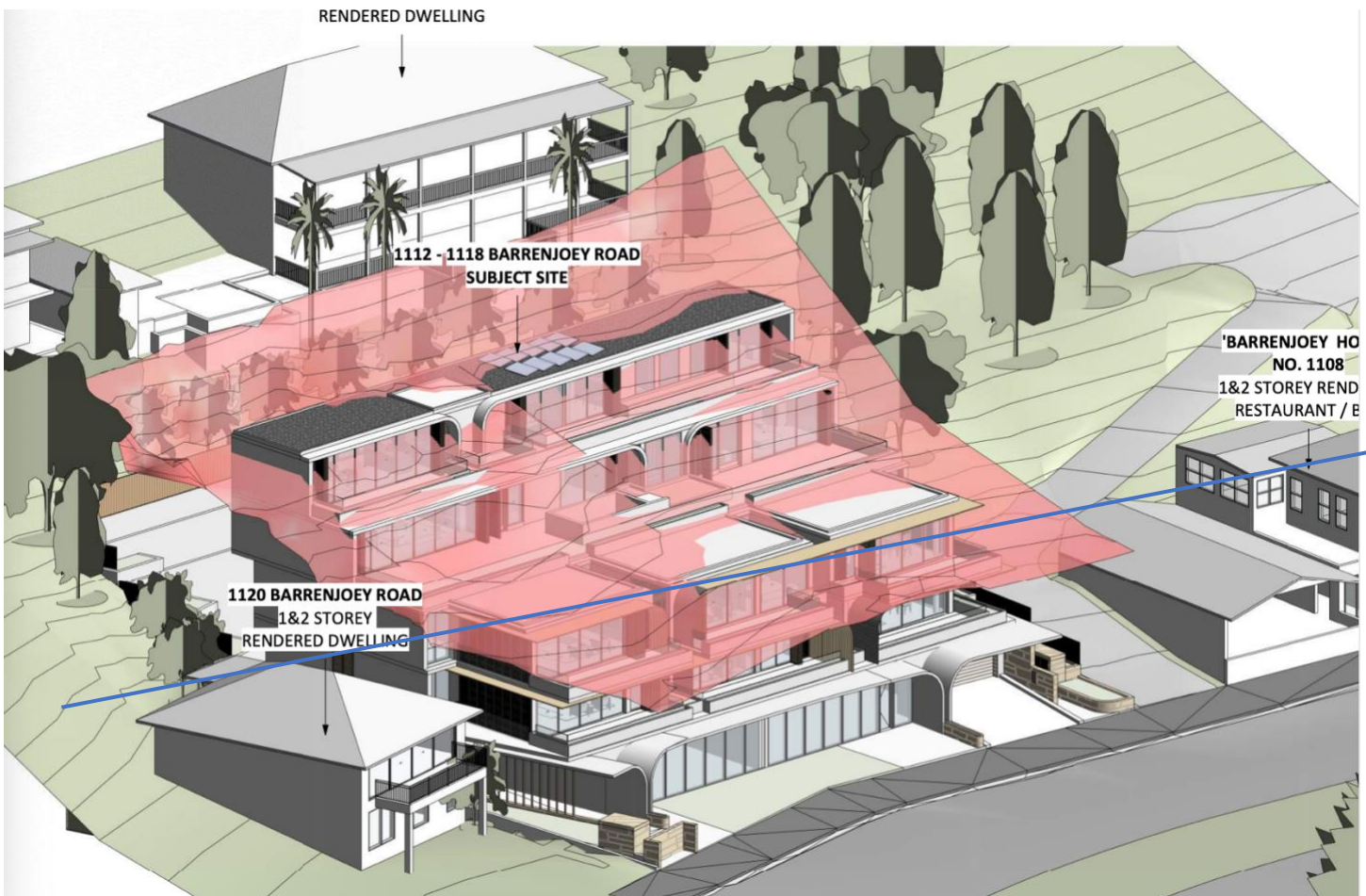
Clause 4.3 (2d) – A bulk excavation to a depth of 14.7 metres demonstrates that the proposed development has not minimised the need for cut and fill.

Figure 3 - 8.5 m height plane breach – note the scale of adjacent development along the Barrenjoey Road and the direct correlation with where the height breach starts to occur.



Source: Extract from Master set plans – Diagram 01 with own annotation added

Figure 4 - 8.5 m height plane breach - – note the scale of adjacent development along the Barrenjoey Road and the direct correlation with where the height breach starts to occur.



Source: Extract from Master set plans – Diagram 02 with own annotation

Clause 5.10 Heritage Conservation

The proposed development fails to meet the objective of Clause 5.10 (1) (b), *to conserve the heritage significance of heritage items...including associated fabric, settings and views.*

The subject site is within the wider curtilage of two local heritage items, Barrenjoey House, (item 2270076), Norfolk Island Pine (Item no. 2270037) and Winten, (item 2270056). As already discussed in this objection, the scale, bulk and siting of the proposed development will appear as an incongruous structure and dwarf surrounding built form. Given that two of the surrounding properties are local heritage items, the impact on their wider curtilage needs to be more sensitively considered and responded to in an appropriate design solution. The proposed development fails to conserve either the setting or views of and from the heritage listed items. With regard to the associated fabric of the heritage items, this objection raises concerns with the level of excavation required and resulting impacts that this may have on the fabric of Barrenjoey House.

Clause 5.21 Flood planning

The writer does not have the technical expertise to respond to flood planning matters but requests that Council ensure that any ‘refuge in place’ facilities or amendments to submitted plans, to address internal referral comments, be made available to my clients for additional consultation. Flood planning and Gross Floor Area calculations need to accurately reflect the floor level controls set out in DCP Control B3.11 – C7 – Floor Levels.

Clause 7.2 Earthworks and 7.7 Geotechnical hazards

A Geotechnical Report has been submitted with the Development Application and risks to neighbouring property, including the impact on adjacent heritage listed items, should be fully assessed as part of this application. The proposed excavation extends to 14.70 metres. The writer does not have the technical expertise to respond to earthwork, geotechnical hazards or resulting groundwater impacts, and requests that Council ensure that any amendments to submitted plans, to address internal referral comments, be made available to my clients for additional consultation. Also note the information at Attachment 1 and 2, with regard to local flood knowledge.

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au

www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

Development Control Plan (DCP) - Non-compliant development and amenity impacts on the locality.

DCP Control A4.12 Palm Beach Locality

As already discussed in this objection, the proposed development fails to meet any of the key attributes of the desired future character of the area. The excessive built form proposed would appear as an obscure and overbearing structure, at odds with the streetscape and surrounding environmental qualities. Comments under Clause 4.3 (1) (a), list the extent of non-compliance at pages 15-17 and photos 1 and 2 show the outline of the anticipated scale of development on the subject site. To permit development so far removed from the desired future character of the area would result in a dangerous precedent and irreversibly alter the existing character.

DCP Control B1 – Heritage controls

As discussed under Clause 5.10, the proposed development would fail to conserve the setting and wider curtilage of local heritage items, Barrenjoey House (Item no. 2270076), Norfolk Island Pine (Item no. 2270037) and Winten (Item no. 2270056). It the overbearing scale, bulk and sitting of the proposed development which would totally over dominate the heritage curtilage, particularly when viewed from the Palm Beach Wharf view and looking north to south along the Barrenjoey Road. This objection also cites concerns with regard to the impact on the fabric of Barrenjoey House given the level of excavation proposed.

DCP Control B2.6 Shop Top Housing

The SEE and Masterset plans acknowledge that the proposed development does not comply with the numerical requirements of DCP Control B2.6.

This objection contends that strict numerical compliance should be maintained, given that the residential development component is only permitted with consent in the commercial centre (E1 zone -former neighbourhood centre), if the mix is appropriate to ensure the functionality of the commercial centre and to meet the economic and employment needs of Pittwater Community. Strict compliance with the control cannot be unreasonable and unnecessary when the commercial component is essential to meet the objectives of the zone, and E1 controls.

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au
www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

This objection further requests that amended GFA calculations be submitted to exclude the storage area for the retail units not used as a shop and to include the extensive balconies if enclosed by 1.4 metre plus privacy screens.

DCP Control B6 – Access and Parking

Comment: The intensification of use, lack of on-site parking provision, relocation of the bus shelter and impact on pedestrian safety is contrary to the objectives of DCP Control B6. Note the cited short fall of 6.3 car parking spaces should be rounded up to 7 spaces, as per the requirements of the control.

Lack of on-site parking provision

The proposed development would result in a shortfall of 7 retail car parking spaces and clarification regarding customer access to the basement car park is required, given the roller shutters system, with intercom & security card swipe.

The report prepared by Varga Traffic Planning Pty Ltd, attempts to justify the lack of parking provision citing that the subject site is located in an accessible town centre area and served by the existing 199 bus service. However, the subject site is located in a neighbourhood centre, not a local centre and not a town centre which would be accessible and served by more than one bus service. This justification should be discounted.

The third justification for lack of provision cites ‘linked trips’ or ‘passing trade’. No evidence has been provided to support this finding. The subject site is located in an area predominantly including C4 zoned land and two very limited E1 zones that were previously classified as neighbourhood centres. See figure 5.

Figure 5 - Land use zoning – E1 zone is limited to two former neighbourhood centres



Source: Northern Beaches Council – Planning map

The fourth justification cites the location of Council’s public car park, ‘Pittwater Park’. Public car parking at Pittwater Park underwent an extensive parking demand study given the existing and ongoing parking pressures for the local community, visitors and residents of the western foreshore. Visitors to the area, tend to use the private car to access the area and place additional demand on public parking spaces. As shown in photos 3 and 4, parking demand at Pittwater Park remains high and justification for additional use of the public car park should not be accepted.

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au
www.planningprogress.com.au
PO Box 213, Avalon Beach, NSW 2107

Photo 3- Excessive high demand for public parking at Pittwater Park

Pittwater Park parking area over capacity on Sunday October 1st approx 2pm
Source: Client site photo

Photo 4 – High demand for public parking at Pittwater Park taken on a Thursday at 5:15pm. Note the excessive degree of demand on a Sunday and continued demand on a weekday.

Source: Own site photo

Photo 5 - Pittwater Park – Palm Beach Car Parking restrictions following the parking demand study



Source: Own site photo of parking restrictions sign at Pittwater Park

The fifth justification is a noted shortfall for on-site retail parking at 1102 Barrenjoey Road. This justification supports the reason to resist any further shortfalls given the cumulative impacts of a lack of on-site parking provision.

The sixth justification cites the heritage preservation area as the constraint for additional on-site provision. However, it is the intensification of the residential uses proposed which results in the shortfall.

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au

www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

The final justification cited is that the retail users and residents would likely use Pittwater Park public car parking. This justification ignores the existing demand, lack of car parking space, and limitations of parking times, as shown in photo 5.

Relocation of the bus shelter

The SEE sets out that the relocation of the bus shelter and location of the driveway access is as per Council's pre lodgement traffic engineer's referral response. This referral has not been included within the appendix to the SEE to provide some context, clarification on details of relocation position or justification to support why it should be moved to benefit one site over another. The only commentary noted is at point 13 which includes a general statement but no detail on exact location or relocation of the bus shelter.

Should the bus shelter be relocated in front of Barrenjoey House, this would have a considerable impact on an existing use, including the vibrancy and use of the licensed footpath seating area and commercial viability of the guesthouse, given the bedroom locations immediately adjacent to the Barrenjoey Road.

My clients have also advised that the bus shelter, is in the safest location with regard to the sitting of pedestrian crossing from Pittwater Park and the Palm Beach Wharf. Please see Attachment 1 for a detailed background on the rationale behind the existing location of the bus shelter and pedestrian crossing. Any change to the location of the bus shelter from the pedestrian crossing could have pedestrian safety implications.

The location of the driveway and associated shutter / intercom system could also create pedestrian safety hazards, which need to be addressed.

DCP Control D12.1 – Character as viewed from a public place

As previously discussed in this objection, the proposed development fails to meet the outcomes of the above control, by virtue of the scale, bulk and siting.

DCP Control D12.14 – Scenic Protection Category One Area

The subject site is located within the above scenic protection area given scenic values. As discussed previously in this submission, the site is highly visible from the three key entry points to the area, including from Palm Beach Wharf and from Pittwater Waterway. The proposed development would totally over dominant the streetscape and be at odds with the character of the area and have a significantly detrimental impact on the scenic values. One of the key outcomes of the above control is for development to minimise any visual impact on the natural environment when viewed from any water, road or public reserve. The proposed development fails to meet the outcomes of DCP control D12.14.

Recommendations

- Request additional information be submitted as follows:
- Revised description required to amend ‘Alterations and additions to commercial development’. The proposed DA should read, ‘Demolition and erection of a new structure ‘Shop Top Housing – Demolition works and construction of shop top housing’.
- Certified height poles to be erected to fully assess the overbearing impact on the character of the area and neighbouring occupiers. My client’s local technical expert cited concerns regarding the accuracy of the degree and percentage slope gradient. To quote, ‘*It is questionable if the 16.7degree slope (30%) has been correctly calculated. It appears to be a flat site for most of the are and 14.7 slope averaged for the rest, thereby eliminating the availability to raise the height limit from 8.5m to 10.0m*’ (see attachment 2).
- Additional view perspective to include the view of the site from Palm Beach wharf, from Pittwater Park and from a north-south perspective along the Barrenjoey Road (all key entry points to the area).
- Clause 4.6 Variation Request (Clause 4.3 Breach to Maximum Height of Buildings).
- A building separation plan in accordance with SEPP 65 and the associated ADG – The building separation plan should include the distances between the elevation and windows of the proposed development and all neighbouring structures and windows, including from levels 3 and 4 to 21A Palm Beach Road (noting that the two highest levels have been set back to avoid additional breaches to Cl.4.3), 23 Palm Beach Road and the approved dwelling at 1110B Barrenjoey Road.
- Noted error in the Urbis Heritage Impact Statement incorrectly siting the proposed

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au

www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

development on the western side of Barrenjoey Road. For accuracy, this should be amended to read, 'to the eastern side of Barrenjoey Road'.

- Clarification from the Aboriginal Heritage Office is requested to determine whether there are any impacts on Aboriginal Heritage items on or in close proximity to the site. My clients have suggested that a Midden and Burial site may be on or near the site (see attachment 1 and 2).
- Amend the GFA calculations to remove retail storage areas.
- Clarification is required from Council regarding the floor area calculations in Flood Prone Land. Also amend to correctly include requirements of DCP Control B3.11 – C7 (Floor Area) which suggests that only the first 5 metres from the street front in the existing business zone may be considered as usable business floor area. If this is the case, the GFA calculations also need to take into consideration the reduced GFA (potentially shop G02 being approx. 54 sqm and shop G01 being approx. 59 sqm. Amended GFA calculations need to be reflected in the assessment against the associated ratio to residential use under shop top housing.
- Details on the privacy screens proposed to enclose the balconies for visual privacy. Privacy screens are generally between 1.6-1.8 metres high and should be included the GFA calculations for residential development.
- A Construction and Demolition Waste Management Plan needs to be provided. As outlined in the WMP at page 2, only operational WMP has been reported. The Construction Management Plan & Methodology Report does not include a Construction and Demolition Waste Management Plan either. Waste Management for the removal of excavated material from a construction site with bulk excavation of 14.70 (or 16.7 metres) metres is required.
- Clarification of cited 14.70 metre bulk excavation. Does bulk excavation extend to 16.7 metres in the south-eastern corner?
- Provide rationale as to why none of the retail premises are food outlets. A food retail unit could be well utilised given the location of the site opposite the Palm Beach Wharf and could have the added benefit that food premises add vibrancy to a streetscape. A food outlet could be more appropriate on the subject site than two non-food retail units.
- It is requested that the Cost Estimate Report for build cost at \$9.18m be verified by Council's appointed independent Quantity Surveyor.

- Should Council be minded approving the proposed development, contrary to the objections raised in this submission, it is recommended that amendments include:
 - Remove levels 3 and 4 from the proposed development and strictly comply with the 8.5 metre height limit.
 - Pull back the rear and side elevations of the proposed development to strictly comply with the ADG. 6-12 metre building separation distances are required.
 - Reduce the level of residential apartment proposed to strictly comply with on-site parking provision.
 - Reduce the level of residential uses to ensure an appropriate mix of retail and residential use and strictly comply with DCP Control B2.6.
 - Provide an appropriate dwelling mix of one, two and 3 bed apartments in accordance with the LHS and reduce the size of the GFA of the apartments.
 - Retain the landscaped escarpment to the rear of the site, including the existing slope gradient to more sensitively address the desire future character of the area- only include new built form on the existing excavated land.
 - Retain the location of the existing bus shelter.
 - Remove the roller shutter and key access to the basement car parking so that retail users can access the retail on-site parking provision.

- It is requested that Council provide my client with the opportunity to provide a submission on additional and / or amended plans.

Conclusion

This submission sets out my client's concerns regarding the proposed development under Development Application DA2023/1289 and recommendations/requests.

The proposed development would have a materially detrimental impact on the sensitive character of the area and is a non-compliant development contrary to SEPP 65 and the associated Apartment Design Guide (ADG), Northern Beaches Local Housing Strategy (LHS), Pittwater LEP 2014 Objectives of the E1 zone – Local Centre; Clause 4.3 Height of Buildings, Clause 5.10 Heritage Conservation and Pittwater DCP 2014 Controls, A4.12 Palm Beach Locality; B1 Heritage Controls; B2.6 Shop Top Housing; B3.11 Flood Prone Land; B6 Access & Parking; D12.1 Character as viewed from a public place and D12.14 Scenic Protection Category One Area.

It is respectfully requested that the proposed development be refused to address the concerns outlined in this submission or amended significantly to mitigate the unreasonable harm expressed.

Should additional and or amended plans be submitted to address concerns expressed, my clients request that they be given an opportunity to comment accordingly and that any recommended conditions be attached to the consent.

I thank you in advance for your consideration of the concerns raised in this submission.

Kind regards,

Karen Buckingham *on behalf of the Palm Beach and Whale Beach Association.*
BA(Hons) Planning; MSc Spatial Planning; MPIA
Planning Progress

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au

www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

Attachment 1: Background information to subject site from Clients

1. *The pedestrian crossing was originally located on the southern end of Pittwater Park and crossed to the former fish and chip shop site at 1102 Barrenjoey Rd..*

This crossing was some distance from the ferry wharf and the southbound bus stop.

Pedestrians arriving by ferry and wishing to use the southbound bus stop and the group of small shops randomly crossed the road at the entrance/exit to the wharf as they would not walk all the way south to the pedestrian crossing and then all the way back (north) to the bus stop. This was dangerous as it is a high traffic area. The crossing was too far for those with mobility issues etc. As you are aware the Pittwater Park Parking Demand Strategy (PPPDS) was developed by NBC in approx 2016/17 and strategies implemented. The speed limit has been reduced from 50km to 40km along this stretch. The pedestrian crossing was moved to the north close to the entrance of Pittwater Park to make crossing the road safe and accessible to all. Sightlines for traffic heading south from the beach down the hill were assessed carefully for its relocation. This has proved to be a much safer and well used crossing. The original exit and entrance to Pittwater Park were "swapped" again for safety reasons. The bus stop shelter is well used by visitors, locals and commuters some of whom have luggage after visiting the Central Coast, the Basin and Currawong Cottages.

Accordingly, it would not be suitable to relocate the bus stop either to the northern side of the pedestrian crossing or the southern side because heritage listed Barrenjoey House has a licensed outdoor seating area along the length of the footpath in front of the premises as does the former fish and chip shop site at 1102 Barrenjoey Rd.

2. *Overland flooding/water from the land behind (eastern side) has impacted the small shops at 1112-1116 Barrenjoey Rd since they were built. On many occasions the shops have been badly affected by mud and water flow.*

3. *There are middens on the site??? Possibly an Aboriginal burial site???*

Attachment 2: Local background information and additional technical advice from Clients local technical expert

This proposal contravenes multiple Development (DCP 2014) Controls not least of which are:

- ***Inappropriate Program.***

When has the policy for excluding apartments in Palm Beach changed? The Palm Beach and Wale Beach Association, with the community, has been able to prevent such development of this type since the Commodore Apartments in the 1980's turned the Council out of office. Nothing has changed either in the LEP or DCP to justify apartments in Palm Beach. For this condition alone, the proposal should be refused.

- ***Context and Privatization***

The context for an alien building couldn't be more removed from comments in the Statement of Environmental Effects. Just about every claim raised in the SoEE draws issues of conflict with the very sensitive village environment centred around Barrenjoey House. that The proposal appears to be privatizing the site in size, use, bulk, height etc, for its own benefit. Just stating that it fits well in the context doesn't make it so.

- ***Bulk.***

Compared to adjacent neighbours the bulk of the building is excessive even despite the stepping setbacks. this will create an unacceptable precedent for the historic area including Barrenjoey House and the Park Precinct.

- ***Scale***

The proposal is out of scale with the precinct in its elements and forms.

- ***Height***

The height controls in the DCP and LEP should have automatically eliminated such a proposal being contemplated. It is questionable if the 16.7 degree slope (30% gradient) has been correctly calculated. It appears to be a flat site for most of the area and 14.7 slope averaged for the rest, thereby eliminating the availability to raise the height limit from 8.5m to 10.0m

- ***View Sharing***

Despite the extensive images of view sharing proposed, the development would have significant impact, on neighbour's views on the upside of the proposal. Its effectively a privatisation of their views without justification.

- ***Privacy and Overlooking***

Privacy and overlooking compromised on three sides of the proposal contrary to the Controls.

- ***Uncharacteristic Forms***

The uncharacteristic forms are alien to the precinct, for no better reason than to achieve a 'look at me' idiom which is contra to the idea of fitting into the Barrenjoey House Precinct.

- **Design Quality**

Whilst there are a number of design quality issues that could be sorted out in development, the issues of lifts in flood prone level, electricity articulation in these flood prone areas, poor connection to the service areas, under-provided parking, stacked parking, distance of travel from apartments to ground, under-provided deep-soil landscape, over-dependence on deck landscaping, west facing window-wall glazing out of context in the precinct, 1980's megastructure as seen from the Park. All of these issues appear to be beyond solution in design development.

- **Landscaping requirements**

The Landscape requirements haven't been provided for and this alone should have the proposal refused. To allow the shortfall is an unacceptable precedent for any other proposals in the area.

- **Heritage impact**

The site may have been an aboriginal burial site in the past and there is no mention of this within the proposal.

- **Traffic requirements**

Traffic implications should have precedence as the proposal is 'high end' in intent and will attract significantly more vehicles to the larger apartments than the minimum guidelines with additional impact on the adjacent Park (which is already stretched at peak times).

- **Disruption to normal commerce and Public Access**

If the project is to take at least 2 years to complete there is no mention of compensation to commerce or community for in the proposals effects on access and disruption and a plan would need to be included as a contingency and for all activities to be strictly on site, including the excavation.

- **Excessive Excavation**

The massive excavation alone should have alerted Council to refuse the applicant. The eastern wall will be of the order of 40m which, even considering Whale Beach Road excavations etc., will have considerable impact on neighbours and community opinion. Managing the politics of such an unprecedented excavation will need the Council and the Community to be aware and prepared.

- **Buildability**

Waste disposal and rock removal hasn't been addressed in the proposal and needs to be, to ensure viability. Removal of excavated material with trucks needs large Trucks, probably articulated, for a number of weeks. Disposal of water and dust will be significant issues for neighbours and community. The inevitable noise alone will be a challenge as such an excavation in the precinct is unprecedented for Palm Beach.

- **Floodplain Management**

The project will flood by its inherent design, below the current sea level. This appears to be an insurmountable challenge that doesn't appear to be address for sustainability in the future.

- **State Government (Building Sustainability) Basix and NatHERS**

The Basix Certificate in support of the proposal appears to be a minimal solution with

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au

www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

If the development is allowed to continue in its current form it would set undesirable precedents for future proposals in Palm Beach.