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8<sup>th</sup> January 2019

Northern Beaches Council  
PO Box 82  
MANLY NSW 1655

**Attention: David Auster**

Dear David

**RE: DA 2018/1342 – PROPOSED ALTERATIONS AND ADDITIONS TO AN EXISTING  
DWELLING FOR THE PURPOSE OF A CAR DECK AND INCLINATOR  
1165 BARRENJOEY ROAD, PALM BEACH**

I am writing in relation to the above-mentioned Development Application (DA), specifically objecting to Council's intention to impose a deferred commencement condition requiring the installation of an Elsholz Median (re-directive median) and associated road works for the full length of the corner at Observation Point, Palm Beach, at the Applicant's (myself) cost.

Please be advised that I have taken planning and legal advice in preparing this submission.

### **Background**

By way of background, my family have owned and resided at the subject property for the last 60 years. Prior to Council building the Palm Beach Walkway, I had adequate opportunity for on street vehicle access, for car parking, unloading and receiving deliveries etc on the road verge within close vicinity of my property.

As a consequence of the new Palm Beach Walkway, and reconfiguration of the road layout around Observation Point, all on street vehicle parking was removed, the pedestrian walkway widened and beautified, and the bus stop reconfigured. Effectively forcing my hand to formalise off street car parking arrangements, and thus lodging this application.

Through the assessment of this application I have become aware of a safety issue that resulted from the recent Palm Beach Walkway works. It is understood from the two (2) x Roads and Maritime Services (RMS) referrals (dated 7<sup>th</sup> September & 19<sup>th</sup> October 2018) that Council undertook these works on a State Classified Public Road without the approval of RMS. This included the removal of some 45m of safety rail.

There are now no effective safety barriers in place around Observation Point, that would, in the event of a car losing control, prevent the car leaving the road and careering over the edge. Potentially crashing into the houses located below Barrenjoey Road, including my house.

It is apparent that this is the safety issue that Council are trying to correct through the imposition of the condition requiring installation of the elsholz median and associated road works, as part of an approval for the proposed development.

### **Objection to the Proposed Condition**

I strongly object to the imposition of the proposed condition requiring the installation of the elsholz median and associated works for the following reasons:

- There is no nexus between the proposed development and the required elsholz median.
- The proposed car deck will not increase any risk to public or private safety. Whilst the proposal includes the removal of 9m of safety rail, the proposed car deck includes quality engineered and fortified safety rail for the entire length of all three sides not fronting Barrenjoey Road. Arguably to a better safety standard than the existing safety rail.
- It is unreasonable to impose this condition on the development given that the development does not generate a risk to public safety.
- It is unreasonable for Council to expect the safety issues that were created by Councils own works to be fixed as part of this DA.
- The proposed development is a relatively small application that will formalise off street car parking for the long-established dwelling at 1165 Barrenjoey Road. The elsholz median and associated works in question are completely unreasonable when compared to the minor scale of the proposed development. Further the cost to carry out these road works will be prohibitive.
- The RMS condition did not require that these works be undertaken at the Applicants cost. It is apparent that Council are trying to take advantage of the situation, and unfairly and unreasonably pass on the responsibility and cost to fix the public safety issue, that it created.

Having regard to the above, Council is not able to impose a Condition of Consent under Section 4.17 of the Environmental Planning and Assessment Act 1979 and in particular in consideration of the Newbury Principles.

The 'Newbury Principles' collectively refer to urban planning guidelines stating that decisions should be made based only on the planning considerations relevant to the current development, even if the consideration of ulterior purposes may lead to a greater public good. These principles are recognised by the NSW Land and Environment Court in deciding whether a condition can be validly imposed.

These principles are addressed below.

**1. *It must be imposed for a planning purpose;***

Arguably the condition is for a planning purpose. The provision of road safety is an appropriate consideration in the assessment of any development application. The elsholz median in question will be of broader public benefit, ensuring public safety for road users, pedestrians, as well as local residences located below Observation Point.

**2. *It must fairly and reasonably relate to the development for which the permission is being given;***

The safety issue has arisen due to the Council's own Public Walkway works, which was undertaken on a State Classified Public road and included removing safety rail (approximately 45m) without the prior approval of the RMS.

The elsholz median in question will provide public safety to road users, pedestrians, as well as residences located below the road.

The proposed development cannot be seen as an opportunity to carry out broader public benefit works. Such works are a matter for Council.

Whilst the proposed development will remove 9m of safety rail, the car deck has been engineered and fortified with safety rail along all three sides not open to Barrenjoey Road. Effectively not increasing any risk to public safety.

There is no nexus between the proposed development and the identified safety issue that could justify the cost and imposition of the condition on this DA. If the proposed development did not occur Council still must separately address the safety issue.

**3. *It must be reasonable.***

Given the lack of nexus between the proposed development and the need for the elsholz median, the disproportionate scale of the road works compared to the proposed application, and the cost to construct the elsholz median it is considered unreasonable to impose the condition on this DA.

In summary, the proposed development does not generate a risk to public safety that would warrant the reasonable imposition of this condition. It has been established that the safety risk was created by Council in the installation of the Palm Beach Walkway and the removal of safety rail without RMS approval.

It is not appropriate to opportunistically require the proponent (myself) to pay for the elsholz median that will improve the safety for a problem that Council created.

Please note that if it is Council's intention to proceed with the condition, then I will be forced to withdraw the application and separately, in any event, pursue Council to correct the safety and access issues that were created by the installation of the Palm Beach Walkway.

Please note that I am Vietnam Veteran and contributing community member, heavily involved in the Palm Beach RSL and associated activities. It is unfair to use me as your free kick to fix up the safety issues that Council have created. I have also sought political assistance with this matter, and a copy of this letter will be forwarded to Rob Stokes, the Honourable Member of Parliament for Pittwater.

It is strongly recommended that Council approve the application without the inclusion of this condition as soon as possible.

Yours Sincerely

John Oliver