



Objection Report to DA2021/0200

1110 Barrenjoey Road, Palm Beach 2108

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1 Introduction

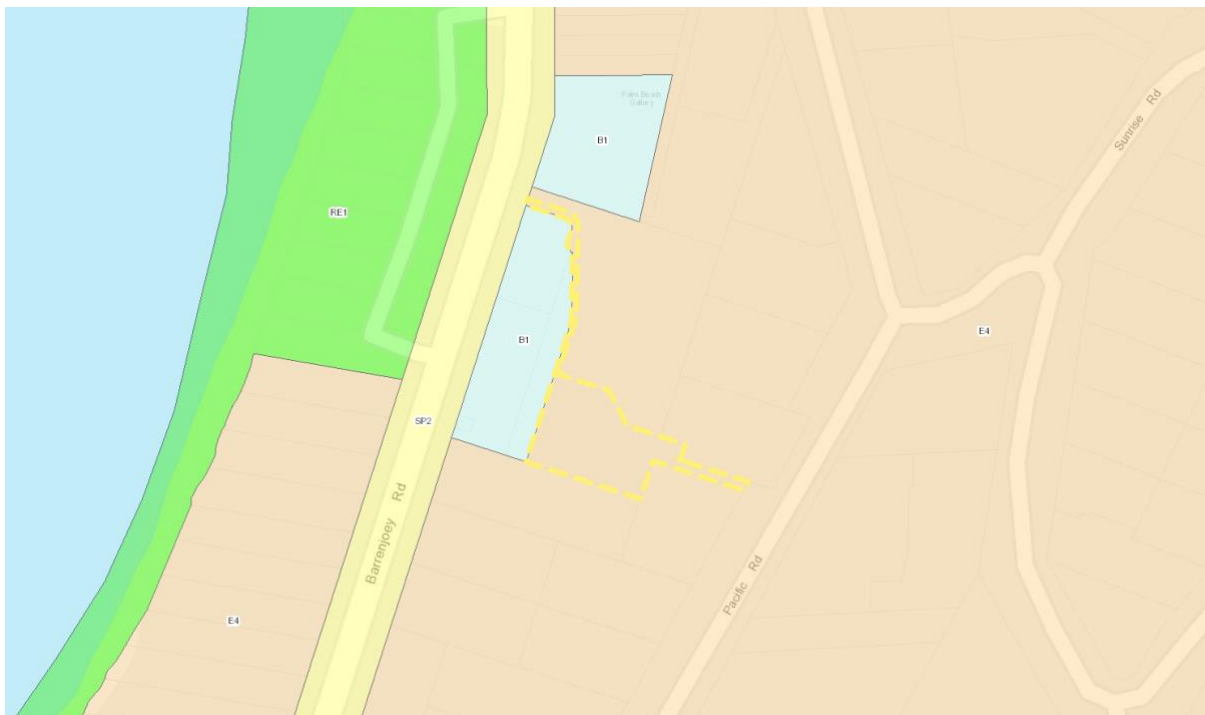
Outlook Planning and Development have been engaged by the residents of 1100 Barrenjoey Road, Palm Beach to review the application for the construction of a boarding house at the site commonly known as 1110 Barrenjoey Road Palm Beach. Our review of the DA has been based on the information that is available from the Northern Beaches Council's website.

2 Background

2.1 Site Description

The applicant's statement of environmental effects provides the following site description:

The site is known as 1110 Barrenjoey Road Palm Beach and is Lot 103 in DP1256016. This land is comprised of an irregularly shaped battle-axe lot with frontage to Barrenjoey Road. A driveway already exists to provide vehicular and pedestrian access, over part of which there are easements (located on 1110A and 1110B Barrenjoey Road) The land is flat along the western boundary where there are a number of temporary structures and then slopes moderately to steeply up towards Pacific Road. There are a number of large trees and rock outcrops on the land as discussed in detail in the submitted arborist and ecological reports.





The subject site is zoned E4 under the Pittwater Local Environmental Plan.

Zone E4 Environmental Living

1 Objectives of zone

- 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.

2 Permitted without consent

Home businesses; Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Environmental protection works; Group homes; Health consulting rooms; Home-based child care; Home industries; Jetties; Oyster aquaculture; Places of public worship; Pond-based

aquaculture; Respite day care centres; Roads; Secondary dwellings; Tank-based aquaculture; Water recreation structures

4 Prohibited

Industries; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

2.2 Proposed Development

The statement of environmental effects provides the following description for the development:

The design is harmonious with the site and prioritises the retention of its surrounding landscape. Large boulders and treescape are features which guide a meandering plan that arranges itself between rocks and protected gums to allow nature to thrive. Using a flexible pier footing construction, spaces can suspend above root systems and boulders as to encourage breezeways, leaving as much of the site as undisturbed as possible. Pavilions and half levels gradually rise up with the steep gradient, preventing imposing a dominant multi-storey facade and ensuring vegetation remains the dominant visual feature of the site.

The proposed approach seeks to avoid large building mass and 'boxy' building forms that detract from the existing character of the area as indicated in the following examples.

The proposal includes:

- *Excavation and removal of vegetation to allow construction of the new development on the site;*
- *A primary residence comprising:*
 - *A Ground Floor Level constructed to match the level of the existing driveway. This level contains a double garage and the main entry to the house including lift access. This level is primarily below existing ground level;*
 - *A small level containing a cellar which below ground but sits above the garage;*
 - *A First Floor Level sitting above the garage and cellar and containing a lobby, bathroom and laundry and an open plan living/dining kitchen area with large deck to Pittwater side. The deck is connected to a swimming pool which runs along the contours towards the southern boundary. A spa is also provided with access off the lobby area;*
 - *A Second Floor Level which sits further up the slope and away from the lower levels. This level contains 3 bedrooms including a main bedroom with ensuite. A bathroom is also provided. Access to this level is via a stair to the level below. A deck provides access to a roof terrace on top of the lower levels of the building;*

- *A Third Floor Level comprising a small studio workspace which sits further up the slope and behind the level below;*
- *A secondary dwelling comprised of an open plan living/kitchen/dining area with bathroom and single bedroom is provided at the level of the existing driveway and in the flat part of the site along the western boundary. Some minor additional excavation and retained will be needed to accommodate this building;*
- *Landscaping of the site as detailed on the submitted drawings;*
- *Provision of necessary infrastructure such as utilities and stormwater. A sewer main running across the upper part of the site will need to be relocated.*

The building is of contemporary design and uses a range of materials (including stone and wood) and colours aimed at harmonising with the existing natural features of the site

3 Planning Assessment

3.1 Visual Privacy

The proposed development is considered to result in substantial visual privacy impacts on the subject site through the position and elevation of the proposed deck and swimming pool and the overlooking impact on the adjoining residents. It is noted that the swimming pool and deck are of an excessive length and do not comply with the side setback controls.

Planning Principle – Privacy Impact

An assessment of the privacy impact is provided against the planning principle Meriton V Sydney City Council [2004] NSWLEC 313 as follows:

- *The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.*

In the case of the proposed development, the site is located in a R2 zone with lots in the area enjoying sufficient privacy through physical building separation. The particular site context is characterised by extensive vegetation and little to no overlooking of neighbouring properties due to the topography of the site. There is an accepted level of privacy achieved for the residential zone due to the nature of the surrounding building designs being in context for the area.

- *Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other.*

Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)

The minimal separation provided for the proposed development is not sufficient in reducing the privacy impacts. The proposed swimming pool and extensive decking is located in close proximity to the side boundary (noting that this is a non compliant side setback) and does not provide sufficient separation to allow for adequate physical separation for privacy mitigation.

- *The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.*

As stated above, the proposed development will impact the privacy of the outdoor recreational spaces of 1100 Barrenjoey Road but will also impact the privacy of any future developments proposed on the site.

- *Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.*

It is considered that the privacy impact occurs through poor design of the building and no consideration to the adjoining landowners in the design of the development. The proposed swimming pool and deck area is excessive in size, doesn't comply with the setback controls and results in an overdevelopment of the site and is therefore considered to be a poor design in relation to the amenity impacts of neighbouring properties.

- *Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.*

The dwelling located at 1100 Barrenjoey Road, due to the topography of the area, is able to easily retain privacy through a consistent approach to the DCP setback controls and the retention of native vegetation that provides substantial privacy for the adjoining dwellings.

- *Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.*

The proposed development provides some screen planting on the deck, but this is a small fix to a large problem that is created from the excessive deck and swimming pool area.

- *Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.*

Landscaping is not used to reduce privacy impacts.

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.*

The area is not currently undergoing substantial change which would impact on privacy.

It is therefore considered that the privacy impacts of the development are directly related to the design of the development and the development should be refused or withdrawn to provide a softer approach to the development and achieve the outcomes of the visual privacy control.

3.2 Setbacks

The development control requires setback of 2.5m to one side boundary and 1m to the other side boundary. It is noted from the development plans that the proposed development results in a substantial departure from the development control for the proposed swimming pool/deck and the secondary dwelling as they are located within the required 2.5m side setback. It is noted that the statement of environmental effects does not provide a sufficient argument for Council to approve a non compliant side setback. It is suggested that the non compliance is not acceptable on merit as it does not achieve the outcomes of the control as followed:

- To achieve the desired future character of the Locality. (S)

As stated in point 3.3 below, the development is not considered to achieve the desired future character of the Palm Beach locality.

- The bulk and scale of the built form is minimised. (En, S)

The proposed development is considered to be a bulky expansive of development that results in a visual scar on the hillside.

- Equitable preservation of views and vistas to and/or from public/private places. (S)

The development appears to achieve this objective due to the topography of the site.

- To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

The development appears to achieve this objective due to the topography of the site.

- To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)

As stated above, the development results in an unacceptable privacy impact on the current residence and any future residence located at 1100 Barrenjoey Road. The privacy impact is a direct result of the proposed swimming pool and excessively large deck.

- Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)

The proposed development results in the substantial clearing of large canopy trees and it is noted that the proposed non-compliant side setback of the dwellings results in the requirement to remove tree 10.

- Flexibility in the siting of buildings and access. (En, S)

The topography of the site limits development to certain areas of the site however it is noted that the development appears to be an overdevelopment of the site with an extensive deck area, large swimming pool and multiple, large living spaces. It is considered that the siting of the buildings and the non compliant side setback is due to the excessive nature of the development rather than the site constraints.

- Vegetation is retained and enhanced to visually reduce the built form. (En)

Vegetation is not considered to be enhanced to reduce the built form. Some plant boxes are proposed to minimise the impact of the swimming pool but this will not be sufficient landscaping to reduce the built form of the development.

It is considered that as the development doesn't comply with the outcomes of the control that Council should request amended plans for the applicant to provide greater side setback distances to comply with the control.

3.3 Character of the area

The design of the proposed development is not considered to be within the desired future character of the area with the development being designed with minimal regard to the bulk and scale of the development or its impact on the adjoining residential area. It is noted that the Palm Beach Desired Future Character is as follows:

Desired Character

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. Any dual occupancy dwellings will be located on the lowlands and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

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 design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

Palm Beach will remain an important link to the offshore communities.

It is noted that the dwelling adjoins the commercial area of Palm Beach and under the desired character should be designed to reflect a 'seaside village'. The development is a multi storey dwelling of a modern design that is not considered to reflect a 'seaside village'. Additionally, it is noted that the development does not result in the retention of the native tree canopy or vegetation and is not considered to reflect the principles of good urban design. It is therefore considered that the development is not within the desired character of the area.

The Planning Principle, *Project Venture Developments Pty Ltd v Pittwater Council* 2005, provides a clear assessment path to determine whether a development is compatible with the surrounding development. The Principle establishes the following two questions to be answered to determine whether a proposal is compatible with its context:

- Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.
- Is the proposal's appearance in harmony with the buildings around it and the character of the street?

An assessment against the planning principle follows:

1. Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

The proposed development is within the height limit for the site however it is a substantial building that occupies a large portion of the site. It is considered that the physical impacts of the development on the surrounding buildings is considered to be unacceptable and damaging to the amenity of adjoining residences. The development will result in substantial visual and acoustic privacy impacts as well as visual impacts due to the bulk and scale of the development and impacts on the commercial locality.

2. Is the proposal's appearance in harmony with the buildings around it and the character of the street?

The proposed development is considered to be an overdevelopment for the site with the proposed development resulting in excessive bulk and scale for the site with the development not being within the character of the area.

It is therefore considered that the proposed development is not in the character for the area as it provides substantial impacts on the locality and would set a precedent for intrusive developments within the R2 Low Density Residential Zone.

3.4 Acoustic Impact

Acoustic Privacy is raised as a concern from 1100 Barrenjoey Road due to the location of the of the site. It is noted that no acoustic report is provided with the development and no acoustic mitigation measures are provided for the proposed swimming pool and deck area. It is considered that the deck is a substantial deck area that has a floor area larger than most standard houses and is considered to be a substantial area for noise generation.

The planning principle, *Stockland Developments v Wollongong Council and others [2004] NSWLEC 470* deals with noise impacts on sensitive receivers as followed:

As a general planning principle, where there is conflict between a noise source and a sensitive receptor preference should be given to the attenuation of any noise from the source rather than at the sensitive receptor.

As per the planning principle above, any noise mitigation measures should be provided at the source of the noise rather than relying on the sensitive receivers to implement measures to maintain their acoustic privacy. This can easily be achieved through a redesign of the development to provide a small development to suit the site and context of the area.

3.5 Visual Impact

The proposed dwelling house is considered to be an overdevelopment of the site and results in a domineering development for the residents at 1100 Barrenjoey Road and also as viewed from Barrenjoey Road and from the public wharf area. It is noted that the development is located within a scenic protection area which is not addressed in the statement of environmental effects. The photo

montage provided with the development application appears to mis-represent the development as it will be observed from the public place. It is noted that the commercial development adjoining the subject site has an approved development application and this development should be taken into consideration with the visual impact of the development. It is considered that the proposed development, in addition to the proposed commercial development will contribute to a substantial scar on the area with the removal of substantial vegetation and the substantial size of the proposed development. The development is not considered to have a positive visual impact on the area and is considered to be of a design that is out of character for the locality and will have detrimental impacts when viewed from the public wharf area.

3.6 Landslip Hazard

The geotechnical report supplied with the development application advises that the development will result in the development requiring to be excavated into the site by 6m which is a substantial amount of excavation. It is noted that this excavation is to provide the garage and lift shaft for the proposed dwelling. Concerns are raised that due to the steep nature of the site that the extensive excavation and the required footings for the dwelling will result in impacts on the neighbouring properties, particularly in association with our client's site. The report additionally advises that the "dilapidated timber hut" at 1100 Barrenjoey Road is within the influence zone of the proposed excavation. The "dilapidated timber hut" is currently used as a home office with the internal parts of the structure being renovated to provide a self-contained office that is used by the owners. It is suggested that due to the extensive nature of the proposed development that there is an unacceptable impact on the potential for landslip and the proposed development should be redesigned to reduce the extent of excavation required.

3.7 Suitability of the site

The proposed development is a large sprawling dwelling house development that seeks to occupy a large portion of the site. It is considered that while the site is large that, due the site constraints, the site would suit a dwelling with a smaller floor area which would reduce the requirement to remove the large extent of native vegetation on the site and would reduce the landslip hazards. It is also considered that the reduced floor area of the house would improve the amenity issues for adjoining residences and would result in the development having a decreased visual impact as well as potentially remaining within the character of the area. It is therefore considered that the proposed development is not suitable for the subject site and should be refused by Council.

4 Conclusion

The residents of 1100 Barrenjoey Road are not anti-development and are only wanting to protect the amenity and privacy that they currently enjoy at their residence. The proposed development as presented to Council is considered to not comply with a variety of development controls, is not consistent with the character of the area, is not suitable for the site and results in substantial impacts on the adjoining property in terms of safety and privacy. Due to the numerous issues with the development it is considered that the development should be refused.