
Sent: 15/02/2021 11:22:42 AM
Subject: Objection - DA 2020/1549 - 1744 Pittwater Road, Bayview
Attachments: Objection Feb 2021.pdf;

Attention: Jordan Davies

Please find attached an objection in response to the notification of the above application.
Please do not hesitate to contact me to discuss any aspect of this submission.

Regards

Greg Boston

B Urb & Reg Plan (UNE) MPIA

B Env Hlth (UWS)

Director



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11th February 2021

The General Manager
Northern Beaches Council
PO Box 882
Mona Vale NSW 1660

Attention: Jordan Davies - Town Planner

Dear Mr Davies,

Notification Response – Development Application 2020/1549
Proposed Torrens Title subdivision
No. 1744 Pittwater Road, Bayview

We have been engaged by the owners of No. 1742 Pittwater Road, Bayview, to critically review the plans and documentation prepared in support of the above development application and provide advice in relation to policy compliance and potential amenity impacts on their property. Our client's property is located directly to the south east of the subject site with both properties located on the vegetated foreshore of Pittwater waterway. An aerial photograph of the relationship between my client's property and the subject development site is depicted in Figure 1 below.



Figure 1 – Aerial photograph with my client's property to the left and subject site to right

Having reviewed the documentation prepared in support of the application, and inspected our client's site to determine the juxtaposition of the properties and the likely location of future dwelling houses were the subdivision to proceed, we feel compelled to object to the application on the following grounds:

Inadequate information

- The development application fails to provide sufficient information to properly assess the impact of future dwelling houses on the amenity of our client's property in relation to view loss, solar access and privacy.
- Such assessment cannot be undertaken without the provision of detailed concept plans for future dwelling houses on each of the proposed allotments.
- The indicative building footprint nominated on proposed Lot 1 fails to acknowledge the 10m front building line setback to Pittwater Road prescribed by Pittwater 21 Development Control Plan (the DCP).
- In relation to view loss, any future dwelling house on proposed Lot 2 will be well forward of the established building line and to that extent will sit forward of our client's property and clearly blinker the existing views available towards Pittwater waterway. Based on the indicative building footprint nominated on the subdivision plan view loss impacts are likely to be significant to devastating.
- The arborist report prepared in support of the application is inadequate in its failure to assess the cumulative impact of the proposed works on the significant gum tree (Tree 27) located within rear yard of our client's property noting that the structural root zone of this tree has already been significantly impacted through construction works on my client's property as depicted in Figure 1.
- The arborist report prepared in support of the application is inadequate in its failure to assess the impacts on Tree 27 associated with the stormwater pipes located within the proposed 1 metre wide drainage easement. No owners consent will be provided for the removal of this tree.

Non-compliant subdivision lot size – Clause 4.6 variation request not well founded

Proposed Lot 1 fails to comply with the minimum 700m² subdivision lot size prescribed by clause 4.1 of Pittwater Local Environmental Plan 2014 (PLEP). The stated objectives of this standard and our response to the same having regard to the variation proposed are as follows:

- (a) to protect residential character and amenity by providing for subdivision where all resulting lots are consistent with the desired character of the locality, and the pattern, size and configuration of existing lots in the locality,*

Response: The proposed subdivision can only be facilitated through the provision of an undersized allotment with proposed Lot 1 also non-compliant the minimum 16m control contain within the DCP. The subject allotment is substantially narrower than other subdivided properties located on the northern side of Pittwater Road and also located within the E4 Environmental Living zone as depicted in Figure 2 below. In this regard, the undersized allotment is inconsistent with the desired character of the locality and the pattern, size and configuration of existing lots located within the E4 Environmental Living zone and immediately adjacent Pittwater waterway. The proposal fails to satisfy this objective.



Figure 2 - Aerial photograph showing comparative widths of subdivided properties along this section of Pittwater Road. Subject development site shown with a red star.

- (b) to provide for subdivision where all resulting lots are capable of providing for the construction of a building that is safe from hazards,*

Response: We are of the opinion that this objective is capable of being satisfied.

- (c) to provide for subdivision where all resulting lots are capable of providing for buildings that will not unacceptably impact on the natural environment or the amenity of neighbouring properties,*
(d) to provide for subdivision that does not adversely affect the heritage significance of any heritage item or heritage conservation area,

- (e) to provide for subdivision where all resulting lots can be provided with adequate and safe access and services,*

Response: Whilst safe access and services are provided to the proposed lots results in a non-compliant allotment width for proposed Lot 1 and a non-compliant right of carriageway width which exceeds 20% of the required allotment width in this location. The proposal fails to satisfy this objective.

- (f) to maintain the existing function and character of rural areas and minimise fragmentation of rural land,*

Response: This objective is not applicable.

- (g) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*

Response: Insufficient information has been provided to demonstrate whether this objective is capable of being satisfied noting that the indicative building footprint on proposed Lot 1 is non-compliant with the 10m front building line setback control to Pittwater Road and no concept dwelling house designs have been provided to enable an assessment in relation to compliance with Council's view sharing, solar access and privacy DCP controls. The proposal fails to satisfy this objective.

In this regard, we consider that the proposed subdivision is inconsistent with the zone objectives and also inconsistent with the objectives of the minimum lot size development standard. Under such circumstances, it has not been demonstrated that strict compliance with the development standard is unreasonable or unnecessary having regard to the first test in *Whebe*.

Further, the environmental planning grounds put forward in support of the clause 4.6 variation request submitted in support of the variation to the minimum subdivision lot size developer standard are as follows:

- *The proposed subdivision is consistent with the prevailing subdivision pattern in the locality.*

Comment: We disagree with this assertion on the basis that the proposal results in an undersized allotment in terms of area and width with the subject site having an area and width substantially less than other previously subdivided properties located along this section of Pittwater Road and which have immediate frontage to Pittwater waterway. In any event, this is an opinion rather than an environmental planning ground.

- *There are no statutory zoning or zone objectives that are an impediment to the granting of approval to the proposed development.*

Comment: We disagree with this assertion. 2.3(2) of PLEP requires the consent authority to have regard to the objectives for development in the zone when determining a development application in respect of land within the zone. For the reasons previously outlined we do not consider the proposed subdivision to be consistent with the objectives for the E4 Environmental Living zone. In any event, this is an opinion rather than an environmental planning ground.

- *This proposed subdivision provides the opportunity for two dwellings that can meet view sharing principals and will result in equitable preservation of views and vistas.*

Response: We disagree with this assertion. Insufficient information has been provided with the application to determine whether a view sharing outcome is able to be achieved. In any event, this is an opinion rather than an environmental planning ground.

- *The size and dimensions of the lots are appropriate in order to allow for the future development of dwellings with setbacks and minimum areas that comply with the DCP controls.*

Response: As previously indicated the nominated building envelope for proposed Lot 1 fails to comply with the minimum 10m front building line setback control to Pittwater Road. This statement is factually incorrect. Further, inadequate information has been provided to demonstrate that the siting of the future dwellings are able to comply with the setback provisions within the DCP it being noted that proposed Lot 2 has an area substantially less than the 840sqm DCP control applicable to allotments having a boundary dimension of less than 6.5m to a road where the area of any proposed allotment shall be increased by 20% over that required for the area. In any event, this is an opinion rather than an environmental planning ground.

- *The subdivision is an efficient and economic use of land that maximises the use of local infrastructure.*

Response: Again, this is an opinion rather than an environmental planning ground to justify a variation to the minimum allotment size development standard.

- *The subdivision provides for an improved outcome in a way that does not compromise the low density residential character of the streetscape and area.*

Response: The provision of the required right of carriageway and passing bay to proposed Lot 2 results in a street facing allotment which is non-compliant with the overall subdivision width and the relative right of carriageway width provisions contained within the DCP as detailed in the following section of this report.

We have formed the opinion that there are no environment planning grounds which would justify the variation to the minimum subdivision lot size development standard as sought and to that extent the clause 4.6 variation request is not well-founded. In this regard, the application must fail.

Non-compliance with Pittwater 21 DCP controls

The indicative building envelope for proposed Lot 1 fails to comply with the 10m front setback control contained within the DCP.

No consideration has been given to the subdivision provisions at section C4 of the DCP in particular clause C4 .7 *Subdivision - Amenity and Design* namely:

- *Where a right-of-carriageway to another lot is provided over a lot, the width of that right-of-carriageway shall not be more than 20% of the required minimum width of the lot over which it is located.*

Response: Proposed Lot 1 incorporates a 3.5 – 5 metre wide right of carriageway which reduces the developable area of the allotment within the required 10 metre front setback to Barrenjoey Road to only 13.29 metres being significantly less than the required 16 metre allotment width control. Further, the right of carriageway in this location occupies 31.25% of the required minimum width of the Lot over which it is located far exceeding the maximum 20% control. This non-compliance results in the undersized allotment having a significantly undersized width rendering the size and geometry of proposed Lot 1 inconsistent with the control and inconsistent with the prevailing subdivision pattern whereby previously subdivided properties along this section of Pittwater Road have substantially greater widths than the required 16 metre control.

- *Where an allotment has a boundary dimension of 6.5 metres or less to a road, then the site area of the allotment shall be increased by 20% over that required for the area.*

Response: Proposed Lot 2 has no frontage to Pittwater Road and to that extent is required to have a site area of 840sqm. Proposed Lot 2 has a site area of only 701sqm representing a non-compliance of 139sqm or 16.5%. No acknowledged or justification has been provided within the Statement of Environmental Effects it been noted that approximately 40% of proposed Lot 1 is significantly constrained by the foreshore building line.

Conclusion

The proposed subdivision results in undersized allotments which are inconsistent with the prevailing subdivision pattern and unable to accommodate future dwelling houses that comply with the applicable built form controls and which are capable of being designed and sited to prevent unacceptable impacts on Tree 27 and the amenity of the adjoining properties in relation to view sharing, privacy and visual amenity.

The proposed subdivision is inconsistent with the E4 Environmental Living zone objectives in that it fails to provide for low-impact residential development on a visually prominent waterfront site.

We have formed the considered opinion that the clause 4.6 variation request submitted with the application is not well-founded and that the variation sought to the clause 4.1 minimum subdivision lot size development standard is inconsistent with the zone objectives, is inconsistent with the objectives of the subdivision standard and that insufficient environmental plan planning grounds have been established to justify the variation.

Further, insufficient information has been provided to enable Council to undertake a detailed assessment as to potential streetscape, environmental and residential amenity impacts associated with future dwelling houses on the proposed allotments and to that extent any subdivision application seeking approval for undersized constrained allotments should be accompanied by concept plans showing how these allotments can be reasonably developed without adverse impact.

The subject property has already reached its environmental capacity and is of inadequate size and dimension to accommodate any future subdivision capable of being consistent with the objectives of the E4 Environmental Living zone. We consider the application to be without merit and accordingly should be refused. Please do not hesitate to contact me to arrange site access or should you wish to discuss any aspect of this submission.

Yours sincerely
Boston Blyth Fleming Pty Ltd



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director