

SUBMISSION

a written submission by way of objection

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on behalf of

Adam Rytenskild, 1110 Barrenjoey Road, Palm Beach

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NBLPP

RE: DA2022/0469 1102 Barrenjoey Road, Palm Beach

I have been instructed by my clients, whose properties adjoin the subject site on the Eastern side to prepare an objection to this DA.

My clients have advised that neither the developer, the architect or any of his consultants have ever reached out to them to discuss any of the issues which they have raised in their many submissions to Council throughout the DA process and in particular their concerns regarding the proposed extensive excavation.

The bulk, scale, density and height of the proposed development is excessive and inconsistent with the established and desired streetscape character and it overwhelms the heritage listed Barrenjoey House.

The NBLPP on 15 February 2023 deferred further consideration and requested the Developer to submit amended plans to:

- 1) *Reduce the overall height, bulk and scale including removal of the mansard roof*
- 2) *Set back the upper level and roof form to be more compatible with surrounding development particularly heritage listed Barrenjoey House*
- 3) *Reduce the overly strong vertical influence of the balcony columns at the front and their impact on bulk and scale*
- 4) *Redesign the mechanical plant enclosure to minimize the height of the screening and the provision of rooftop landscape screen.*

I refer to the latest set of Architectural Drawings, dated 8 March 2023 submitted as a response to that request.

The proposed development is still substantially beyond Height and Setback controls. The majority of the upper level exceeds the controls. The proposed development is significantly out of scale to Barrenjoey House. The proposed length of the building, at over 44 meters, will present a jarring outcome set against the more modest scale of Barrenjoey House.

In Project Venture Developments v Pittwater Council (2005) NSW LEC 191, NSW LEC considered character:

“whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site's visual catchment”.

As can be read in the hundreds of submissions concerning this development the non-compliant elements and in particular the height bulk and scale are found to be *'offensive, jarring and unsympathetic'* to my clients and the broader community.



My clients believe that, for all the reasons stated within this Submission and in the hundreds of other objections to this proposal, this DA in its current form should be refused.

However, should NBLPP decide to continue with the assessment process, my clients ask that the following amendments or conditions of consent be considered:

1. The storey height of the proposed Ground Floor at 3.99m is excessive considering the size of the commercial units. My clients ask the Panel to reduce the storey height to 3.74m, and to lower the First Floor to FFL 6.3m. This modest adjustment of 250mm would not affect the amenity or layout of the commercial areas.
2. The storey height of the proposed First Floor at 3.3m is excessive. My clients ask the Panel to reduce the storey height to 3.1m, and to lower the Second Floor to FFL 9.4m. This modest adjustment would also not affect the amenity or layout of the apartments on this level.
3. The parapet height of RL 13.75m is excessive and unnecessary. My clients ask the Panel to reduce the height of the Parapet to RL 12.35 which would match the ridge height of Barrenjoey House.

4. Locating the Mechanical Plant and HWS on the roof, which would have the potential to create visual and noise pollution to my clients, is just not necessary. My clients ask the Panel to require that it be relocated either to the area behind the lifts and stairwell on level 1 or alternatively in the basement
5. Although the application does not seek approval for the roof top area to be used for recreation my clients are concerned that the provision of stairs from level 2 to the rooftop provides the potential for such use. Therefore, my clients ask the Panel to require those stairs from floor level 2 to the roof be deleted so that the rooftop is not accessible to residents, visitors or the public.
6. The flat roof structures over the balconies on level two contribute to the excessive bulk and scale. My clients ask the Panel to require them to be removed.

To summarise, my clients ask for the six following matters to be amended or made conditions of consent:

- o CONDITION 1: Reduce the Level 1 Floor Level to FFL 6.3m.
- o CONDITION 2: Reduce the Level 2 Floor Level to FFL 9.4m.
- o CONDITION 3: Reduce parapet height FFL 12.35m to match the ridge height of Barrenjoey House
- o CONDITION 4: Remove the screening and screen planting from the roof and relocate the Mechanical Plant and HWS to the area behind the lift/stairwell on level 1 or to the basement.
- o CONDITION 5: Delete stairs from level 2 to the roof.
- o CONDITION 6: Delete the flat roof structures over all the balconies on level 2.

If all the above conditions were enacted, this design outcome would achieve the same GFA and spatial arrangement as proposed by the applicant. We contend that it is a '*more skillful design*', as the amended outcome would better respond to the streetscape and reduce the bulk and scale that the NBLPP and indeed the community were so concerned about in February 2023.

GEOTECHNICAL

My clients have previously expressed concerns relating to the proposed 13m deep excavation against my clients' western boundary is of particular concern.

The JK Geotechnics Report dated 8 February 2023 focus on the large sandstone boulder on the southern boundary and provides considerable detail on how the surrounding excavation and its support will be carried out.

The JK Geotechnics Report dated 31 January 2023 relies upon anchors under my client's property to support a soldier pile wall. My clients will not give approval for anchors to be placed under their property. As the soldier pile wall is positioned on the boundary, there is no adequate geotechnical solution to the construction of the retaining wall structures. NBLPP cannot be satisfied that sufficient reports have been submitted to consider the geotechnical solutions or the risks.

The geotechnical report supplied does not meet the Council's policy requirements or objectives and as such should not be accepted by Council with the Development Application.

The geotechnical report provides limited assessment provides no design or construction recommendations to maintain stability within the "Acceptable Risk Management" criteria and involved very limited investigation for what are deep excavations into the hill slope that have high potential for detrimental impact on adjacent properties and structures.

As such, should approval of the proposed development occur based on the supplied geotechnical report, then serious concerns should be held for the stability and protection of my client's property and house.

My clients have significant geotechnical concerns.

- Stability of the natural hillside slope; upslope of the proposed building, beneath the proposed residence, downslope of the proposed residence and to all neighbour's land.
- Stability of the steep slope adjacent to the site.
- Stability of existing retaining walls that will remain;
- Stability of proposed retaining walls to support the excavations for the proposed building, and external landscaping walls.
- Incomplete consideration of landslip hazards
- Incomplete consideration of natural hillside slope
- Incomplete consideration of the steep slope above the Site
- Incomplete consideration to create a large-scale translational slide
- Incomplete consideration of existing retaining walls
- Incomplete consideration of proposed retaining walls
- Incomplete consideration of partial excavation of large boulders
- Incomplete consideration and inadequate identification of 'floaters' across neighbour's boundary
- Incomplete consideration of surface erosion
- Incomplete consideration of potential rock fall
- Incomplete consideration of landslip of soils from excavation

My clients have concerns regarding the lack of extensive recommendations in respect to the following:

- Incomplete Conditions Recommended to Establish the Design Parameters

- Incomplete Conditions Recommended to the Detailed Design to be Undertaken for the Construction Certificate
- Incomplete Conditions Recommended During the Construction Period
- Incomplete Conditions Recommended for Ongoing Management of the Site/Structure(s)
- Incomplete Geotechnical Risk Management Forms

The Geotechnical report does not contain the full extent of conditions normally associated with this type of deep excavation on a steep slope.

Tony Crozier confirmed the following matters on 13 February 2023:

We have reviewed the supplied geotechnical reports by JK Geotechnics and provide the following concerns:

It is understood that the report Reference: 33618YJrptrev3, Dated 16 September 2022 has been supplied and will be utilised for the determination of the DA, however a more recent report (Dated: 31 January) appears to cover the issues related to several boulders on the south boundary).

Whilst interbedded low to medium strength bedrock is seen in the base of the current eastern excavation there is no investigation data upslope regarding the depth of soils adjacent to the eastern boundary with only limited assessment indicating a reinforced soil embankment exists. Excavation to RL-1.0 is proposed in No. 1102, extending to the eastern (common) boundary with No. 1110 where ground surface levels are currently at RL12.0. As such, bulk excavation to 13m depth appears required adjacent to No. 1110.

The geotechnical reports indicate a soldier pile support wall or a soil nail wall could be utilised along the eastern boundary.

Both propped or anchored systems are recommended in the geotechnical report. Propping will impede the construction sequence and is rarely a preferred option, therefore it is expected that an anchored design will be proposed. Due to the separation distances, anchoring will need to extend a significant distance across into No. 1110. This has the potential to impact approved works within that property.

Anchored pile walls to 13.0m depth will be expected to deflect, especially where deeper soils exist or there is surcharging. This deflection will invoke movement in the soils to the rear of the wall, across the boundary into No. 1102 which then has the potential to impact the recently approved development located within 1.0m of the common boundary. Soldier piles will involve an unsupported excavation between each pile, therefore if deep soils exist at the eastern boundary there is potential for collapse between piles before shotcrete infill. The loss of soils between the piles due to collapse or from over-excavation during the piling process could impact the condition/settlement of the structure in No. 1102.

Without support design completed at this stage there is no way to assess the full impacts that could occur to No. 1102

Although my clients have repeatedly requested that a detailed assessment be carried out for the excavation on their western boundary, which presents a far greater risk to the surrounding landform, none has been provided. Given that the developer stated at the 15 February 2023

NBLPP meeting that they would be able to construct the required retaining walls without needing to install anchors for support under my clients' properties it is very difficult to understand how this construction can be achieved.

Consequently, we ask the Panel to require the Applicant to provide an updated Geotechnical Report regarding the excavation and construction of this retaining wall, detailed all matters identified above, which would then be peer reviewed. It would be prudent for Council to ensure that such a report be provided by the developer to mitigate any potential Council liability in the future.

CONCLUSION

My clients ask the Panel to seek further precise amendments to the proposed development as outlined within this submission, including a detailed Geotechnical Report that addresses my client's obvious geotechnical concerns.

If NBLPP are of a view that this is not achievable through the NBLPP process, then my client's ask for the DA to be REFUSED for reason as listed within the appendix.

Yours faithfully,

Bill Tulloch

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18 APRIL 2023

Appendix: Reasons for Refusal

The proposal does not succeed when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, does not succeed on merit and is not worthy of the granting of development consent.

The proposed development fails the fundamental principles of design excellence in terms of:

- Context and local character
- Built form, scale and public domain, urban design response
- Density
- Landscape integration
- Amenity impacts on neighbours

If the Panel determine that the above amendments are not to be achieved through the NBLPP process, then my clients request that the DA be REFUSED by NBLPP for the following reasons:

The proposal is contrary to the Environmental Planning and Assessment Act:

1. NBLPP is not satisfied that under clause 4.6 of the LEP seeking to justify a contravention of the development standard that the development will be in the public interest because it is inconsistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
2. The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy objectives and planning controls of LEP:
 - Aims of Plan
 - Zone Objectives
 - Height of Buildings
 - Exceptions to Development Standards
 - Earthworks
3. The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy objectives and planning controls of DCP:
 - Poor Streetscape Outcomes
 - Heritage Conservation Concerns
 - Excessive Wall Height & Number of Storey
 - Unacceptable Building Separation
 - Geotechnical Concerns
 - Impacts Upon Adjoining Properties: View Loss, Overshadowing, Privacy
 - Impacts Upon Adjoining Properties: Visual Bulk

4. Adverse visual impacts to adjoining properties. The proposal raises the potential for adverse visual impacts and associated view impacts to the adjoining properties. In this regard, the proposal is contrary to the provisions of the aims of the LEP.
5. Adverse solar impacts to adjoining properties. The proposal raises the potential for adverse visual impacts and associated solar impacts to the adjoining properties. In this regard, the proposal is contrary to the provisions of the aims of the LEP.
6. Adverse visual and acoustic privacy impacts to adjoining properties. The proposal does not demonstrate effective mitigation of overlooking to adjoining properties from balconies and windows.
7. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that the plans and documentation are misleading as they do not clearly portray the true extent of works proposed. The plans include inaccuracies and inconsistencies and insufficient information has been provided in order to enable a detailed assessment. There is insufficient plan dimensions to set out the proposed development from the boundaries.
8. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that the proposal would not satisfy the matters for consideration under Biodiversity & Conservation SEPP 2021 and Resilience & Hazards SEPP 2021
9. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that it will have an adverse impact through its bulk, scale and siting on the built environment, and through lack of landscape provision, and adverse impact on the natural environment. The proposed development will have a detrimental impact on the visual amenity of the adjoining properties by virtue of the excessive building bulk, scale and mass of the upper floor and its associated non-compliant envelope.
10. The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* in that this area of the site is unsuitable for a development of such excessive bulk and scale.
11. The proposals are unsuitably located on the site pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
12. The proposal does not satisfy Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not adequately address the amenity of neighbours
13. The proposal is contrary to the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*. The proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest. The proposed development will have a detrimental impact on the amenity of adjoining residential properties, and for this reason is contrary to the public interest.