
Sent: 27/05/2021 4:25:10 PM
Subject: Objection to a proposed modification to a development consent for 20 Palm Beach Road, Palm Beach (DA2020/0214) – Mod2021/0221
Attachments: 20 Palm Beach Rd Mod2021 0221.pdf;

Dear Sir/Madam,

Please see the attached.

Regards



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Partner

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Our ref: RJW

27 May 2021

The General Manager
Northern Beaches Council
GPO Box 82
Manly NSW 1655



By email: Council@northernbeaches.nsw.gov.au

Dear Sir/Madam,

Re: Objection to a proposed modification to a development consent for 20 Palm Beach Road, Palm Beach (DA2020/0214) – Mod2021/0221

We act for Stemlet Pty Ltd, the owner of no.16 Palm Beach Road, Palm Beach, and have been asked to lodge an objection on their behalf to the above application to modify development consent (DA2019/0827), submitted pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. As you are aware, no.16 is the southern neighbour of no.20.

The current development consent already has a substantial negative impact on the amenity of the residents of 16 Palm Beach Road, and the proposed modification will only exacerbate that impact.

Our client objects on the bases that the proposed changes:

- will severely adversely affect the amenity of our client's property;
- are not substantially the same development as the development in the current consent;
- substantially breach the statutory controls for the site and or Council's own planning controls; and
- are not in the public interest.

As evidenced in this submission the material submitted in support of the site is misleading.



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Background

In 2007 Council received a development application for a development which also included a vaulted roof. The roof height in the 2007 application exceeded the height control and the application was subsequently refused by Council on this and other grounds.

In 2019 a development consent was granted for minor alterations and additions. In June 2020 Council gave a further development consent (DA2020/0214), ostensibly for alterations and additions, despite the application involving a 20.8% variation to the height of buildings development standard prescribed by Clause 4.3 of the *Pittwater Local Environmental Plan 2014* (PLEP 2014) and the negative impacts on the adjoining properties.

Proposed Modification

The current application proposes the following modification to the approved development:

- Additional floor space within existing roof void areas of the dwelling.
- New skillion roof to link the approved upper floor to the existing.
- Internal layout changes within the dwelling.
- External modifications including stairs, balustrade, retaining wall, formalisation of north facing patio area.
- Retention of lawn area on the eastern side of the dwelling
- Removal of previously approved pool and spa.

Reasons for Refusal

The reasons why Council should refuse this application to modify the current consent are as follows:

1. The proposed modifications severely exacerbate the existing negative impacts of the house on n0.20 upon the amenity of no.16;
2. The modified development is not substantially the same development as the development for which the consent was originally granted;
3. The development departs even further from applicable statutory controls and Council's planning controls;
4. The proposal is not in the public interest;
5. The material presented to justify the modification is misleading or doesn't provide an adequate justification that the modifications involves minimal environmental impacts.

Exacerbation of existing impacts

The current development presents an overbearing and domineering bulk upon no.16. This excessive bulk resulted from the exceedance of the height and floor space standards at the time of the original DA.

The proposal wants to extend the increase in bulk and height to about 32.5% above the standard, ie almost 3m above the standard. This is too much. The owner of no.16 objected to the original breaches of standards, but was overruled, and they have had to endure the excessive bulk to this day.

This time however, they ought not be overruled, as the proposed modification will exacerbate the bulk of the building to totally unacceptable levels. Standards are there for a reason, one of which is to fit in with topography and not to be too bulky for the location and neighbourhood. Already in excess, the proposed changes would pose even more adverse outcomes for the owners of no.16.

No.16 also suffers from shadows cast by the existing building. As the proposed modification will increase the height of the building, the shadows will only increase. However, as noted below the drawings are wholly inadequate in describing the increased shadow impacts. Only one shadow diagram is provided, with no date or time on it, making it impossible to assess the shadow impacts properly.

Not Substantially the Same Development

Section 4.55(2)(a) of the EP&A Act provides:

- (2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—
 - (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and ...

In seeking to apply Section 4.55(2) of the EP&A Act, the applicant acknowledges that the proposed modification involves more than minimal environmental impacts as provided by Section 4.55(1A). Accordingly, it is important for Council to establish that the modified development will be substantially the same as the approved development.

The applicant argues, based on some decision of the Land and Environment Court, that the test is whether the proposed modifications involve “alterations without radical transformation”. The problem is, the proposed modification does not just alter the approved development it also proposes substantial additions to the approved development; it involves a radical transformation of the approved development internally and externally. The list of proposed alterations and additions is so extensive, particularly the increase in height of the building and the wholesale internal transformation, that Council cannot reasonably form the view that the modified development is substantially the same as the development previously approved.

Departure from Applicable Planning Controls and Policies

In the PLEP there is a development standard at clause 4.3 for the maximum height of a building, which for the subject site and the surrounding lands, is 8.5m. The accompanying planning report indicates that the proposed modification will increase the approved height to 11.27m, which is not compliant with this development standard. The proposed increase in height is 32.5% variation from the standard, which is a significant departure. The applicant argues that because the original application contained a justification for the variation a further justification is not required.

This is a wholly incorrect approach. The mere fact that a standard was varied previously does not mean that it should be automatically varied again, especially by increasing the breach of the standard. Council must assess an application on the basis of the law and

standards that apply to the proposal at the time the development is lodged, and not on the basis of information supplied under a previous application which relates to different measurements. While Council must, under s.4.55(3) take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified, it must assess the breaches of the standards with new eyes, and not rely solely on past information.

The current application relies on the previous justification without elaboration. The previous justification argued that because the site is steeply sloping the standard can be ignored. However, the departure from the height standard has the effect of increasing the bulk, height and scale of the building and hence the overall environmental impact of the development. A past justification for a 20.8% breach is not a justification for a 32.5% breach. Indeed, one of the objectives for the imposition of the standard is to encourage buildings that respond sensitively to the natural topography. It cannot be said that the proposed modification will respond sensitively to the natural topography. Instead, it exacerbates the environmental impacts of the development by grossly increasing its bulk.

The original justification that accompanied the original DA does not provide a valid reason for Council to now further exceed the development standard; a proper assessment of the changes shows that the extent of the new variation will adversely impact the amenity of the adjoining residents.

The proposed modification further departs from the requirements of Council's development control plan (PDCP). The proposed building envelope as modified is even more non-compliant in terms of height and roof pitch, the building envelope and landscape area.

Adequacy of the Information Supplied.

The drawings submitted in the justification show approved development compared to proposed development as modified. However, a close inspection of the drawings reveals subtle differences which are misleading. For example, the drawing in the Master Set showing the MOD.16 Modified Southern Elevations shows that the surrounding vegetation has increase in height thus reducing the apparent height of the building, which is misleading.

The analysis of potential overshadowing impacts from the proposed modification is totally inadequate. Drawing MOD.22 is the only drawing provided and no detail of the time-of-day etc is missing. However, what this drawing does indicate is that there will be increased overshadowing although when this might occur is totally uncertain. Council is therefore not in a position to make a proper assessment of the full impacts of the proposed modification.

Public Interest

It is not in the public interest to approve further modifications to a dwelling based significant departures from Council's own development standards and planning policies. It would be a perverse planning decision to allow the development when it departs from a major planning control in both the PLEP and PDCP.

Summary

It is submitted that Council should refuse this application to modify Development Consent **(DA2020/0214)** on the following grounds:

1. The proposed modification will result in a building that is overly excessive in bulk and height, severely exacerbating the impacts that arise from the current building;

2. The proposed development as modified is not substantially the same as the approved development;
3. The proposed modification moves even further from Council's well established planning principle for height. Council has a responsibility to support its own controls to ensure the protection of the environment and the amenity of adjoining residents, and
4. This proposal is not in the public interest.

Yours faithfully

HICKSONS

A handwritten signature in black ink, appearing to read 'RW', with a stylized flourish at the end.

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