
Sent: 21/02/2020 3:33:11 PM
Subject: 325 Whale Beach Road Palm Beach - DA 2019/1504
Attachments: 325 WHALE BEACH ROAD SUBMISSION TO COUNCIL.pdf;

Dear Northern Beaches Council.

Please find attached, submission on behalf of the owner of 319 Whale Beach Road Palm Beach in regard to the above DA.

Please forward to Mr Gareth David for his consideration.

Regards,

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21st February 2020

The General Manager

Northern Beaches Council

Council@northernbeaches.nsw.gov.au

Re-DA No.2019/1504- 325 Whale Beach Road Palm Beach

ATTN: Mr Gareth David

Dear Sir,

Firstly, thank you for the opportunity extended to my clients - Ms Shannon Gregory, the owner of a nearby property namely 319 Whale Beach Road, and her husband Mr John Sheahan who occupies it with her - to enable both my clients and myself to examine the proposal and ascertain the potential impacts of the proposal and recommend any measures to ameliorate the proposed impact.

In the preparation of this submission to Council, I have viewed the submitted application including the plans of the proposed pool and associated landscaping and structures, the Statement of Environmental Effects, along with associated documentation regarding geotechnical aspects of the subject site. I am also familiar with the locality and the relevant controls contained within the Northern Beaches Council planning documents.

Prior to the preparation of this submission, I have attended my client's property at 319 Whale Beach Road in order to evaluate the potential impacts upon my clients enjoyment of their property. Upon viewing the subject site and the juxtaposition of the proposal with No.319, I expressed strong concern over the inappropriateness of

the proposal in terms of its location, height and disregard for the view lines across the subject site from principal living areas of 319 Whale Beach Road.

This assessment is based upon the survey plan and site plans and sections submitted as part of the development application along with supporting documentation including the Statement of Environmental Effects.

The proposal is, by any measure incongruous and ill-conceived and chooses to pay little regard to the fundamental objectives of the State Environmental Planning Policy (Coastal Management) 2018 and the E4 Environmental Living zone as described in the following paragraphs of my submission.

The initial reaction when viewing the proposed location and configuration of the proposal was that the area of land encompasses two lots whilst the location of the proposal on a nil setback to the southern boundary is, by any measure, an insensitive solution on a site that is visually prominent.

The visual importance of the New South Wales coastline is reflected and endorsed under the State Environmental Planning Policy (Coastal Management) 2018 (the SEPP) wherein the following provisions are required to be considered by all parties associated with the preparation and assessment of development applications within the area encompassed by the SEPP (emphasis added) –

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or***
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or***
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.***

The subject proposal is likely to cause an adverse impact upon the existing public open space namely the public reserve to the south of the subject site by proposing a structure of excessive visual impact directly adjacent to this public reserve and as such fails to satisfy the assessment criteria above.

On a more local statutory planning level, the subject site is zoned E4 Environmental Living under the Pittwater Local Environmental Plan 2014 which sets out the following objectives for development within the E4 zone –

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.*

When the subject proposal is considered against the Objectives of the zone, it is readily apparent that the structure will fail to satisfy the above objectives by proposing a pool and associated structures that project well above ground level, on a nil setback to the side boundary, presenting its longest elevation along the side boundary and offers no opportunity for the provision of vegetation between the built form and the boundary.

My clients have expressed strong concerns over the proposal by virtue of its height and associated length, which will be in a location that will impinge upon the views across the subject site towards iconic views of Palm Beach.

In this regard, it is readily apparent that the proponent and/or its representatives have not attended 319 Whale Beach Road to carry out an assessment of potential impacts upon the outlook from 319 resulting in the DA containing supporting documentation that disregards the view lines and openness of this sensitive foreshore area and merely seek to rely upon numerical compliance with the planning control for Landscaping as expressed within the Pittwater 21 Development Control Plan and reflected in the Palm Beach Locality Statement.

The proposal gives little or no due regard to the sensitivity of the location or its interface with the surrounding locality, particularly the Council Reserve and No.319. Nor is it designed and located in a manner that avoids any material impact upon the site occupants amenity - the proposal is *not* located well away from any view lines enjoyed by the occupants of the dwelling at 319. The proposal turns its back on the controls expressed within the Pittwater Development Control Plan.

The Pittwater 21 Development Control Plan is specific in its language in seeking to avoid any material amenity or visual impacts from proposal such as this located in a precinct that is renowned for its desire to preserve the ecological, scientific and aesthetic values along this area of coastline.

Specifically, the provisions of the Pittwater Development Control Plan relevant to the proposal are as follows –

D12.1 Character as viewed from a public place

Outcomes

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment.

The visual impact of the built form is secondary to landscaping and vegetation

To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context. (emphasis added)

To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land.

D 12.2 Scenic protection – General

bushland landscape is the predominant feature of Pittwater with the built form being a secondary component of the visual catchment.

INFORMATION TO BE INCLUDED IN THE STATEMENT OF ENVIRONMENTAL EFFECTS

An analysis of the development in terms of how it impacts on the visual character of the area, demonstrating that the proposal ensures that the bushland landscape is the predominant feature of Pittwater with its built form being a secondary component of the visual catchment.

(THIS ASSESSMENT HAS NOT BEEN PERFORMED AS NO REPRESENTATIVE OF THE PROPONENT HAS ATTENDED 319 WHALE BEACH ROAD RESULTING IN AN INACCURATE ASSESSMENT EXPRESSED WITHIN SUPPORTING DOCUMENTATION).

D 12.6 Side and rear building line

The bulk and scale of the built form is minimised **(THE BULK AND SCALE ARE NOT MINIMISED).**

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties **(A REASONABLE LEVEL OF AMENITY TO 319 IS NOT MAINTAINED).**

Vegetation is retained and enhanced to visually reduce the built form **(THE SETBACK IS COMPRISED OF A DECK AND NO VEGETATION)**

For swimming pools and spas a 1 m minimum setback from the boundary to the pool coping may be permitted subject to the following –

satisfactory landscaping within the set back from the pool or spa coping to the side or rear boundary, **(NOTE: NO LANDSCAPING IS PROPOSED ALONG THIS ELEVATION AS NO SETBACK IS PROVIDED FROM THE BUILT FORM TO THE SOUTHERN BOUNDARY) and**

Council is satisfied that the adjoining properties will not be adversely affected, **(COUNCIL OFFICERS ARE REQUIRED TO ATTEND No.319 TO ASSESS THE PROPOSAL WHEN VIEWED FROM THIS SITE AND ADJOINING RESERVE) and**

the pool or spa is not more than 1 m above ground level (existing), and that the outcomes of this clause are achieved without strict adherence to the standards, **(THE PROPOSAL IS WELL ABOVE 1 METRE ABOVE GROUND LEVEL) and**

where the site constraints make strict adherence to the setback impractical, (ON A SITE OF THIS SIZE AND CONFIGURATION, CONTAINING A LARGE CENTRAL CLEARED AREA AN ALTERNATE LOCATION IS READILY AVAILABLE WITH SIGNIFICANTLY REDUCED VISUAL IMPACTS) and

where strict compliance with these requirements will adversely impact on the views of adjoining residential properties (THE VIEW LINES ARE ABLE TO BE PROTECTED BY RELOCATION WITHIN THE CENTRAL, CLEARED AREA OF THE SUBJECT SITE).

The proposal turns its back on these controls, seeks to maximise the open space areas of the subject site by disregarding the intent of Council's controls, offends the objectives of the Environmental Living zone and relies upon documentation, including the Statement of Environmental Effects which fails to provide the fundamental analysis of the development in terms of how it impacts on the visual character of the area or amenity of nearby sites.

The Statement of Environmental Effects accompanying the application does not rely upon the Desired Future Character of Palm Beach (A4.12 Pittwater 21 DCP).

Instead the Statement relies upon what appears to be the first part of the Desired Future Character of Bilgola Locality - "The Bilgola Beach Area" (as set out in A4.3 Pittwater 21 DCP) with the words "Palm Beach" substituted for the words "Bilgola" and "Bilgola Beach" throughout. This is evidenced on pages 50 and 51 of the Statement and raises concerns over the Desired Future Character criteria used in supporting the proposal.

In its Introduction, the Statement of Environmental Effects states (at page 3) that:

The subject site [325] ... is oriented to the ocean views to the rear of the site. ...

The adjoining dwelling to the north [327] is ... oriented to the ocean views to the east ... similar to the subject site. ...

*The dwelling to the south [319] is ... **oriented to the ocean views to the east.***

(Emphasis added.)

This description clearly depicts the three houses as oriented in the same way – that is, facing east towards the ocean. In doing so, it fundamentally misconceives and misdescribes the orientation of the dwelling at 319. The house at 319 is in fact oriented at a right angle to the dwelling at 325 – that is, facing north towards Palm Beach and Barrenjoey Headland. This basic misconception and misdescription of 319's orientation have two "knock-on" effects in the Statement of Environmental Effects. First, by inaccurately characterising the dwelling at 319 as "oriented to the ocean views to the east", from the outset it creates the false impression and leads to the false assumption that any development to the north or north-east side of the 319 allotment will (almost by definition) have little-to-no adverse impact on the amenity of the property and residents at 319 – in particular, on the views and site lines from the dwelling's principal living areas or on the openness of the foreshore area as perceived from the 319 allotment. Secondly, it means much of the examination, assessment and analysis as regards the impact of the proposed development that has been and must be undertaken in the Statement of Environmental Effects is based on a fundamentally incorrect factual assertion and, more than likely, on the false assumptions that flow from that incorrect assertion.

It is therefore critical that Council officers attend 319 Whale Beach Road to confirm the extent of the inaccurate description of the orientation of 319 within the submitted documentation leading to a perception that views are to the east only. This is incorrect.

The Statement of Environmental Effects (page 71) also makes a statement that –

The proposal has generally been designed in accordance with Council's policies and planning instruments and will make a positive contribution to the locality by maintaining the relationship of the approved building which enhances the character of the streetscape. Where noncompliances with the controls have occurred they have been designed so as not to adversely impact the amenity of surrounding residents.

The noncompliances, being an elevated swimming pool with a surrounding deck located on a nil setback to a common boundary with a public reserve on a sensitive foreshore location, are difficult to reconcile as being 'designed so as not to adversely impact the amenity of surrounding residents' and as such do not warrant favourable consideration by Council as the consent authority.

This submission to Council formally requests that prior to further assessment of the proposal, the proponent be directed to provide height poles, certified by a Registered Surveyor to indicate the height, location and extent of the proposal in order to enable a detailed assessment of the proposal in terms of its visual impact and assessment against the Planning Principle expressed within *Tenacity v Warringah* in terms of assessment of view loss from principal living areas of 319 Whale Beach Road.

I reiterate that the proposal due to its insensitive design and particularly its location supports very few, if any of the fundamental objectives expressed within the statutory

environmental planning instruments namely Coastal Management SEPP, the Pittwater Local Environmental Plan 2014 under the E4 Environmental Living zone and the Locality Statement for Palm Beach along with the associated planning controls expressed within Pittwater 21 Development Control Plan.

Please contact me to arrange a site visit to enable Council representatives to view the subject site from 319 Whale Beach Road to carry out an accurate assessment of the proposal which I am of the view should be refused due to the reasons set out in the preceding components of this submission.

Thank you once again for the opportunity to provide this submission and we look forward to your attendance at my clients property to further progress your assessment of the proposal.

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