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Northern Beaches Council  
16 FEB 2022  
MAIL ROOM

Adam Croft, Development Assessment Planner  
Northern Beaches Council  
PO Box 82  
MANLY NSW 1655

13 February 2023

Dear Sir,

**Re: Development Application No. DA 2022/2152 – 122-128 Crescent Road and 55-57 The Avenue, Newport**

We have been requested to prepare a submission in relation to Development Application No. DA 2022/2152 on behalf of Damian Huon, the owner of 50 The Avenue, Newport.

The Statement of Environmental Effects prepared by The Planning Studio dated 9 December 2022 identifies that Development Application No. DA 2022/2152 seeks consent for the demolition of structures located above the high water mark, removal of 46 trees, subdivision of the site into nine (9) residential lots, construction of driveways, creation of rights of way and provision of servicing and stormwater drainage works on the land at 122-128 Crescent Road and 55-57 The Avenue, Newport ("the development application").

It is noted that the site includes Lot 295 DP 820302, which is occupied by a commercial marina known as Sirsi Marina. The Statement of Environmental Effects identifies that a future application will be made to convert the commercial marina to a residential marina of 9 berths, with access to the Marina to be made available through the proposed residential subdivision.

The balance of the site is currently occupied by four (4) dwelling houses on the land at 55-57 The Avenue and 126-128 Crescent Road, Newport, and commercial buildings on the land at 122 Crescent Road, Newport that are associated with the Marina.

Mr Huon's property, 50 The Avenue, Newport, is located on the northern side of The Avenue, and directly opposite proposed Lot 9 (which will have its own driveway entry from The Avenue) and the access driveway proposed to service Lots 2, 3, 5, 6, 7 and 8, and the Marina.

Although Mr Huon does not oppose redevelopment of the site generally, concerns are raised in relation to the adverse impact that the proposed development will have on his property at 50 The Avenue, Newport as well as on the local community generally.

In particular, the following concerns are raised in relation to the development application:

1. Impacts of the development upon significant trees;
2. Traffic and parking impacts;
3. Inadequate consideration of vehicular access;
4. Inconsistency of the development with the residential character; and
5. Non-compliance with development controls.

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Further details in relation to the above concerns are set out in the below submission.

### **1. Impacts of the development upon significant trees**

The Arborist Report prepared by Rain Tree Consulting dated 25 May 2022 identifies Trees 57 and 59 as proposed for retention. Trees 57 and 59 are significant trees which are located on the southern side of The Avenue, within Council's verge.

The Arborist Report notes the following in relation to Trees 57 and 59:

*"Those receiving Major (>10%) building footprint occupancy within the TPZ requiring tree sensitive dwelling & infrastructure design to ensure the trees remain viable are trees: T3, 57, 59 & 76."*

According to the Arborist Report, proposed Lot 9 and its associated driveway off The Avenue will result in incursions into the Tree Protection Zones of Trees 57 and 59 which has the potential to impact the viability of those trees.

The development application includes plans to relocate "Undgrounded HV – 33kV" (refer to Plans-Services) which is likely to require significant engineering and large trenching to cater for the needs of the high voltage power run.

In addition, although not currently proposed as part of the development application it is considered likely that The Avenue will require upgrade works in order to cater for the proposed development.

Any amendments/upgrades to roads that may be required by the Council should be incorporated as part of the development application and be publically notified with full information for public consideration.

These elements (road upgrade and power relocation) have not been considered in the Arborist Report, and are considered likely to impact upon and ultimately kill Trees 57 and 59.

Visually this section of land when seen from Pittwater has a greater level of natural vegetation, with significant gum trees when compared to other residential Pittwater foreshores (eg Rednall Street foreshore). Accordingly, this natural vista on the shores of Pittwater is an important characteristic of Pittwater that needs to be protected. Whilst the Arborist Report refers to protection measures to minimise impact, the arborist does not adequately address tree and vegetation management issues outside of the construction zone, noting that construction will in some cases will directly impact vegetation or have a contamination effect from changes imposed on the site.

### **2. Traffic and Parking Impacts**

The Avenue (upper section) already suffers from a narrow roadway and overcrowded parking from residents and the public accessing the waterway. Increasing the housing volume without providing adequate parking within the development site will adversely impact current traffic and parking on The Avenue to an untenable state.

The Avenue (lower section) is currently a quiet road with lower traffic volumes, the roadway is in poor condition and there is insufficient vehicle turning space. The development application proposes to provide vehicular access for 6 of the 9 lots, as well as access to the marina, via a driveway off The Avenue.

Having the main feeder entrance to the proposed development from the lower part of the Avenue is not feasible and will significantly and adversely affect the residences in the lower part of the Avenue, cause traffic issues, overcrowded parking, and effect the public access to the waterway.



Sirsi Marina is currently serviced from Crescent Road. As Crescent Road is a more substantive roadway supporting better traffic volumes than The Avenue, Crescent Road should provide primary access to the proposed development and not the lower part of The Avenue.

Sirsi Marina currently provides a car park located off Crescent Road that caters for 20 cars. Furthermore, off-street parking is provided for each existing dwelling, whereby each dwelling caters for multiple cars ranging between 2 and 5 vehicles.

The material submitted with the development application identifies that each of the proposed lots are intended to be occupied by luxury housing designs. It is therefore likely that each household is will have several vehicles, and each lot should be capable of catering for 3-4 vehicles for residents. In addition, the development overall should cater for visitors, maintenance and tradespersons all within the subject development site.

The nature of the current use is distributed across two streets, being Crescent Road and The Avenue. Accordingly "traffic stress" is not concentrated but rather distributed with the larger volume of traffic entering via Crescent Road (the better form roadway). The design of the proposed development imposes a significant change to traffic and parking and as such is inadequately designed and should be amended to ensure a more sensitive approach with lower impact is maintained.

Whilst the Traffic Management Report caters for "typical average traffic volumes" it does not deal with the subject site being adjacent to a publicly used waterway that has an effect of increasing traffic nor does it deal with The Avenue already being over capacity with residents' and public cars accessing the waterway, nor does it adequately deal with parking.

The Transport Statement prepared by JMT Consulting dated 6 June 2022 relevantly concludes as follows:

*"The proposal, with the removal of the existing commercial marina which accommodates more than 20 car parking spaces, is expected to result in fewer traffic movements over the course of the day when compared to existing conditions."*

The development application does not include the removal of the existing commercial marina, and the Statement of Environmental Effects identifies that a future application will be made to convert the commercial marina to a residential marina of 9 berths. In circumstances where no application has yet been made or approved to convert the commercial marina to a residential marina, a traffic impact assessment should be undertaken on the basis that the commercial marina will continue operation. This further assessment could require significant changes to the development to ensure that the traffic and parking impacts associated with the ongoing commercial marina are appropriately addressed.

A better suited and more acceptable development of the sites, which would have less impacts on the character and existing development in the area, would comprise an amended subdivision layout to battle-axe style blocks feeding from Crescent Road for lots 2, 8, 7, 3, 6, 5 and 4 (whereas it would be logical that lot 9 is accessed by the Avenue). A battle-axe style design is in keeping with current housing on Crescent Road, for example development at 136, 132, 140A, 118A to name a few.

It is noted that a Construction Traffic Management Plan is typically required as a condition on any development consent issued by Council. However, significant concern is raised regarding the potential impacts upon 50 The Avenue, Newport if access to the site for construction vehicles is permitted along The Avenue. The Avenue is not capable of accommodating construction traffic of the volume and nature necessary for the proposed development of the site.

During the construction phase all trucks, excavation, builders, delivery vehicles requiring site access should be restricted to site access via the Crescent to ensure no adverse impacts to residents in the lower part section of The Avenue.



It is identified in the development application that the proposed marina facilities (to be lodged as a separate development application) will be designed to cater for vessels of a significant size, including the following:

1. 8 x Berths
2. 4 x 20M (60 foot) Berth
3. 2 x 25M (75 foot) Berth
4. 2 x 18M (48 foot) Berth

It is highly unlikely that residents of the proposed subdivision will use their vessels without being assisted and accompanied by guests and/or professional marine staff. Accordingly the development application should include a consideration of the likely parking requirements of the 'future' marina to adequately cater for the use of the marina, having regard to the significant size of the proposed vessels that it will accommodate and the use of the marina by visitors and staff associated with those vessels. At present the proposed subdivision does not and cannot accommodate the vehicles and traffic associated with the existing commercial marina or the future marina to be associated with future dwellings. This is entirely unacceptable and does not comprise forward planning.

### **3. Inadequate consideration of vehicular access**

The proposed internal roadway is marked on the plan as 3.25m wide with a single passing bay, which is not considered reasonable for vehicles to pass adequately. The material submitted with the development application does not adequately address how the proposed development intends to cater for the following:

- Guest Parking
- Service vehicles and tradesmen
- Garbage Management
- Fire Evacuation if the main roadway was blocked.
- Turning of vehicles, specifically vehicles over 5 metres in length

Further to the above, the existing condition in terms of road surface and drainage of The Avenue is poor. Noting the proposed increase in use of The Avenue as part of the subdivision application and the future use to provide access to the Marina, the condition of The Avenue in terms of the roadway and associated drainage will need to be upgraded as part of the application. This is an important issue that has not been assessed or considered, which is not acceptable.

### **4. Inconsistency of the development with the residential character**

As outlined above, the development site currently comprises of a number of lots occupied by residential development, with others occupied by commercial buildings associated with the commercial Marina.

The development application proposes to demolish the commercial buildings that are associated with the commercial Marina, including areas of car parking, and to subdivide these portions of the development site as residential lots.

The development application does not propose change to the Marina hard stand and sea wall (commercial areas) which are located on Lot 295 DP 820302, and the only works proposed on Lot 295 DP 820302 relate to stormwater drainage.

Concern is raised in relation to approval of residential lots adjoining the existing commercial Marina, without there being any works proposed to clean up the commercial areas of the site. In that regard, the development application should include works to return the commercial areas to a normal or typical residential style landscape and appropriate "residential" sea wall constructed. Extensive hard stand

areas should be removed and reverted to soft landscaping in keeping with the residential properties to the north and south of the subject site.

### **5. Waste Management**

The Waste Management Plan dated 25/10/16 contains no information in relation to waste management associated with the ongoing use of the subdivided lots.

Current access to the lower section of the Avenue by garbage trucks is not safe, noting that trucks cannot turn around within the Avenue and need to reverse out once bins have been collected.

No information appears to have been submitted in support of the development application which demonstrates how waste will be managed and bins will be collected from the future residential lots or the marina (either the commercial marina or the future residential marina). Given the difficulties associated with waste trucks accessing the existing residential development in The Avenue, ongoing waste management is a significant concern that must be addressed as part of the proposed development.

### **6. Non-compliance with development controls**

Proposed Lot 5 is not compliant with the minimum lot size of 700m<sup>2</sup> required pursuant to clause 4.1 of Pittwater Local Environmental Plan 2014 ("**PLEP 2014**"). In that regard, Lot 5 is proposed to have an area of 640m<sup>2</sup> which falls short of the minimum required by 60m<sup>2</sup>, or 8.6%.

A written request pursuant to clause 4.6 of PLEP 2014 has been submitted with the development application in support of the variation proposed to the minimum lot size development standard ("**the written request**").

Clause 4.6 of PLEP 2014 relevantly states:

- "(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard."*

In relation to the test in 3(a) of clause 4.6 or PLEP 2014, the written request relies on the fact that compliance with the development standard is unreasonable and unnecessary because the proposed development complies with the objectives of clause 4.1 of PLEP 2014 notwithstanding the non-compliance with the development standard.

In relation to the test in 3(b) of clause 4.6 or PLEP 2014, the written request appears relies on the following two matters which it describes as 'environmental planning grounds':

1. That the non-compliance with the development standard does not result in any adverse environmental planning impacts (there will be no additional impacts to surrounding properties with respect to hazards, bulk, visual and acoustic privacy, services or amenity); and
2. The subdivision delivers a high-quality future residential development.



Re: Awelf Construction Pty Ltd - Land and Environment Court Case number 2021/00332278 -  
Development application for construction of 8 storey residential flat building at 8-10 Evans  
Road, Telopea  
13 February 2023

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It is questionable whether the clause 4.6 request has adequately demonstrated that compliance with the minimum lot size development standard is unreasonable or unnecessary in the circumstances, or that there are sufficient environmental planning grounds to justify the contravention of the minimum lot size development standard.

Compliance with the minimum lot size development application can be easily achieved on the subject site by reducing the lot yield.

It is also noted that Lot 6 is proposed to be positioned below the waterfront set back (planning anomaly) which should be addressed as part of this application for consistent uniformity along the foreshore.

To achieve compliance with the minimum lot size required, and the positioning of Lot 6, recommendation would be to consider amalgamating Lots 4, 5 and 6 and imposing proper setbacks from the waterfront setback.

### **Conclusion**

The development application as presently comprised is significantly deficient and unacceptable in terms of several fundamental matters, including:

1. Impacts of the development upon significant trees
2. Traffic and parking impacts
3. Vehicular access
4. Inadequate consideration and provision for the future use of the Sirsi Marina
5. Inconsistency of the development with the residential character of the area and overdevelopment of the site
6. Undersized lots
7. Construction and ongoing waste management

If approved, the development will have significant and adverse impacts on trees and the environment, on the amenity of existing residents in the area, on traffic and pedestrian safety and on the residential character of the area.

We request that the above concerns be taken into consideration by the Council when assessing and determining the development application and that the application be refused by Council.

Should you have any queries in relation to the above, please do not hesitate to contact Peta Hudson at our Campbelltown office.

Yours faithfully

**MARSDENS LAW GROUP**



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***Accredited Specialist Local Govt. & Planning***