

Memo

Department

To: Northern Beaches Local Planning Panel (NBLPP)
Cc: Daniel Milliken – Development Assessment Manager
From: Jordan Davies – Principal Town Planner
Date: 14 February 2023
Subject: Item 4.1 – DA2022/0469 – Demolition works and construction of shop top housing – 1102 Barrenjoey Road Palm Beach
Record Number: 2023/101955

Dear Panel,

This purpose of this memo is to acknowledge the additional submissions and information received following finalisation of the NBLPP Agenda and Assessment Report for item 4.1 DA2022/0469 – Demolition works and construction of shop top housing – 1102 Barrenjoey Road Palm Beach.

A further eight (8) submissions have been received regarding the proposed development, each of which are further submissions to those already made by surrounding and nearby residents.

In addition to this, additional supporting geotechnical information has been submitted by the applicant comprising of a letter from JK Geotechnics dated 8 February 2023 and titled “Geotechnical Investigation – Thickness of Shotcrete Panel and Nature of Material Present Behind It (Ref: 33618Ylet3).

A copy of the submissions and additional geotechnical information will be provided to the Panel.

The submissions raise the following concerns:

1. Geotechnical Risks Associated with the application for the adjoining properties 1110 Barrenjoey Road and 1100 Barrenjoey Road.

Council’s assessment report deals with Clause 7.7 Pittwater LEP 2014 and Council is satisfied that the submitted geotechnical information allows consent to be granted, subject to the recommended conditions. Following finalisation of the assessment report, the applicant has provided further details from their Geotechnical Consultant in regard to the existing condition of the shotcrete wall at the rear of the site. The letter supplements the geotechnical reports already provided and relies on the recommendations of the two geotechnical reports that have been referenced in the proposed conditions of consent. No further changes to conditions are required to reference the letter dated 8 February 2023 and Council’s original assessment is maintained, as outlined in the assessment report.

2. Unacceptable Heritage Impact

A submission received raises concerns regarding the impact upon Barrenjoey House due to the size and scale of the development. The issue of heritage is address within the assessment report, along with height and scale.

3. View impact and privacy impact upon approved Bungalow at 1110 Barrenjoey Road

The submission raises that *“the proposed roof impinges on private views from our approved Bungalow towards Pittwater and Ku-ring-gai Chase National Park”*. It is noted that this approved Bungalow requires landscape planting to a height of 3m along the western edge to screen the bungalow from street view. This is required by Condition 13 of DA2021/0200. The Bungalow was not approved on the basis that a view would be achieved and the intention of the approval was to provide landscape screening of the Bungalow. Expansive views from the approved dwelling in the centre of the site will be maintained over the development site.

The issue of privacy is addressed within the assessment report.

4. Request for boundary fencing to be dealt with under Dividing Fences Act

The original submission from 1110 Barrenjoey Road raised concern that no fence along the common boundary was proposed and therefore this could lead to a safety concern. In response, the applicant has nominated a fence on the plans to a height of 1.6m along the boundary, which was shown on Proposed Long Section 02. However, the latest submission requests this be dealt with under the Dividing Fences Act so materials can be agreed upon between properties. Council is satisfied that when this occurs (noting that it can occur at any time as exempt development), the safety issue will be resolved.

Therefore, it is recommended the following condition be included:

Condition – General – No Approval for Boundary Fencing

No common boundary fencing is approved under this application. Any common boundary fencing between adjoining properties is to be dealt with via the Dividing Fences Act 1991.

Reason: To ensure common boundary fencing material is agreed between adjoining properties.

5. Concerns with planter box designs on the western boundary and roof

The submission from 1110 Barrenjoey Road requests that *“for planting in the top planter box (western boundary), above retaining wall, is maintained to be no higher than the fence height in the location of the Bungalow in order to maintain views towards Pittwater and Ku-ring-gai Chase National Park”*. The landscape planter along the western boundary proposes a species capable of achieving a mature height of 2m, which is considered reasonable having regard to the comments above in Point 3 regarding views from the Bungalow.

The submission requests more extensive roof planting to hide the plant area. This issue is addressed in the assessment report and Council is satisfied with the roof planting design to screen the mechanical plant.

6. Discrepancy between height of mechanical plant screening on plans

The submission from 1110 Barrenjoey Road correctly identifies that the section plan shows the roof plant screening at 1425mm high, whilst the roof plan nominates screening to a height of 1700mm. Whilst Council could recommend a condition to increase the height of the screening to 1.7m height, it is considered once the landscaping within the planter box along the western edge of the roof plant area is established, the western edge of the screening will not be visible and therefore, there would be no benefit in requiring a taller screen. To ensure the maximum building height is not breached any further by the screens and to ensure consistency across the plans, the following condition is recommended:

Condition Prior to the Issue of a Construction Certificate – Roof Plant Screening Design

Prior to the issue of any construction certificate, the plans are to be updated to nominate that the screening of the mechanical plant area is to have a maximum height of 1.425m above the floor level of the mechanical plant area.

Reason: To ensure plan consistency for the screen design of the mechanical roof plant area.

A discussion is contained within the assessment report regarding the visibility of the roof plant area and no further recommendations are made in regard to this.

7. The extent of the building height non-compliance has similarities with a development recently refused by the NSW Land and Environment Court at 1105 Barrenjoey Road. There are insufficient planning grounds to approve the height breach.

The submissions raise that the recent LEC decision for another shop-top housing development in Palm Beach should set a precedence for refusal of the subject development application (this case being *Forest Apartments Pty Ltd v Northern Beaches Council [2023] NSWLEC 1042* at 1105 Barrenjoey Road).

Whilst the application at 1105 Barrenjoey Road was refused by the Court due to a deficient Clause 4.6 request for the height breach (there were other outstanding contentions that the Court did not need to turn its mind to), Council has undertaken a detailed assessment of the merits of the subject application for 1102 Barrenjoey Road, together with the expert advice of Council's Heritage Advisor and Design and Sustainability Panel. Council is satisfied with the design and is of the opinion that the planning grounds relied upon in the Clause 4.6 request are sufficient to grant the variation.

8. Concern with further view impact for 1100 Barrenjoey Road due to southern boundary planting

The landscape plan nominates some planting along the southern boundary to a height of 2m to screen the bin holding bay along the southern boundary. The 2m planting is not considered to be detrimental with regards to views assessed within the assessment report for 1100 Barrenjoey Road.

The submission raises concern regarding 8m-15m tall trees along the southern boundary. The proposal is to plant 7 Weeping Lilly Pilly trees along the length of the

front setback zone, capable of reaching a mature height of 10m. There is potentially one (1) Lilli Pilli that may partially obscure a cross boundary view for 1100 Barrenjoey Road. However, given the position of this tree, Council is satisfied that a reasonable view sharing corridor will be maintained over the front setback of the site and this circumstance does not warrant the deletion of one (1) tree which will be of benefit to the public domain.

Summary

As a result of the additional submissions received, it is recommended that the above additional two (2) conditions be included in any approval of the application. The further submissions received do not change Council's overall assessment and recommendation of the application. Each of the submissions received will be passed onto the Panel for their consideration in determining the application.

If you have any queries please contact Jordan Davies – Principal Town Planner.



Daniel Milliken
Manager Development Assessments