



The Palm Beach & Whale Beach Association Inc.
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25 March 2024

NORTHERN BEACHES COUNCIL

PLANNING AND DEVELOPMENT

Attention Adam Croft

Dear Adam

D/A 2023/1532 – 15 OCEAN ROAD, PALM BEACH

AMENDED DRAWINGS

We wish to provide comments to the Council on the Amended Drawings lodged with this Development Application. We also refer you to our earlier submission dated 20 November 2023 in connection with the original drawings. We note that an amended Statement of Environmental Effects (SEE) has not been provided with the Amended Drawings. We have reviewed the original SEE in conjunction with our review of the Amended Drawings and our view is reinforced that the SEE contains so many misleading and mistaken statements that it is not fit for purpose and should be rejected by the Council.

Height, Bulk and Scale

The height of the building has been reduced by 1.2 metres in the amended drawings. Its height is now 13.2 metres, according to Drawing A1201 (height at top of building 18.37 metres AHD minus ground level at 5.17 metres AHD = 13.2 metres building height. This is 4.7 metres or 55.2% in excess of the height control of 8.5 metres (LEP clause 4.3(2)). The alterations to the height of the decks on some of the lower floors do not affect the overall height of the building but may reduce its bulk marginally but not so as to make any difference to the bulk and scale of the proposal when viewed from Ocean Road.

Clause 4.3 (2)(d) of the LEP allows a breach of 8.5 metres (but not to more than 10 metres) if: -

- (a) The portion of the development above 8.5 metres is minor, and
- (b) The objectives of the clause are delivered, and
- (c) The building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%, and
- (d) The buildings are sited and designed to take into account of the slope of the land to minimise the need for cut and fill by design that allows the building to step down the slope.

The following comments apply to this Clause:

- (a) The clause specifies that even if allowed to exceed 8.5 metres in height, the height of the building cannot exceed 10 metres above natural ground level;
- (b) Neither breach, 55.2% in excess of 8.5 metres or 32% in excess 10 metres, could be described as minor (but as mentioned, Clause 4.3(2)(d) specifically precludes any excess over 10 metres).
- (c) Whether the objectives of the clause are met is debateable. It clearly fails the requirement to minimise the overshadowing of the adjoining building and the requirement to minimise adverse visual impact on adjoining heritage items.
- (d) There is no data supplied with the D/A to show that the slope is more than 16.7 degrees, despite numerous opportunities to do so.
- (e) The building is not designed to take account of the slope in a way that allows the building to step down the slope. Instead the slope is excavated as necessary to enable the entire building to be built on set of foundations at the ground level (5.17 metres AHD). The height of the building is in no way a response to or a consequence of, the landform topography (page 53).

To be fair, the Section 4.6 Request makes no claim to bring the building within the 10 metre provision or to justify the height breaches by reference to the 10 metre provision. Therefore it can be argued that the arguments set out above relating to Section 4.3 have been accepted in the way the Section 4.6 Request proceeds. In fact we would also argue that the 10 metre relaxation is not in itself a height control in respect of which a Section 4.6 Request could be put forward – it is merely a limit on the extent to which a breach of the height control can be excused under Section 4.6.

As a result, the breach being dealt with in this D/A is one of an excess of 55% over the height control of 8.5 metres. That could in no way be described as “minor” and must be rejected on that ground alone.

For these reasons the building as shown in the amended drawings cannot be approved and the Section 4.6 report cannot change this conclusion because Clause 4.6 of the LEP is not satisfied. Nevertheless the Section 4.6 Request has been re-analysed and in our view it does not establish that compliance with the standard is unnecessary or unreasonable nor that there are environmental planning grounds to excuse the contravention of the height control.

There are many unsatisfactory elements to the SEE and the Section 4.6 Request. Some of them are as follows: -

- (a) In dealing with the objectives of the EPA Act, the claim is made (page 14) that the development (the original plans in this instance but the amended plans are equally applicable) would ensure that the amenity of the built environment in the vicinity would remain uncompromised. The impact on the adjoining historic building, the Palladium, which is being considered for heritage listing (see Heritage Report), from overshadowing, comparative bulk and height and harm to visual amenity as well as on the heritage listed house at 2 Palm Beach Road, shows that this statement is not supportable.
- (b) The building presents four storeys to Ocean Road and its height and bulk and prominence could not be described as “low impact”. Even if the fourth floor were removed as

recommended in our original submission, the building would still be in breach of the 8.5 metre height control – see Drawing A1402.

- (c) There is no substantiation of the claim that the height of the building is below the tree canopy and because of its height, bulk, scale and prominence as well as its manner of construction, it could not be described as harmonising with the natural environment.
- (d) The statements (page 31) that the Palladium will “continue to receive to receive contemplated levels of solar access year round” or “will not be adversely affected by the extent of the height breach” (page 52) are clearly mistaken. In fact the Palladium will have to relocate a considerable number of its solar panels to continue to be energy self-sufficient, due to the increased overshadowing.
- (e) Comparing the proposed development of 15 Ocean Road with the approved but uncommenced development of 14 Ocean Road is misleading. While the two buildings are portrayed as of similar height, the natural ground level of 14 Ocean Road is significantly higher than the equivalent level at 15 Ocean Road – it is built on a higher point of the hillside so it is in fact a lower building with two minor breaches of the 8.5 metre height control and compliance with the 10 metre height control. It is staggered up the hillside and the only point where it exceeds two stories is the top bedroom at the very rear of the building. A fair comparison of building heights must take these factors into account as well as other adjoining buildings such as 16 Ocean Road and 2 Palm Beach Road. (Development Application 2021/2262, Drawings 07/08/09). The comparisons with 2, 9 and 11 Ocean Road are also misleading because they are all built on steeply sloping sites.
- (f) Much is made of the articulated frontage of 15 Ocean Road as a factor in the Section 4.6 request to excuse the height breach. Apart from the fact that articulation across the proposed frontage of 15 Ocean Road is almost non-existent (and absent from the other three walls), it is irrelevant in considering whether or not the breach of the height control should be excused. Articulation requires modulation of the façade by varying the setback of various elements of the façade from the front boundary, not straight sections of plate glass all in the similar vertical planes.
- (g) The proposal does not comply with Clause 4.12 of the Pittwater DCP21 – it is far removed from the descriptions of orderly and economic use envisaged in the DCP – it is not in keeping with any seaside character or the local character or desired future character– it is not below the tree canopy – it does not minimise bulk and scale, even in the amended plans – it is not a staggered form in response to the topography – and more.
- (h) Given the nature of the breach of the height control and the fact that it does not qualify for Section 4.6 relief, it is very difficult to argue that compliance with the control is unnecessary or unreasonable, particularly when the objectives of the LEP, DCP and zoning are not met. The Section 4.6 Request does not succeed in doing so and the series of mis-statements in the request are further evidence that it does not succeed in its purpose.
- (i) The Request must also establish that the development meets the objectives of the LEP. This submission demonstrates that it does not meet the objectives of either the LEP or the DCP. It also does not meet the objectives of its C4 zoning.
- (j) There are no environmental planning grounds provided for concluding that the breach of the height control should be ignored. The absence of environmental harm (a debatable claim anyway) does not establish an environmental ground.

- (k) The repetition of statements like “The proposed variation to the height is deemed a necessary outcome to allow for a well-resolved and functional floor plate arrangement offering high levels of residential amenity. The height breach will result in no adverse impacts on adjoining properties in terms of visual bulk, views, privacy or overshadowing” (page 53) is not a substitute for demonstrating that there are environmental planning grounds for excusing the breach of height. Such statements are clearly, demonstrably wrong.
- (l) The development would not be ecologically sustainable (page 54) because the entire building is constructed of concrete, steel and glass with no means of off-setting the emissions and pollution attendant on their manufacture. Apart from the garage door there is no attempt to use sustainable materials in accordance with the DCP.
- (m) There is no discernible public interest served by such a gross breach of the height control.
- (n) Among other defects, the proposal does not comply with the required building envelope, particularly at Section 04 (Drawing A1204). However the extent of the breach is not quantified. There are no arguments put forward as to why this is justified or ought to be excused.
- (o) The summer and winter sunrise and sunset lines on Drawing A1012 of the amended drawings are the wrong way round. This may impact on the shadowing diagrams provided.

Conclusion

The D/A as amended does not meet the objectives of the LEP, DCP or zoning and no basis for arguing that compliance with the height control is unnecessary or unreasonable has been established. Similarly no environmental grounds have been demonstrated for excusing the breach. The D/A should be rejected by the Council.

Yours truly

Professor Richard West AM

President

Palm Beach & Whale Beach Association