



Newport Residents Association Inc.

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20th April 2016

General Manager
Pittwater Council
PO Box 882
Mona Vale NSW 1660

Dear Mr Ferguson

Re: S96 (2) Modification Application 316-324 Barrenjoey Rd Newport – ref S96 NO238/13

We refer to your letter of the 5th April 2016 which seeks to further modify the original consent and modification advice NO238/13/96(1) of October 2015 for the above shop top development.

We would like to firstly refer you to our letter of objection dated 30th November 2016. All the matters raised in this letter continue to remain valid. This further S96 request now takes the changes to the Land & Environment court approved plans to 36. Whilst a developer has the right to apply to make changes to approved plans we believe they do not have the right to structurally make all the changes prior to seeking approval. It would make a mockery of the planning process to approve these changes 'after-the-fact' given that a number of these changes are extremely structurally significant.

We restate the major structural change whereby the entry has been changed to occur from 'The Boulevard' rather than from Barrenjoey Road is a prime objection of the members of the Newport Residents Association. Should this change be approved the traffic on The Boulevard would greatly increase and people living close by, including residents who use the Boulevard/Barrenjoey Road lights (which a number of our members do regularly), would find it more difficult to get access. It would be difficult and dangerous for cars leaving the development car park via The Boulevard exit to turn right out of the property into the Boulevard as visibility of cars coming around the corner would be compromised. It makes more sense for cars needing to go south to use the Barrenjoey Road exit. There also appears to be no consideration of the impact the proposed driveway change has as a flood hazard considering The Boulevard area is considered an area of high hazard flooding in Newport.

We also restate our comment from our letter of the 30th November 2015 whereby we understand the proposal is actually not assessable under Section 96AA of the Environmental Planning & Assessment Act 1979 (NSW) whereby any modification will not apply if it is not substantially the same development as originally granted.

Further we understand that under the same section Council may only modify a consent before those works the subject of a revised consent can be given.

One of the conditions of the consent issued by the Land & Environment Court related to the driveway access of the mixed-use development onto Barrenjoey Road and the removal of the former driveway access and associated crossing of a floodway canal facing onto The Boulevard, Newport. This matter was the subject of an express condition of the orders made by the Land & Environment Court. A change to this condition is therefore a fundamental change to the entire

development, and dramatically alters the traffic flow implications of the development for the local area. Under no circumstance could the major requested changes be deemed to be substantially the same therefore, we believe Pittwater Council is unable to grant consent. The S96 application should be denied in its entirety and any unapproved changes demolished.

With regard to the list of 36 changed items included in the application we refer you to a submission from two of our members Mr. J Brady & Mr. P Brady and support the particular items outlined by them in their submission, namely;

Item 1 & 3. *Alternate vehicular access over drainage channel. We object to this modification on the grounds of safety and the additional traffic load which will be pushed onto The Boulevard. The Boulevard is the most flood affected access to this site and possibly in Newport Village, so having this as the one and only vehicular access via this street is undesirable especially in the case of an emergency. This proposal directly ties in with item 3, the new retail space for shop 5, being purely a financial gain from the sale of this space and not a valid reason to approve this modification.*

Item 8. *Sothorn Elevation Balustrade 1000mm high on roof top. This detail was not approved on the amended drawings DA-401 16/7/13 by the Land and Environment Court 27/4/14 (appendix B). The inclusion of this balustrade at the edge of the roof area as a communal area will result in a loss of privacy and amenity to the Brady's unit, as this deck will look directly down and into the rear and front deck areas of their unit which currently enjoys a considerable degree of privacy. The original proposal indicated a permanent fixed insitu constructed planter box which had a curved front, there by pushing the accessible area back away from the edge of the deck area. This was an acceptable solution and should be included as designed.*

Item 17. *Relocation of Car wash to Visitor space number 2. The loss of a visitor car parking space is undesirable as visitor parking is at a premium, and forces a greater load on to the adjacent council car parking. A simple and environmental solution is to retain the current basement carwash and include for a coalescing machine to remove oil contaminates and this does include a pump for removal to an elevated or difficult connection to the sewer main. A competent plumber can address this problem.*

Item 29 & 30. *S96-404 East Elevation REC C Balustrade. We strongly object to these modification already carried out to both the roof areas of the first and second floors (outside units 8 and 14). It was brought to council's attention on the 22 October 2015 that these unauthorised works were proceeding. We further understand that the developer continued works despite these matters coming to light. These modifications do not comply with Pittwater DCP 21 sections D10-08 & D10-24 side separation and State Environmental planning policy SEPP 65. The result of this work is a loss of amenity and privacy, which was the basis of the Brady's original objections and formed part of the amendments to the proposal as was finally approved by the land and Environment Court. If these amendments were first mooted at the court hearings, then greater separation than that which was imposed would no doubt have applied. The developer has installed access doors through, what should have been fixed privacy screens to the East elevation. The developer has noted these on the drawings for 'strictly maintenance access'. We do not believe this to be true and any reasonable person understands that these doors will be used for access to a new created external deck enclosed by the already installed glass balustrade. Also claimed that the glass balustrade is for safety reason is also a fallacy. If this area, which was approved as a non-accessible roof area by the court, needs to be accessed for maintenance then a roof anchor system*

with Fall arrest system is the accepted method of solving this problem. Furthermore having access via a private units to carry out maintenance of roof areas is very poor design. A better access via common areas is possible in this instance and far more practical.

***Additional items.** The following unauthorised works have been carried out but are not listed on the schedule.*

***a. Soho unit on the first floor, East Elevation-** there has been a sliding door installed in lieu of a glazed window with privacy screen, and there is glazed balustrade to the southern elevation there by forming an unapproved external deck which is only approved as a non-accessible roof void. (Refer to appendix E attached to the Brady submission)*

***b. Unit 14, second storey, East elevation-** Three windows to this elevation are detailed as frosted glass for privacy to the Brady unit. In fact 2 of the windows are clear glazed which is in contravention of approval. If these windows are to be clear glazed then privacy screens must be installed. (Refer to appendix C of the Brady submission).*

We also note that an Interim Occupation Certificate has been supplied to council No CC0265/14, and that tenants have commenced to occupy some of the units. We consider that any occupation prior to the changes requested by this application being approved is **completely out of order and should be stopped immediately.**

Again we restate that under Section 96AA Council may only modify a consent before those works the subject of a revised consent can be given and therefore consent cannot be given to this application.

Yours sincerely

Gavin Butler
President