



Newport Residents Association Inc.

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Hon. Secretary - (secretary@newport.org.au)
Hon. Treasurer - Kyle Hill 0412 221 962
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30th November 2015

General Manager
Pittwater Council
PO Box 882
Mona Vale NSW 1660

Dear Mr Ferguson

Re: S96 (8) Application 316-324 Barrenjoey Rd Newport – ref S96 NO238/13/S96/1

Members of our association have drawn attention to this S96 application which seeks to modify the original consent to relocate the access driveway for the shop top development from Barrenjoey Rd to The Boulevard and convert the former driveway to retail space.

Our members strongly object to this change of access driveway. Our objection and concerns have already been expressed in an e-mail to the General Manager dated 29th October 2015 as follows;

'It has come to our attention that the developers of this site (old Caltex site) have lodged a Sec 96 Application to move the driveway from Barrenjoey Rd to The Boulevard. (The Newport Residents Assn have not yet seen a copy although it is on your web site). It also appears the developer has already constructed a new driveway into The Boulevard without consent. The original approval was from the Court Orders of the L & E Court. Some of the residents of The Boulevard are most upset by this unauthorised construction and are very concerned regarding the redirection of all traffic to that street, plus the obvious loss of parking. We would appreciate you looking into this breach of court orders and consider Council action be taken against the developer.'

We strongly believe the entry should remain from Barrenjoey Road. Without this, 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.

Additionally the development includes an attached dual occupancy on The Boulevard and all the traffic from the shop-top housing being diverted to The Boulevard would place unfair and unreasonable volumes of traffic within metres of the dual occupancy.

This development has had numerous variations and L & E Court hearings over the last few years prior to consent being given and for the developers to now attempt to make significant changes to the Court approved concept is unfair and unreasonable to the neighbouring residents who live in The Boulevard and all Newport residents who made numerous submissions during the original application processes.

It has also come to our notice that 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. 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.

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. In this case the works outlined in the Sec 96 application have fundamentally been completed, being the configuration of the internal liftwell, the slope and orientation of the ground floor carpark slab towards The Boulevard and the construction of the driveway crossing over the floodway. Therefore this application cannot be considered.

There 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.

One further matter which we realise does not form part of the S96 issue is the developer's non-compliance of the original construction with the approved plans and we again refer you to our earlier mentioned e-mail to the General Manager of the 29th October 2015 (we attach a copy herewith) where these non-compliance matters are raised. We believe these non-compliance matters actually should be taken into consideration when assessing this application and together with all the above outlined reasons we believe council has no option other than to reject completely this application.

Yours sincerely

Gavin Butler
President

From: Gavin & Elizabeth Butler [mailto:gebutler@aapt.net.au]
Sent: Thursday, 29 October 2015 3:56 PM
To: 'Mark J Ferguson' <mjferguson@pittwater.nsw.gov.au>
Cc: 'peter@midboyd.com' <peter@midboyd.com>; Kyle Hill (kyleahill@optusnet.com.au) <kyleahill@optusnet.com.au>; 'billthomson232@optusnet.com.au' <billthomson232@optusnet.com.au>; 'wendydunnet@gmail.com' <wendydunnet@gmail.com>; Selena Webber (selenawebber@hotmail.com) <selenawebber@hotmail.com>
Subject: 316/324 Barrenjoey Rd Newport

Mark,

It has come to our attention that the developers of this site (old Caltex site) have Lodged a Sec 96 Application to move the driveway from Barrenjoey Rd to The Boulevard. (The Newport Residents Assn have not yet seen a copy although it is on your web site). It also appears the developer has already constructed a new driveway into The Boulevard without consent. The original approval was from the Court Orders of the L & E Court.

Some of the residents of The Boulevard are most upset by this unauthorised construction and are very concerned regarding the redirection of all traffic to that street, plus the obvious loss of parking. We would appreciate you looking into this breach of court orders and consider Council action be taken against the developer.

When we receive formal notification of the S96 we will be lodging an objection.

Another of our members who has an adjoining unit on the North side on Barrenjoey Rd has also written to council regarding another breach as noted below;

I wish to draw councils attention to the following work which has been carried out in complete contravention of the approvals.

The plans approved by the land and Environment court date 13 march 2004, copy attached (appendix 2,3 &4) for your reference, clearly indicated that the 3rd level (DA drawing DA-204, revision, E level 2 floor plan, East elevation and F, North Elevation along Barrenjoey rd) has a non accessible roof area which is screened by planter boxes from the adjacent building 326-330 Barrenjoey rd. The approval does not indicate any hand rails or alike being included. Also on this elevation all windows as clearly stated on the drawings are to be frosted glass, not clear glazed.

I have observed on inspection of the building progress (22 October 2015) the following,

- 1) An aluminium balustrade has been erected on the roof / non accessible area on the north or eastern elevation of the building, which in effect means this area has been converted to an accessible deck area. Copy of photo attached appendix .1)*
- 2) Clear glazing has been installed to windows on the same face of the building as above.*

Both of these issues will result in a complete loss of privacy to our unit, and was to a large extent the cause of our objections to the design of the development .

We look forward to your reply.

Thanks & regards

Gavin Butler

President

Newport Residents Assn.