Submission
No 88

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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THE DIRECTOR
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Dear Sir,

Inquiry into the New South Wales planning framework

Thank you for the opportunity to provide a submission to the Inquiry into the New South Wales planning framework.

Please find my submission attached.

Yours faithfully

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INTRODUCTION

This submission makes reference to two case studies of SEPP Senior Living [SL] Developments which have been built on either side of my house. It is a personal account, however, I also write from a professional view point as I have completed a Bachelor of Architecture from the University of NSW.

In this report I would like to outline what I perceive to be the weakness in the SEPPSL Policy in general as well as problems associated with the Development Application and Certification process which such Developments have to adhere to.

There are several professional reports prepared by Geo-Technical and Structural Engineers, a Town planner, an Architect, a Surveyor and an Arborist which were prepared on our behalf and at our expense in regards to what we experienced during the building of these two SEPPSL Developments. These reports can be provided as evidence if necessary but have not been included in this submission. A photographic record can also be provided as evidence if necessary but again has not been included in this submission.

BACKGROUND TO CASE STUDIES; BUILDINGS A & B

The SEPPSL development to the west of our house consists of 4 units with an underground car park comprising 8 car spaces. It was commenced in December 2004 and completed in November 2006. This development was approved by Pittwater Council and a private consent authority was engaged by the developer. In this report I will refer to these 4 units as Building A.

The SEPPSL development to the east of our house consists of 6 units with an underground car park comprising 12 car spaces. It was commenced in September 2007 and is still not completed. This development was approved by the Land and Environment Court after Pittwater Council failed to pass it on the grounds that it was completely unsympathetic to the surrounding context. The land and Environment Courts decision to approve it was appealed albeit unsuccessfully. Again a private consent authority was engaged by the developer. In this report I will refer to these 6 units as Building B.

Both developments received a considerable amount of objection from both the surrounding neighbours as well as the wider local community. The total number of objections received during the Development Application Process for Building A was over 70 and for Building B was over 80.

SEPPSL POLICY AS BLANKET APPROACH WHICH DOES NOT TAKE INTO CONSIDERATION THE LOCAL CONTEXT LEADING TO INAPPROPRIATE DEVELOPMENT NOT IN KEEPING WITH LOCALITY

This weakness in the SEPPSL Policy is evident in the following points regarding bulk and scale, cumulative development impact, limited infrastructure and lack of consideration given to local site constraints. These issues will be discussed with specific reference to the two case study developments referred to as Buildings A & B.

Bulk and Scale

The bulk and scale of Buildings A & B are totally out of character with the locality of this particular area of Pittwater which is considered a 'special interest' area by the local Council in which subdivisions less than 1200m² are not permitted. This has meant that the predominant built form has been that of small scale single dwellings with abundant gardens and large trees. Furthermore, dual occupancy was not permissible under the local councils zoning at the time of these developments gaining approval.

However, the SEPPSL legislation over rules such Development Control Plans set down by local councils resulting in inappropriate development which is not in keeping with the locality. For example, 1789m² is the site area on which Building B is located and therefore, only a single dwelling was permitted by Pittwater 21DCP at the time of the DA submission for a SEPPSL development on the site. Dual occupancy was not allowed and the block size did not allow for subdivision. However, SEPPSL permitted 6 units to be built with an underground car park. The bulk and scale of this development is considerably greater than if two single dwellings had been built or dual occupancy had been allowed. Why is SEPPSL permitted in this area that is considered 'special interest' and which is zoned for large block sizes? A review into this legislation needs to be undertaken as this State Government Planning Policy makes a mockery of Local Councils Planning Policy which has been developed over a long period of time in specific response to the unique attributes of the locality.

The bulk and scale of both Buildings A & B but especially B have an unfavourable visual impact when viewed from both the street yet also the Pittwater waterway. This area is zoned 2 (a) (Residential A) and under the Foreshore Scenic Protection Area in Pittwater 21 the visual impact when viewed from the water, of any new development, is meant to be taken into consideration. This has not occurred and Building B is highly visible from the water standing as one monolithic building of glass and masonry construction 4 storeys high. The underground car park rather than being invisible and hidden underground also dominates the façade contributing to the size and impact of the development. The building reads as a block of flats with very formal garden beds and concrete planter boxes. This is completely out of context with the surrounding single standing 1 to 2 storey dwellings which are surrounded by informal gardens and soft plantings into deep soil zones. It dominates the entire streetscape and becomes a dominating element on the foreshore when viewed from the water. The SEPPSL Policy does not attribute enough significance to these issues as it is a blanket policy which does not take into consideration the local context.

Cumulative Development Impact

SEPPSL Developments are rapidly being built all along this stretch of Pittwater road. Currently there are 4 units at 2091 Pittwater Rd and 6 units at 2085 Pittwater Rd between which sits my house as previously mentioned. A further 5 units is currently at DA stage at 2079 Pittwater Rd. Another 4 units is near completion a few hundred meters down from this on Pittwater Rd and a DA has recently been lodged for 10 units at 2129 Pittwater Rd. Thus, soon the dominant built form along this stretch will be multi unit developments. It can be argued that the existing character of this part of Pittwater has already been permanently changed due to these developments. Thus, rather than SEPPSL being infill housing as the Policy currently states as its objective the remaining single dwellings who have not sold out to the developers will in fact become the infill housing amongst the dominant streetscape of multi-unit housing. Furthermore, it is a highly visible part of Pittwater being viewed from the surrounding water and foreshores as well as the road.

Limited Infrastructure

Traffic and parking problems have been increased with these developments. Pittwater Rd is a single lane road in both directions with a heavy traffic load. This road cannot be widened due to the site constraints and therefore, increasing the density of the area through these SEPPSL developments is inappropriate given the limited infrastructure. There is no available street parking with the only available public parking within reasonable proximity of Buildings A & B being outside the BYRA boathouse. During weekends and public holidays this parking area is taken up by boat trailers and cars for the clientele of BYRA. During the week people who use the public pathway around to Church Point park their vehicles here.

Although these developments satisfy the minimum requirement of one visitor car parking space and 0.5 spaces per bedroom, commonsense would indicate that one permanent car space per 2 bedroom unit and one visitor car space is not realistic for an area which is so under serviced by local public transport with one bus only servicing the area every hour. It should also be noted that only 30% of the bus fleet contain wheelchair access which will limit available travel times for potential residents. It is totally inappropriate to propose such high density when the infrastructure is simply not there. For example, Building A & B on either side of my house has meant that 11 families, including my own family, are now living in an area which previously only had 3 families present. Such an increase in density is simply not sustainable.

This limited infrastructure was very apparent during the building of these developments as there was limited public parking for the large number of vehicles belonging to the builders and contractors working on these buildings. Furthermore, the amount of excavation required to build the underground car parks for both of these buildings meant very large trucks had to be brought to site to take away the excavated material. Building B alone generated about 3000 cubic metres (equivalent to 300 truck loads) of excavated material. There was limited parking for these trucks causing safety issues on the road often occurring during morning peak hour when local residents were trying to get to work or drop the children at school. Often the cars would be lined up hundreds of metres down Pittwater Rd waiting for these trucks to manoeuvre into the site. Massive cranes brought to site on huge trucks also caused the same problems. Such machinery would not be necessary when building a single dwelling house. This part of Pittwater Rd is simply not designed for the building of such large scale development. It constitutes an over-development of this locality.

Lack of Consideration Given to Local Site Constraints

Due to SEPPSL being a blanket policy the local site constraints of a particular area are overlooked. This can have implications for the neighbouring properties as well as the local environment. This is evident in the case studies of both Building A & B. That is, the construction of underground car parking spaces for these developments results in the replacement of the natural steep terrain of the site with a concrete structure requiring excavation to a depth of 5m below the natural ground line in the case of Building A and 9m in the case of Building B. In the case of Building B this development will create a basement wall totally traversing the site to a depth of around 9 metres. It is impossible for any expert to predict what impact this may have on ground water movement and long term stability of the existing hill side.

That is, gullies run down from the escarpment behind (Bayview Heights) and are both visible above ground yet also invisible underground. Such development which excavates huge portions of this sandstone and replaces it with a concrete structure interferes with the natural flow of this gully water through the ground. This becomes a major concern when constructing underground car-parks (an essential prerequisite of such large scale development) if such water flows are not mapped in advance through geotechnical reports leading to risk for adjacent properties possibly causing undermining of foundations. The cumulative environmental impact that such large scale development has on this sensitive foreshore area of sandstone escarpments and gullies should not be underestimated. That is, the specific topography of the locality needs to be taken into consideration if a detrimental environmental impact is to be avoided.

Furthermore, the minimum setback required of SEPPSL developments is 1m despite the fact they are multi unit developments. This is the set back required of a single dwelling residence. The LEP clearly outlines far greater setbacks applying to multi-unit developments (D4-6). Pittwater 21 clearly nominates a side boundary setback of at least 3 metres for multi unit developments. Thus, despite these developments being defined as SEPPSL they are actually multi unit developments that

should have to conform to local planning policies. Such setbacks are important in terms of minimising damage to adjacent properties as well as making sure adequate privacy and amenity is achieved between adjacent properties.

Pittwater DCP 21 recommends that a 1m excavation depth is appropriate for this locality. However, the SEPPSL Policy has been allowed to overrule this and excavate to around 9 times this depth as is in the case of Building B and 5 times as in the case of Building A. This has led to damage being caused to our property due to the boundary to boundary excavation which occurred on either side of us with both Building A & B. The excavation for the underground car park of Building A undermined our driveway, which also serves as an access road to the two blocks of land at the back. This resulted in us not being able to use our driveway for 4 months. Apparently this was due to inadequacies in the design of Building A with the sheet piling collapsing after heavy rain and this in turn caused our driveway to be undermined. Reports conducted by our Engineer stated that this was due to both surface and ground water seepage which was not taken into consideration. Steel screw piles were used in order to reinstate our driveway.

The underground car park of Building A has been designed like a large bowl surrounded by water seepage and subject to tidal flow as it sits a few metres below sea level. It requires a pump to run 24/7. Acid sulphate soils are present on the site of Building A and these had to be removed during excavation and disposed of at an appropriate location as such soil is considered toxic. It is of concern as to whether this water seepage containing acid sulphate residue is being allowed to flow under Pittwater Rd and into the bay in front. How can a development like this be considered compatible given these site constraints?

Our neighbours house also suffered damage resulting in cracks to the interior of their house as a direct result of the massive excavation required for Building B. Jack hammers were used to excavate the car park for Building B as circular saws were not able to manage the very high strength iron cemented ferruginised sandstone bands located on site. The severity of such excavation should have been reason enough to refuse the application to build this SEPPSL Development especially given these site restraints which had been documented and made apparent during DA. Such damage would not have occurred if the site constraints had been properly considered.

WEAKNESSES IN THE DEVELOPMENT APPLICATION AND CERTIFICATION PROCESS ASSOCIATED WITH SEPPSL POLICY

Inadequate Site Analysis at DA Stage

The issue of potential heritage of my house was not addressed during the site analysis at DA stage. This was despite a report submitted by a Heritage Architect with specialist knowledge of our house and the original Architect who designed it. That is, our house was built in 1935 to a design by a famous Architect of the time B.J. Waterhouse. It was one of the first houses built in the area and is considered a rare example of a Waterhouse design remaining almost entirely in its original condition which my family has preserved over the last 70 years of ownership. My family were a pioneering family in the area with links to the early history and development of Pittwater and thus my house should also be considered an item of cultural heritage.

There was no mention of the house's potential heritage resulting in the design of both Building A & B being unsympathetic to my house. Due to the sheer scale of Building B this has resulted in our house being completely compromised in terms of its heritage significance and in my opinion does not warrant heritage listing anymore as the loss of privacy to our dwelling would require a complete redesign of the house in order to compensate for this. In its current state we have no privacy in our back yard and the bedroom to the east has been severely compromised in terms of privacy and acoustic amenity. The windows and terraces on the Western façade of Building B are elevated up to 5m above natural ground line and look directly onto our house and backyard. Privacy should be achieved inherently in the design of the building rather than relying on screen plantings. Furthermore, the species selection for these screen plantings has only allowed for maximum growing heights of 4m and yet the elevation of this western façade is over 8m.The easterly aspect of our front garden has also been compromised with overlooking from Building B. Effectively my house has become totally dwarfed by this massive development adjacent to us.

The report prepared by the Arborist engaged by the developer during DA stage for Building B did not include the 70 year old Magnolia Grandiflora tree located in our front yard. The Arborist said that the reason for this was that the developer had not provided them with correct documents and yet the Arborist was said to have conducted an onsite visual inspection. In our submissions to Council and then the Land & Environment Court we mentioned our concerns regarding this locally significant Magnolia tree as its roots extend into the Development site of Building B. Pittwater DCP 21 states that any tree within 5m of a common boundary has to be included in the Arborist's Report. However, this did not happen despite the fact our tree was within 4m of the shared boundary. Therefore, there was no Tree Protection Order [TPO] put in place for our Magnolia tree. This resulted in the tree roots being badly damaged during the construction of Building B. It was not possible for Council to retrospectively place a TPO on our tree and this resulted in us having to personally negotiate with the builders of Building B as well as engage the services of our own Arborist at considerable expense simply in order to protect this tree. If an adequate site analysis had been performed at DA stage this would not have occurred.

Poor design outcomes have resulted with both Building A & B due to inadequate site analysis during DA stage. If the surrounding houses and natural environment had been sufficiently documented during this initial stage a building far more sympathetic to its surrounding context could have been achieved. Instead the result is two buildings which are orientated far more towards a commercial style of building rather than being in keeping with low scale residential housing that characterizes this locality. This has to be reassessed and more thorough procedures should be mandated in regards to Development Applications.

Over-Riding of Democratic Rights of Residents and Local Council & Lack of Accountability of Developers and Builders

As no one was accountable we have had to engage our own experts costing us close to $25000 for both Developments in order to try and protect our house. We had to engage Solicitors, Architects, Engineers, Surveyors and Arborists to independently assess the risk to our property as well as to enforce and carry out remedial work due to the damage that was caused by both Building A & B during the construction process. Our solicitor wrote to the builders and developers when our property was damaged but we didn't even receive a reply. We personally wrote countless letters to

the builders regarding the damage to our property during the construction of both Building A & B and never once received a reply.

Local knowledge was also not taken into consideration during the Approval stage of these Developments. For example, we tried to explain at numerous D/U meetings about the water problems in this area, especially in regards to Building A but no one took any notice and didn't take into consideration the underground water seepage. As already mentioned this resulted in the undermining of our driveway.

It is all very well to argue that these developments afford opportunity for older people but what about the older people who are already here. What kind of quality of life are we and the local community going to have while all this is going on. We have endured years of inconvenience and stress whilst these two Developments were being built and have not been compensated in any way, shape or form. How is it possible that there is no place for recourse? It can be argued that it is only the Developers who profit at the expense of the local community and environment. Council need to consider a bond being put in place to safe guard any potential loss to neighbouring properties caused by these developments so as to prevent the owners having to 'bear the brunt' of such financial cost resulting from such damage.

Applications for both of these buildings were lodged in December right on the holiday season. We had to write to Council requesting an extension of time especially as everyone wanted to engage experts to prepare reports etc. This needs to be addressed in order that residents are given sufficient time to prepare their objections.

There is an absolute lack of accountability by the developers and builders. Measures need to be put in place to keep them accountable. Furthermore, the Conditions of Consent outlined by the Land & Environment Court in regards to Building B were simply not followed. For example, the Land and Environment Court Proceedings highlighted the fact that the development was not to involve 'boundary to boundary excavation'. As stated in Clause 79 Appeal No: 10147 of 2006;

> *As amended in July 2006, the proposal would not involve an excavation of the land from "boundary-to-boundary" as alleged in the issues.*

However, this did occur during the excavation of the underground car park and as a direct result of this we had our land undermined. Use of our land at the rear of our property for an area of 2 x 3 metres was restricted with the Geo-Technical Engineer engaged by the developer deeming it unsafe when he came out to inspect the site. It remained like this for close to 12 months and our garden shed still has cracks due to it being undermined by this excavation. This is because the excavation made no allowance for the shoring of our property and the engineer whom we engaged advised that the excavation works that had been carried out were structurally unsound. The engineer also advised that no care had been taken by the builder to ensure the stability of the excavation.

When we wrote to the Land & Environment Court they said we needed to contact the PCA but isn't the court the certifying authority? No one has any moral responsibility and no one is in charge. It was left simply up to us to form a good relation with builder and the PCA. Where is the protection for resident's properties that are living adjacent to these developments? What is the point in the Court outlining all of these Conditions of Consent if there is no one to ensure that such Conditions are followed?

A Section 96 to modify Building B with the addition of a Plunge Pool for one of the Units was submitted during the construction stage. This was submitted to Council yet why was it not submitted to the Land & Environment Court as they were the Certifying authority? The Court approves these developments after Council has refused them and yet they are then exempt from any further involvement. Developers should have to submit any modifications to the Court and pay money to do so.

Conflict of Interest in Regards to Private Certifying Authority

There is an obvious conflict of interest as the PCA is paid by the developer. From our experience it has been very important to establish a good rapport with the PCA as they become a critical contact

between the builder and surrounding residents especially as Council have no power as the PCA replaces their role as the Certifying Authority. Issues have arisen when we have realized that these buildings have been non-compliant. It is not sufficient that Occupation Certificates can be granted when a building is non-compliant and the only means we as the residents have at our disposal is to report the PCA to the Builders Professional Board and wait for them to investigate. From our experience it is left up to us to do the hard negotiating with the builders and make these two buildings as compliant as possible. We have been left to do the work of the PCA. For example, I have personally intervened and assisted the builders with the landscaping for Building B in order to achieve adequate screening for the development. I have ended up doing landscaping and watering the plants for them not because I am being paid or have nothing else to do with my time but simply because if I don't do it no one else will and the plants will die as has already happened and then it will be upon my shoulders to contact the PCA so that the dead plants are then replaced and the cycle starts all over again.

CONCLUSION

In conclusion I would like to state that from having lived through the entire process of two SEPPSL Developments I can justifiably say that there are gross inadequacies within the system from the DA stage to the Issuing of Occupation Certificate. We have endured far more stress than we should have not to mention the financial costs we have been burdened with all because of a Policy which may theoretically have some merit but in practice does not work except to make developers wealthy.