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05 December 2022

Chair
Development Assessment Panel
PMHC

CC PMHC CEO and Councillors

RE: Development Assessment Panel Meeting - Wednesday, 7 December 2022

Item 08 DA2021 - 964.1 Demolition of Dwelling and Construction of New Dwelling and Swimming Pool at Lot 29A DP 24446, No. 976 Ocean Drive, Bonny Hills

Dear Chairperson

Our apologies for not attending this meeting in person due to a prior engagement. We note that the recommendation is that "the development application be approved subject to the conditions in Attachment 1".

Bonny Hills Progress Association (BHPA) does not usually enter into discussion of individual Development Applications but the sheer scale of this proposal, its location, its impact on the village character of Bonny Hills, and numerous concerns brought to us by neighbouring property owners, has obliged us to take notice.

Further to our earlier submissions there are two related points we would like to make for your consideration, one of which is perhaps more relevant to Council:

1. Assessment of view sharing

View sharing was by far the greatest concern of neighbouring property owners. Step 4 in the judgement in *Tenacity Consulting v Warringah* 2004 NSW LEC 140 makes the clear point that:

"A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable."

And yet despite this DA being non-compliant on five counts the judgement has been made that view impacts are reasonable, simply because building height is compliant. The assessment for one neighbouring property was "The extent of view loss is considered to be severe". Surely the simplest way to further reduce view impacts is to insist that the building be compliant regarding setback from Ocean Drive, so moving it further down the hill. The decision to allow non-compliance of setbacks on such a large block (1568m2) seems extraordinary.

2. Council processes for dealing with DAs of this nature

Through no fault of planning staff, Council's credibility has taken a beating in the impact assessment of this DA. This is really unfortunate, and Council's planners have been 'hung out to dry' in the process.

There are two main reasons for this in our view:

- A lack of precise guidelines and policies for planners to use in their assessments.
- A lack of transparency about the processes used and how decisions are made.

Quoting from the agenda paper:

'Council has no adopted policy or guideline specifying minimum requirements for assessment of view impacts'

'Council has no policy or guideline on the erection of height poles'.

Under "View sharing" – 'Council has no specific policy surrounding assessment of view impacts'.

Other Councils are doing considerably better in this regard as we pointed out in our submission of 9 October, and there is little excuse for Port Macquarie Hastings Council not to follow suit.

We suggest that lessons should be learned from this unfortunate example. With declining availability of prime coastal real estate, the pressures on planners can only become greater and they will need the tools to manage these pressures effectively and transparently as wealthy developers move in.

BHPA trusts that the concerns outlined here will be given serious consideration.

Yours sincerely

Roger Barlow
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