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Subject: 27 Bellevue Avenue, Avalon Beach NSW 2107 DA 2020/1162 WRITTEN
SUBMISSION: LETTER OF OBJECTION #2 Submission: Williams

Attachments: Submission #2 Williams.docx;

SUBMISSION: WILLIAMS
a written submission by way of objection to DA 2020/1162

Mr & Mrs John & Carol Williams

12/15 Old Barrenjoey Road
Avalon Beach
NSW 2107

5 March 2021

Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
Dee Why
NSW 2099

Northern Beaches Council
council@northernbeaches.nsw.gov.au

Dear Chief Executive Officer,

Re:
27 Bellevue Avenue, Avalon Beach NSW 2107
DA 2020/1162

WRITTEN SUBMISSION: LETTER OF OBJECTION #2
Submission: Williams

This document is a written submission by way of objection to DA 2020/1162
lodged under Section 4.15 of the EPAA 1979 [the EPA Act]

We refer to our earlier Submission dated 18 October 2020.

We refer to the submission of Amended Plans by the Applicant, Issue B dated 1 March 2021.

Unfortunately, the Amended Plan submission has not dealt with any of the matters raised within our Submission dated 18 October 2020.

Our objection to this DA therefore remains, and we ask Council to REFUSE this DA.

The rear setback has not been amended and therefore the proposed development remains non-compliant to Clause 40 of SEPP [HSPD], and to DCP D1.9 Rear Building Line controls

The poor rear setback results in unreasonable and unacceptable amenity outcomes, of loss of privacy, visual bulk, and loss of amenity from the loss of existing landscape and trees of high significance.

We agree with Roseth SC in NSWLEC Pafbum v East Sydney Council:

“People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.”

The ‘*legitimate expectation*’ that we had as a neighbour was for a development that would fully respect the Rear Setback controls, and in doing so would ensure that the existing trees in the rear setback zone, and more generally across the subject site, and would be fully protected and fully preserved.

In Project Venture Developments v Pittwater Council (2005) NSW LEC 191, NSW LEC considered character:

“whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site’s visual catchment”

The non-compliant elements of the proposed development, particularly caused from non-compliant Clause 40 SEPP [HSPD], DCP D1.9 Controls of Rear Setbacks, and the lack of B4.22 Preservation of Trees and other issues would have most observers finding *‘the proposed development offensive, jarring or unsympathetic having regard to the built form characteristics of development within the site’s visual catchment’*, including our property.

The existing trees on the site particularly the Sydney Red Gums Tree 21, 23, 26, 33, and the Cheese Tree T25 provide particular amenity to us.

We are concerned that the non-complaint rear setback is resulting in the removal of Tree 34 Red Bloodwood, and the two Stringy Barks Tree 35 and 36.

The latest Arborist Report states that Tree 34 is of Very High Landscape Significance and in good health.

Trees 35 and 36 are stated as High Landscape significance.

We are very concerned that although Tree 33 is to be retained, it appears omitted from nearly all of the DA drawings, such as DA 100-B, DA 102A, DA 110B, DA 120B, DA 301B, DA 302B, and DA303B. Is the real intent to remove this tree, or somehow suggest that it was to be removed?

We agree with Council's Landscape Officer in the referral response of 3 March 2021, however we ask Council to also consider **Tree 34, 35 and 36** that are **within the rear setback zone, but are planned for removal due to non-compliant development in the rear setback zone.** We are of the view that similar comments made by Council's Landscape Officer to Tree 33, would also be relevant to Tree 34, 35, and 36. A rear setback must ensure the long-term arboricultural preservation of these existing trees.

The Landscape Officer states:

Concerns remain that excavation works and the proximity of existing trees to proposed building and structures will place ongoing issues with the arboricultural preservation of existing trees in the long term, as opposed to arboricultural construction methods near the existing trees, as follows:

- T21 (Sydney Red Gum): the updated arboricultural impact assessment provides construction recommendations including the use of permeable pavers for the proposed new driveway which is contrary to Council's engineering standards requiring concrete driveways, and hence the advantages of permeable paving to providing moisture and aeration to the existing root system is not available, thus restricting the available area for future root growth deemed necessary where the area lost to an encroachment should be compensated elsewhere and contiguous with the tree protection zone. The amount of built elements around T21 including driveway and pavement, and building reduces the natural ground area available for future growth,*
- T23 (Sydney Red Gum), T25 (Cheese Tree), and T26 (Sydney Red Gum): the existing tree trunks are suitably located approximately 3 metres and more away from buildings to be able to construct the development works, but are located against the proposed walkway, and in close proximity to the lift and pool, such that the long term preservation of these trees is at*

risk from resident safety concerns and requests for removal based on proximity to building, structures and the loss of solar access to the building internal areas and the pool. Council would be required to assess any such tree applications for removal on merit, and it is considered that such possible removal then does not present any opportunity for replacement trees of a similar size due to the reduced natural ground areas,

• T33 (Sydney Red Gum): the existing tree trunk is located approximately 1 metre from the lower parking level and the building line / terrace/ lounge of Apartment 3 at the lower ground level, and whilst the updated arboricultural impact assessment determines construction in close proximity is feasible, the long term preservation of this tree is at risk from resident safety concerns and requests for removal based on proximity to building and the loss of solar access to the building internal areas. Council would be required to assess any such tree application for removal on merit, and it is considered that such possible removal then does not present any opportunity for a replacement tree of a similar size as the rear setback is insufficient in area to support an equal sized canopy tree.

Landscape Referral are of the opinion that a reduction of the footprint away from these existing trees is required to achieve retention of the trees in the long term, and provide an acceptable landscape outcome, where development is incorporated into a landscape setting typical of the locality.

The proposal is therefore unsupported.

We also raise objection to the proposed concreting of the strip beside our fence in Wickham Lane. We have mulched, planted and watered this bed at the corner of Sanders and Wickham Lanes. The Developer proposes to place their waste bins for collection on this zone, and that is both unreasonable and unacceptable. All waste storage and collection will need to occur on the subject site.

We also support the numerous NBC Officer referrals that are all 'unsupportive' of this DA:

- Landscape
- Natural Environment: Biodiversity
- Traffic Engineer
- Waste

We support the NBC Officers concerns on all these matters.

We also bring to Council's attention numerous NSWLEC decisions on this matter, as stated in our earlier Submission:

- *Jigari Pty Ltd v City of Parramatta Council* [2018] NSWLEC 1568 Dickson
- *Manderrah Pty Ltd v Woollahra Municipal Council and Anor* [2013] NSWLEC 1196 at [70] Tuor
- *De Stoop v Ku-ring-gai Council* [2010] NSWLEC 1019 at [60];
- *Nanevski Pty Limited v Rockdale City Council* [2010] NSWLEC 1220 at [47] Tuor

In assessing the impact of a development proposal upon a neighbouring property, what was said by Roseth SC in *Pafbum v East Sydney Council* [2005] NSWLEC 444 (16 August 2005), at [19]-[24], is extremely helpful:

19 Several judgments of this Court have dealt with the principles to be applied to the assessment of impacts on neighbouring properties. Tenacity Consulting v Warringah [2004] NSWLEC 140 dealt with the assessment of views loss; Parsonage v Ku-ring-gai Council [2004] NSWLEC 347 dealt with the assessment of overshadowing; while Meriton v Sydney City Council [2004] NSWLEC 313 and Super Studio v Waverley Council [2004] NSWLEC 91 dealt with the assessment of overlooking.

20 Five common themes run through the above principles. The first theme is that change in impact may be as important as the magnitude of impact.

21 The second theme is that in assessing an impact, one should balance the magnitude of the impact with the necessity and reasonableness of the proposal that creates it.

22 The third theme is that in assessing an impact one should take into consideration the vulnerability of the property receiving the impact.

23 The fourth theme is that the skill with which a proposal has been designed is relevant to the assessments of its impacts. Even a small impact should be avoided if a more skilful design can reduce or eliminate it.

24 The fifth theme is that an impact that arises from a proposal that fails to comply with planning controls is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.

In the case of the present development proposal:

1. the magnitude of impact upon the amenity, use and enjoyment by us of our property is certainly not insignificant, in that:
 - the visual and acoustic privacy, visual bulk impacts, and loss of amenity from the destruction of very high value trees, from the proposed development
 - The extent of the proposed building envelopes
 - The siting and extent of the proposed building without having sufficient consideration for maintaining amenity, with non-compliant SEPP HSPD Clause 40 and and DCP Rear Setbacks and other controls.
 - taking amenity from neighbours
2. our property is vulnerable, being directly opposite to the subject site;
3. the lack of attention in the design of the development proposal as regards the impacts of the proposed development on our property in terms of height, bulk, lack of adequate rear setback, visual privacy, acoustic privacy, visual bulk, and loss of tree canopy, is relevant to the assessments of those impacts, such that even a small impact should be avoided if a more skilful design can reduce or eliminate it;
4. the fact that the proposal fails to comply with a number of important planning controls is much more difficult to justify than would otherwise be the case with a complying proposal; and
5. the proposal involves non-compliance with a number of SEPP Clause 40 controls, and LEP and DCP controls and this is an indicator of overdevelopment of the site.

In summary, we have, as Roseth SC pointed out in Pafbum, a legitimate expectation that the development to take place on the subject property '*will comply with the planning regime*' in the present circumstances.

The proposal is contrary to Section 4.15(1)(a) and (b) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not satisfy the aims, standards, controls, and objectives of the SEPP HSPD, LEP, and DCP.

The proposal is contrary to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that it will have an adverse impact on the natural and built environments in the locality.

The proposals are unsuitably located on the site pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

The proposal is contrary to the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.

We ask Council to REFUSE this DA.

Yours faithfully,

Mr & Mrs John & Carol Williams
12/15 Old Barrenjoey Road
Avalon Beach NSW 2107