
From: Brett Daintry
Sent: 27/02/2024 3:39:33 PM
To: Council Northernbeaches Mailbox
Cc: Brigg , Peter; Hazer, Sophie
Subject: TRIMMED: DA2024/0044 - Submission - 25-27 Kevin Avenue AVALON BEACH NSW 2107 - Demolition works and construction of Seniors Housing with basement parking
Attachments: DA20240044 Submi ion Daintry A ociate Pty Ltd HSF comment pdf;

Our Ref: Project 994
Your Ref: DA2024/0044
27 February 2024

Mr Scott Phillips
General Manager
Northern Beaches Council
(by email: council@northernbeaches.nsw.gov.au)

Attention: Gareth David, Assessment Officer
Re: Submission - Development Application - Demolition works and construction of Seniors Housing with basement parking
Property: 25-27 Kevin Avenue AVALON BEACH NSW 2107

I refer to the development application DA2024/0044 for demolition works and construction of Seniors Housing with basement parking at 25-27 Kevin Avenue, Avalon Beach NSW 2107 (**Proposal**)

I am instructed by the owner of 23 Kevin Avenue, AVALON BEACH (**No.23** or the **southern neighbour**) to review the Proposal, as neighbour notified, and make submissions for the consent authority's consideration under section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979 (EPA Act)

My submissions are attached. Should you require any clarification please don't hesitate to call me.

Regards

Brett

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cc Mr Peter Briggs,
Partner
Herbert Smith Freehills

cc Sophie Hazer (née Volk)
Senior Associate
Herbert Smith Freehills

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I refer to the development application DA2024/0044 for demolition works and construction of Seniors Housing with basement parking at 25-27 Kevin Avenue, Avalon Beach NSW 2107 (**Proposal**).

I am instructed by the owner of 23 Kevin Avenue, AVALON BEACH (**No.23** or the **southern neighbour**) to review the Proposal, as neighbour notified, and make submissions for the consent authority's consideration under section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979 (EPA Act).

No.23 is the most directly and adversely affected neighbouring property in terms of loss of trees, extent of excavation and built form impacts caused by the Proposal.

Section 4.15 of the EPA Act outlines the matters that a consent authority must consider in determination a development application. In our submission, it is not open to the consent authority, acting reasonably, to find that these matters have been adequately accommodated in this Proposal because:

- the object of the EPA Act, *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)*, Pittwater Local Environmental Plan (**LEP**) and Pittwater 21 Development Control Plan (**DCP**) objectives will not be achieved by the proposal (s 4.15 (1) (a)). In addition to these provisions the consent authority should, to the extent they are relevant, give significant weight to and apply the methodology of the Land and Environment Court's Planning Principles in its assessment under section 4.15 of the EPA Act.
- Most relevantly, the site is not suitable (s 4.15 (c)), for ten (10) in-fill self-care housing units because, by distance and topographically, residents will not have "*adequate access to facilities and services*" as required by clause 93 of the Housing SEPP. Access is not adequate because:
 - The facilities and services, or transport service, is located more than 400m from the site and therefore does not comply with clause 93(a) of the Housing SEPP; and

- the location is absent a “**suitable access pathway**” to facilities and services for the proposed independent living units and therefore does not comply with clause 93 (3) (b) of the Housing SEPP . The absence of a **suitable access pathway** is defined by section 93(4) of the Housing SEPP.
- The likely impacts of the Proposal are not acceptable (s 4.15 (b)) including biodiversity, amenity, visual impact, shadowing, and traffic issues. These matters are discussed further below.

Issues

This submission will outline the following issues with the Proposal:

1. Distance & Grades to Facilities, Shops and Services – The Accessibility Report does not establish compliance with Clause 93 and Clause 108(a) of the Housing SEPP.
2. Extensive land clearing, potential biodiversity impacts (lack of BDAR), lack of sufficient replacement canopy occasioned by an excessive building footprint.
3. Excessive excavation offending the objectives of clause 7.2(1) of the LEP, failing to identify the effect of the development on the existing and likely amenity of adjoining properties (in particular No.23) and failing to provide appropriate measures proposed to avoid, minimise, or mitigate the impacts of the development.
4. Loss of Aural and Visual Privacy to No.23 the design providing large, elevated private open space (POS) areas that directly overlook the POS within No.23.
5. Shadowing of No.23 caused by the Proposal.
6. Excessive bulk and scale causing visual intrusion to No.23.
7. Traffic and Parking Impacts – The Statement of Environmental Effects (SEE) refers to the Traffic and Parking Assessment Report prepared by Terraffic Pty Limited not published publicly for review by neighbours or their consultants.

1. Suitable access pathway

Clause 93 (1) of the Housing SEPP provides that:

*(1) Development consent must not be granted for development for the purposes of an independent living unit unless the consent authority has considered **whether residents will have adequate access to facilities and services—***

- (a) by a transport service that complies with subsection (2), or*
- (b) on-site.*

Clause 93 (3) provides that:

(3) For the purposes of subsections (1) and (2), access is adequate if—

(a) *the facilities and services are, or the transport service is, **located at a distance of not more than 400m from the site, and***

(b) ***the distance is accessible by means of a suitable access pathway, and***

(c) *the gradient along the pathway complies with subsection (4)(c).*

(emphasis added)

The site is 400m or a 6 minute walk from the north bound Barrenjoey Road bus stop and more than 400m as one must cross Barrenjoey Road to gain access to the south bound Barrenjoey Road bus stop. The Access Report calls this Option A and new footpaths would be required to be constructed.

Option B would again access the same bus routes but relies on traversing a mid-block link (grades unclear). The Access Report concedes that one bus stop is 426m from the site but does not disclose which one specifically.

The Access Report is vague about compliance with the maximum grades established by clause 93 (3) (c) and 4 (c) of the Housing SEPP, for both option A and B.

Firstly, the option that has a travel distance exceeding 400m must be ruled out by application of clause 93(3)(a) of the Housing SEPP.

Secondly, the Applicant must provide a detailed long section of the full paths of **suitable access pathway** from the site to bus stops within 400m of the site demonstrating full compliance with clause 93(4)(c) of the Housing SEPP.

It is my submission that the statement in the Access Report that "**appropriate access in accordance with Clauses 93(2)(3)(4) and 104(a) of the SEPP HS**" is provided is not supported by sufficient rigour to satisfy the statutory preconditions to the permissibility of the proposed independent living units.

2. Biodiversity impacts (lack of BDAR)

The extent of vegetation being removed is significant and there is a real question as to whether a biodiversity development assessment report (**BDAR**) is required under the *Biodiversity Conservation Act 2016*. The statutory requirements for a BDAR must be satisfied and we leave that with Council to ensure compliance is achieved.

On the merits, we submit that too many trees are proposed to be removed and the extent of tree cover proposed is not sufficient to offset canopy loss.

3. Earthworks (Section 7.2 of the LEP)

The Proposal does not ensure that the excavation will not have a detrimental impact on neighbouring uses.

The effect of the development's excavation on the existing and likely amenity of adjoining properties (including No.23) as well as other neighbours, is addressed in a superficial way by the SEE referring to the Geotechnical Report prepared by Crozier Geotechnical Consultants.

The Geotechnical Report does not sufficiently detail appropriate measures proposed to avoid, minimise, or mitigate the impacts of the development.

The Geotechnical Report does not address and is not conclusive as to:

- The volume of excavated material to be removed given the need for the buildings to be founded upon foundations with the same Allowable Bearing Pressure (ABP). This may mean that excavation is significantly greater than the 5.5m articulated by the Geotechnical Report. The report states "Locally deeper excavations appear required for footings, lift pits and service trenches." But this is not quantified.
- Whether the footing of the neighbouring structure are founded upon sand or bedrock and how any damage to them will be mitigated, i.e. excavation methodology and vibration monitoring.
- Whether the volume of ground water or its position indicate any hanging or perch aquifers that in turn may require temporary or permanent dewatering of the site, what impact this may have and whether activity approval is required under the water use approval, water management work approval or activity approval required under Part 3 of Chapter 3 *Water Management Act 2000*. I note the report assumes "*that the retaining walls will be fully drained with suitable subsoil drains provided at the rear of the wall footings. If this is not done, then the walls should be designed to support full hydrostatic pressure in addition to pressures due to the soil backfill*". WaterNSW have in similar circumstances required the installation of ground water monitoring to properly and conclusively determine the extent of ground water affecting sites, and this can trigger Integrated development under Part 4, Division 4.8 of the EPA Act.
- The Geotechnical Report is not conclusive, stating at p.9 "*Additional geotechnical investigation in the form of cored boreholes is required to confirm the condition of bedrock below the existing investigation and proposed bulk excavation level.*"
- The Geotechnical Report also observes "*The use of rock hammers can create ground vibrations which could damage the neighbouring and adjacent structures even during demolition works.*" Nevertheless, the Geotechnical Report does not, despite setting a Peak Particle Velocity Limit of 5mm/s, make any recommendations for vibration monitoring or alarm system that is reasonably necessary, especially where neighbouring buildings may be founded upon sand and there is excavation into bedrock below.

- The duration and temporary impacts of excavation, which might also be determined by a Construction Management Plan addressing hours of work, truck movements, erosion and sedimentation controls and dust mitigation measures.

4. Loss of Aural and Visual Privacy to No.23

The Proposal provides for elevated POS that directly overlooks the POS within No.23.

The Aural and Visual Privacy impacts should in this R2 low density residential zone be treated with a higher level of sensitivity than in medium or high density zones.

Despite the LEP prohibiting the proposed use it is usurped by the Housing SEPP, but clause C1.5 Visual Privacy of the DCP expressly applies to Seniors Housing.

The objective of clause C.15, C1 Design Criteria for Residential Development of the DCP is that:

“Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.”

The development controls under clause C1.5¹ of the DCP are:

“Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).

Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.

Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.”

The design is not a good design in this sense and the Proposal fails to comply with the development controls as well as not achieving the objectives. The design must be altered to eliminate direct overlooking of the POS within No.23.

5. Shadowing of No.23

The extent of overshadowing as shown by drawing A.12 Revision A Shadow Diagrams of the northern elevation of the existing dwellings and the open space of No.23 is considered severe.

This can be reduced by moving the development further north so that the 3m setback is to the northern boundary and there is an increased setback to the boundary with

¹ <https://eservices.northernbeaches.nsw.gov.au/ePlanning/live/Pages/Plan/Book.aspx?exhibit=PDGP&hid=11916>

No.23. This should occur as there is no significant change to the amenity for future occupants but a significant improvement to the amenity of No.23.

6. Visual intrusion to No.23 – Bulk and Scale

The change requested above in relation to shadowing applies equally to the impacts of visual intrusion of the building's bulk and scale. There should be as a minimum an increased boundary setback to No.23.

The height, shape, bulk, and scale is completely out of character with other residential dwellings within the immediate vicinity (visual catchment). The Proposal simply too big and occupies too much of the site offending in particular Clause 14.1 of the *Seniors Housing Design Guide*, published by the Department in December 2023.

7. Traffic and Parking Impacts

The owner of No.23, along with many other neighbours, have highlighted that the road is narrow and often on-street parking on both sides constricts the width of the road to a single lane causing traffic impacts and conflicts. The owner of No.23 is seeking an independent review by a Traffic Engineer of the road related impacts and may lodge a further and more detailed submission in this regard.

Conclusion

On its face, the Proposal does not provide adequate access to facilities and services as required by the Housing SEPP and therefore the site is not suitable, for ten (10) in-fill self-care housing units. The suitability of the site for the development is a mandatory relevant consideration under section 4.15 (1)(c) of the EPA Act.

The site is simply too isolated from access to services and the distance, and the topography does not support independent living units. On this basis alone, the Proposal should not receive your favourable consideration and we seek a recommendation for refusal to the Local Planning Panel (**LPP**).

Albeit permissible under the Housing SEPP, the Proposal would otherwise be prohibited in this low density zone under the LEP. This highlights the need for a rigorous assessment against the statutory considerations under the Housing SEPP and a heightened level of sensitivity to the externalisation of impacts upon neighbours.

In my submission, the design offends clause 97 of the Housing SEPP and the *Seniors Housing Design Guide*, published by the Department in December 2023 (<https://www.planning.nsw.gov.au/sites/default/files/2023-07/seniors-housing-design-guide.pdf>). This requires careful consideration by Council's report to the LPP, will this development build a community or is the Housing SEPP just being used to maximise yield for a developer?

Please don't hesitate to contact me on [REDACTED] or by email [REDACTED]

Yours faithfully,



Brett Daintry, MPIA, MAIBS, MEHA, MEPLA
Director