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**Sent:** 19/10/2020 11:09:53 AM

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

**Attachments:** Submission Williams .pdf;

S U B M I S S I O N : W I L L I A M S  
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

18 October 2020

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

Northern Beaches Council  
[council@northernbeaches.nsw.gov.au](mailto: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  
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]

The DA seeks development consent for the carrying out of certain development, namely:

*Demolition of existing building and associated structures the construction of Seniors Housing under SEPP (Housing for Seniors or People with a Disability) 2004, at No. 27 Bellevue Avenue, Avalon Beach.*

Cost of Work: \$5m.

The subject site is zoned Zone R2 Low Density Residential under the LEP, and there is no reason, unique or otherwise why a fully compliant solution to SEPP HSPD, LEP and DCP controls cannot be designed on the site.

## **Executive Summary**

This Written Submission addresses our objection to the above development.

We want to emphasise the fact that we take no pleasure in objecting to our neighbour's DA.

We are objecting because the proposed DA has a very poor impact on the amenity of our property, and this is caused by the DA being non-compliant to SEPP HSPD, LEP, and DCP controls.

If the DA was fully compliant to all controls our amenity loss would be more reasonable.

It does seem unreasonable that the Applicant wishes to remove our amenity to improve his own, and is proposing non-compliant outcomes that would adversely affect our amenity.

Our main concerns are:

- Visual Privacy
- Acoustic Privacy
- Protection of Trees

We contend that our amenity losses are directly attributable to non-compliance of the SEPP HSPD Clause 40 controls.

The Applicant's SEE states the matter very clearly:

*The assessment demonstrates that the proposed development is generally consistent with the principles, design requirements and guidelines outlined by the Policy, with the exception of storey height in the rear 25% of the site.*

The Applicant's SEE continues:

*Storey Height in Rear 25% of the Site*

*Clause 40 of SEPP (HSPD) provides a number of development standards to be complied with for seniors housing developments. Subclause (4) states the following:*

- (4) Height in zones where residential flat buildings are not permitted If the development is proposed in a residential zone where residential flat buildings are not permitted —  
(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.*

*The interpretation under Clause 3 of SEPP (HSPD) states the following:*

- (2) In calculating the number of storeys in a development for the purposes of this Policy, a car park that does not extend above ground level by more than 1 metre is not to be counted as a storey.*

In this Submission we will contend that the proposed car park extends above ground by more than 1 metre, to a zone to a rear setback of 10.20m.

The proposed rear setback is just 3.25m, and therefore there is a substantial 313% non-compliance to SEPP HSPD controls.

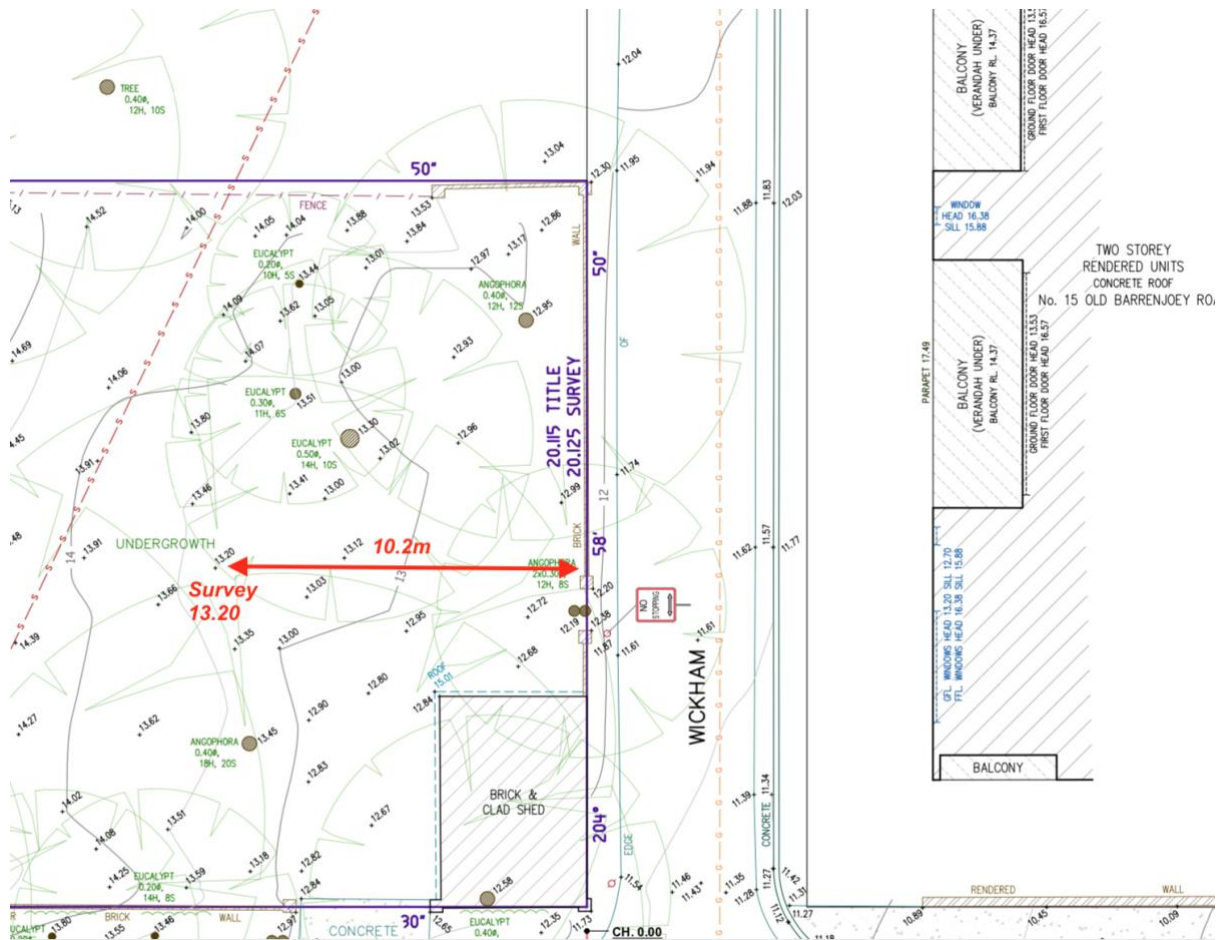
The proposed Lower Ground Floor is at FFL 14.40, and a survey mark at 13.20 is positioned 10.2m from the rear boundary.

This represents a finished floor level 1.2m above this survey level, allowing for a 200mm slab.

Control D1.9 of PDCP provides that development in Avalon Beach on land zoned R2 Low Density Residential, R3 Medium Density Residential or E4 Environmental Living should have a rear setback of 6.5m.

We contend that as the proposed development is two storey in the rear quarter, then Council must impose a minimum rear setback of 6.5m.

We attach the following sketch:



It is our contention that the Lower Ground Floor must have a rear setback of 6.5m to better accord with Clause 40, and Control D1.9 of PDCP that provides that development in Avalon Beach on land zoned R2 Low Density Residential, R3 Medium Density Residential or E4 Environmental Living should have a rear setback of 6.5m.

Within the rear setback zone of 6.5m are a number of existing trees that provide considerable amenity. With careful design more of the existing trees in this zone could be preserved.

In this Submission we will discuss rulings regarding this matter at the NSWLEC that are relevant for Council to consider.

We will consider the statements made within the SEE relating to this matter, and offer an alternative view point.

We are concerned to the non-compliance of the LEP:

PLEP 2014

- 1.2 Aims
- 2.3 Zone R2 Low Density Residential

## P21DCP

- A4.1 Avalon Beach Locality
- B4.22 Preservation of Trees & Bushland Vegetation
- B6.3 Off Street Parking Requirements
- C1.1 Landscaping
- C1.5 Visual Privacy
- C1.21 Seniors Housing
- D Locality Specific Development Controls
- D1 Avalon Beach Locality
- D1.1 Character as viewed from a public place
- D1.4 Scenic Protection
- D1.9 Side and Rear Building line
- D1.11 Building Envelope
- D1.13 Landscape Area - General

We contend that it is necessary for the Developer to submit the following additional information and amended plans. We ask Council to 'stop the clock' and ask the Applicant for the following:

This information must be requested in accordance with Clause 54 of the Environmental Planning and Assessment Regulation 2000 (the Regulation) and pursuant to Clause 112 of the Regulation:

To enable Council and Neighbours to undertake an accurate and detailed assessment, the 'ground level existing' under NSWLEC Stamford, including all registered surveyors spot levels and contours, and all proposed RLs are to be accurately and clearly detailed on all the amended plans, sections and elevations.

The proposal exceeds standards and the proposed development is required to be amended to comply with the following SEPP HSPD, LEP, DCP controls:

1. Increase Rear Setback to 6.5m
2. Retain existing Trees in Rear Setback

3. Carpark to have a 6.5m Rear Setback
4. Landscape to fully cover the proposed development by dense vegetation screen facing Wickham Lane
5. Privacy Screens to windows facing Wickham Lane



DATE A	DATE 10/9/20	DESCRIPTION ISSUED FOR DA	PROJECT 27 BELLEVUE AVE (AUNTON)	DATE NTS	DRAWING TITLE PHOTOMONTAGE 2	
			OWNER DA CLIENT CONSTRUCT BY DESIGN DRAWN BY SHED CHECKED BY SHED INCHES BY CH		DRAWING NO. 1901- DA 002 A	

*The Wickham Lane Montage clearly shows the unacceptable rear setback, and the removal of substantial trees in the DCP 6.5m rear setback zone. The rear setback does not accord with SEPP HSPD nor PDGP. Landscape is insufficient to screen the proposed building to Wickham Lane.*

## CHARACTERISTICS OF MY PROPERTY

Key aspects of our property are as follows:

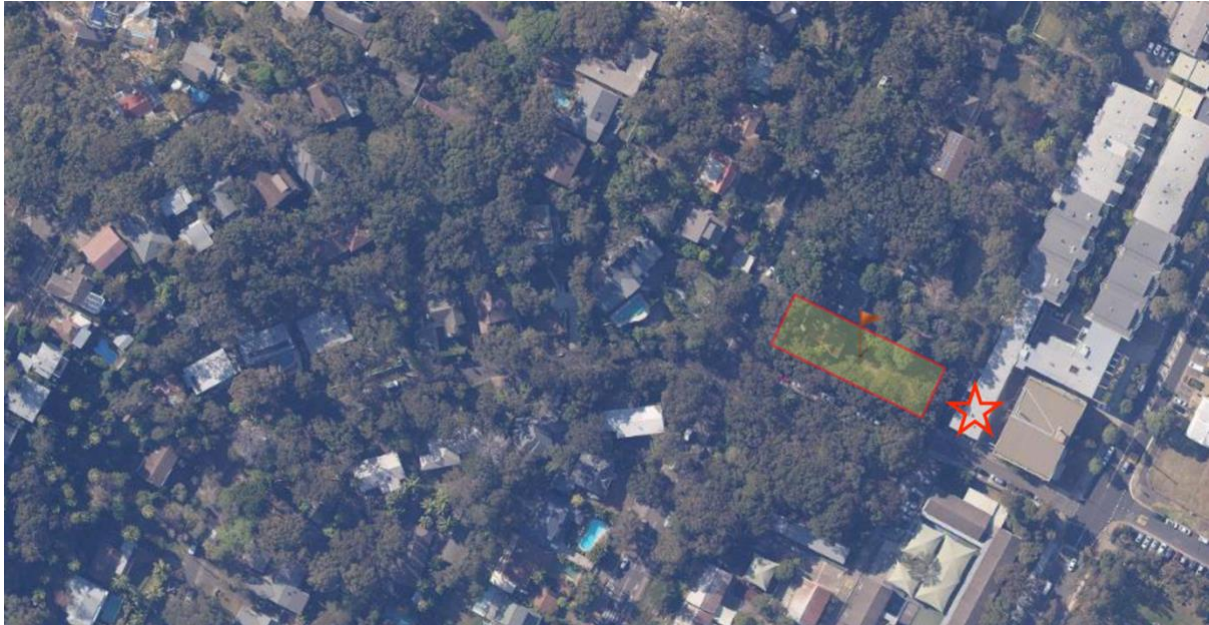
Our property is immediately across Wickham Lane from the proposed development with the subject property.

The subject site lies to the west of our property.



We enjoy extremely good levels of privacy, daylight access, and landscaped views over the subject site's rear boundaries.

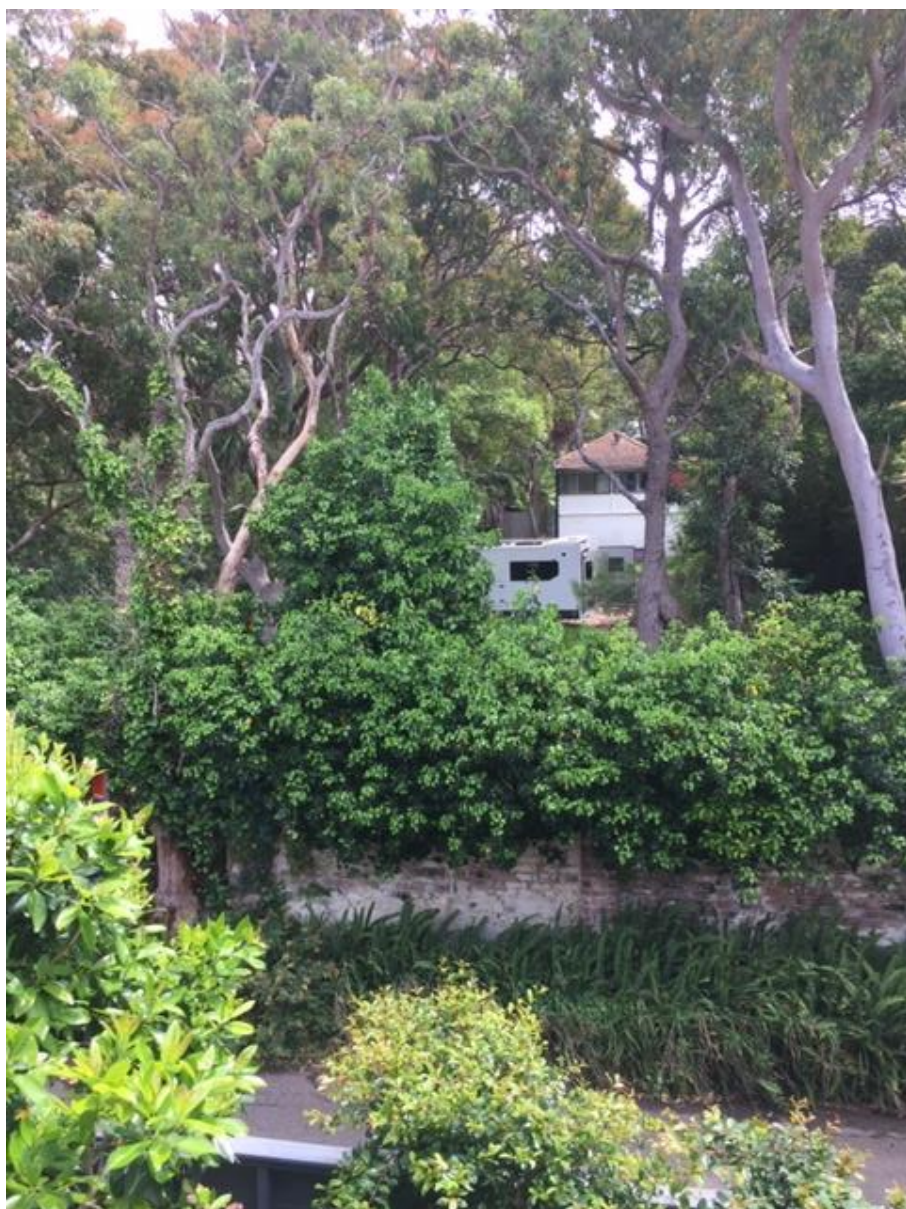
Our property is shown on the attached map 'red starred'. The subject site is shown 'edged in red and flagged'.



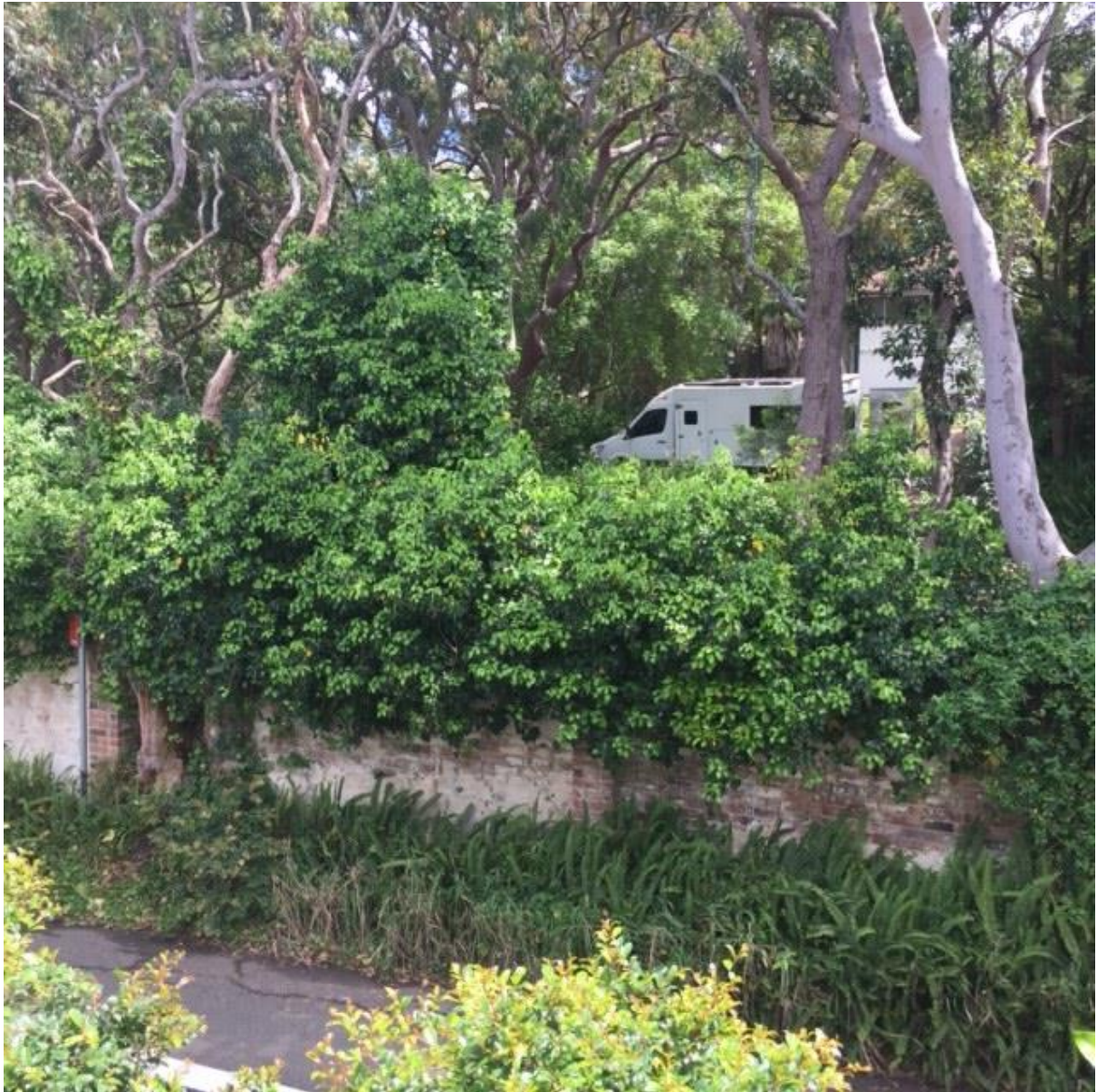
The following photographs show the current views from our property to clearly show the current leafy character of the view and outlook compared with what is proposed.

















## MATTERS OF CONCERN

We are concerned that these impacts will negatively impact the level of amenity currently enjoyed.

The following aspects of the proposal are of concern:

- The extent of the proposed building envelopes
- The siting and extent of the proposed dwelling without having sufficient consideration for maintaining amenity

We provide further details of these matters below and request Council's close consideration of these in the assessment of the application.

We are concerned that the SEE has failed to properly address our amenity concerns, and is suggesting that the DA accords with SEPP HSPD, LEP and DCP outcomes and controls when it clearly it does not.

The non-compliance to SEPP HSPD, LEP and DCP outcomes and controls forms the basis of our objection.

The subject site is of a large size, and there is no reason, unique or otherwise why a fully complaint solution to all outcomes and controls cannot be designed on the site.

This letter of objection will detail our concerns, and our amenity losses that have arisen as a direct result of the non-compliance to outcomes and controls.

## **SITE DESCRIPTION**

The site is described within the Applicant's SEE.

*The site has a north-western street frontage to Bellevue Avenue of 20.115m, a south-western street frontage to Sanders Lane of 60.365m, a south-eastern rear street frontage of 20.125m, and a north-eastern side boundary of 60.365m. The site has a total area of 5,528m<sup>2</sup>. It has a site area of 1,214m<sup>2</sup>.*

*The site falls by approximately 9m from the north-west to south-east. It is characterised by dense tree coverage, including significant trees located along the site boundaries, including on Council-owned land adjoining the site.*

*A single storey rendered detached dwelling house is located on the north-western side of the site with vehicular access via Sanders Lane. A further vehicular access from Sanders Lane is located towards the southern corner of the site, close to the intersection with Wickham Lane.*

*The site is zoned R2 Low Density Residential and the surrounding area is characterised by residential lots containing detached dwelling houses with dense vegetation cover to the north and west. No.29 Bellevue Avenue adjoining the site to the north contains a part one, part two storey clad dwelling house fronting Bellevue Avenue, with vehicular access provided from Wickham Lane.*

*Land to the north-west, on the opposite side of Bellevue Avenue is zoned E4 Environmental Living. It generally comprises large two storey dwelling houses setback from the street on steeply sloping sites with detached garages providing parking on the lower end of the site directly accessed off Bellevue Avenue.*

*Avalon Public School is located to the south of the site, on the opposite side of Sanders Lane. The school grounds contain numerous buildings and play areas, with vehicular access provided from Sanders Lane. A densely vegetated area is located on the northern side of the School site, adjacent to the subject site.*

*Mixed use developments containing medium density residential housing and commercial premises are located to the east, on the opposite side of Wickham Lane on land zoned B2 Local Centre. These are generally two storeys in height with access provided from Wickham Lane or Old Barrenjoey Road, which forms part of Avalon Beach Village Centre. The centre provides a wide range of amenities, employment and services to serve the locality.*

## **PROPOSED DEVELOPMENT**

### **Tree Removal**

The Arborist states:

*“Trees 26 and 33 have a 13% incursion to the TPZ this is marginally more than the acceptable 10% as per AS 4970-2009. It is recommended these trees are irrigated through the construction process. Irrigation times are to be scheduled by the project arborist.*

We are concerned to the low term survival of Trees 26 & 33. These trees add considerably to our amenity.

A compliant 6.5m rear setback would assist their survival, particularly Tree 33.

The Arborist states that Tree 33 is a 12m high Sydney Red Gum tree and is of Very High Landscape Significance.

The Arborist states that Tree 26 is a 14m high Sydney Red Gum tree and is of Very High Landscape Significance.

The Arborist states:



*“Trees 30, 34, 35 and 39 are impacted negatively by this proposal and should be removed.”*

We are very concerned that these trees are to be removed.

A compliant 6.5m rear setback would assist their survival, particularly Tree 30, 34, and 35.

The Arborist states that Tree 30 is a 12m high Red Bloodwood and is of Very High Landscape Significance.

The Arborist states that Tree 34 is a 12m high Red Bloodwood and is of Very High Landscape Significance.

The Arborist states that Tree 35 is a 12m high Stringy Bark and is of High Landscape Significance.

The Arborist states that Tree 39 is a 11m high Cheese Tree and is of Very High Landscape Significance

We are very concerned that the proposed non-compliant rear setback is removing these healthy trees of very high landscape significance, and putting others in harms way. These trees add considerable amenity to our property and would considerably assist in future privacy outcomes.

## **Proposed Development: Building Configuration**

The SEE states:

*The proposal seeks to construct two buildings on the site, both of which will be a maximum of two storeys in height.*

*The western building will be located on the front end of the site and will accommodate two apartments and two (2) car stackers providing parking for four (4) cars. Apartment 1 comprises a 3-bedroom apartment at first floor level with 215m<sup>2</sup> of internal floor space and a private balcony wrapping around the external walls. Apartment 2 comprises a 3- bedroom apartment at ground level with 195m<sup>2</sup> of internal floor space and a private open space including swimming pool on the eastern side.*

*The eastern buildings will be located on the rear end of the site and will step up the site to the west. Car parking for two (2) cars and waste storage will be located at semi-basement level,*

*accessed from Wickham Lane. The building will contain Apartment 3, a split level 3-bedroom apartment with 190m<sup>2</sup> of internal floor space, with private open space provided on the northern side at lower ground level and a roof terrace at ground level.*

*Car parking will be provided within two partially excavated car parking areas. The western parking area will contain two mechanical car stackers providing four (4) car parking spaces serving Apartments 1 and 2, accessed from an existing crossing from Sanders Lane. The eastern building will contain two (2) car parking spaces serving Apartment 3, accessed from Wickham Lane.*

*Accessible pedestrian access is provided to all of the proposed apartments, utilising an access pathway and platform lift on the southern side of the site.*

*Bin storage areas will be provided for both buildings adjacent the car parking areas. Bins are proposed to be wheeled to Sanders Lane for Council collection on waste collection days.*

## **MISLEADING INFORMATION & OUTSTANDING INFORMATION**

### **INCORRECT GROUND LEVEL [EXISTING]**

Unfortunately, the Applicant has not represented the ground level [existing] levels as shown on the Applicant's Registered Surveyor's plan correctly on the Longitudinal Section Drawing 1901 DA 200A.

The survey spot levels of 13.91 over the sewer line, 13.20 [near the word 'undergrowth', 13.03, and 11.74 on Wickham Lane must be show accurately on this drawing.

If the DA relies upon incorrect information, such as false and misleading drawings, then we reserve our position on the validity of any future approval, and we reserve our right to challenge the validity at any time.

## **ENVIRONMENTAL PLANNING INSTRUMENTS**

**SEPP (Housing for Seniors or People with a Disability) 2004**

**Pittwater LEP 2014**

## Pittwater 21 DCP

The primary statutory documents that relate to the subject site and the proposed development are *SEPP (Housing for Seniors and People with a Disability) 2004*, and *Pittwater Local Environmental Plan 2014 (PLEP 2014)*. The primary non-statutory plans relating to the subject site and proposed development is the *Pittwater 21 Development Control Plan (PDCP)*.

### SEPP (Housing for Seniors or People with a Disability) 2004

*State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* commenced on 31 March 2004, and repealed the former State Policy relating to seniors living entitled *SEPP No.5 - Housing for Older People or People with a Disability*, which commenced on the 14 February, 1998.

Our particular concern is the non-compliance of the Storey Height in Rear 25% of the Site.

Clause 40 of SEPP (HSPD) provides a number of development standards to be complied with for seniors housing developments. Subclause (4) states the following:

*(4) Height in zones where residential flat buildings are not permitted If the development is proposed in a residential zone where residential flat buildings are not permitted —*

*(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.*

The interpretation under Clause 3 of SEPP (HSPD) states the following:

*(2) In calculating the number of storeys in a development for the purposes of this Policy, a car park that does not extend above ground level by more than 1 metre is not to be counted as a storey.*

The SEE, on page 24, incorrectly states:

*The proposed eastern building is located at the rear of the site and is generally 1 storey in height within the rear 25% of the site.*

The SEE, on page 24, incorrectly states:

*However, a small part of the undercroft parking area extends approximately 1.15m above the existing ground level at the rear of the site (refer to **Figure 16**) and is thus technically regarded as a storey under SEPP (HSPD).*

What the author of the SEE has done, is rely solely on the Architects drawing as being accurate.

Unfortunately, as stated earlier, the Applicant has not represented the ground level [existing] levels as shown on the Applicant's Registered Surveyor's plan correctly on the Longitudinal Section Drawing 1901 DA 200A.

The survey spot levels of **13.91** over the sewer line, **13.20** [near the word 'undergrowth', **13.03**, and **11.74** on Wickham Lane must be show accurately on this drawing.

The outcome is that the 'two-storey' component extends, not by a small amount, but by over 10.2m from the rear setback.

We contend that Council does not have before it a SEE that can be relied upon, and furthermore, perhaps has been misled in the pre-consultation process, that the DA was generally compliant.

The two-storey component, and the non-compliant rear setback, coupled with the excessive bulk and scale, causing direct visual privacy concerns and acoustic privacy concerns to us is therefore unacceptable.

The technical non-compliance has caused the Applicant to request a variation pursuant to Clause 4.6 of Pittwater Local Environmental Plan 2014 and is provided at Annexure E of the SEE. We contend that this request is flawed as it is based upon a considerable concern on inaccurate ground level existing, and subsequent heights of the basement above ground level existing. Existing high valued trees are being removed due to the non-compliant rear setback, and the poor amenity outcomes are totally unacceptable.

## PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

The SEE states:

*The Pittwater Local Environmental Plan 2014 (PLEP 2014) applies to the subject site. Under the LEP the subject site is within Zone R2 – Low Density Residential, as indicated on the Land Zoning Map. The proposed development is characterised as seniors housing comprising a group of self-contained dwellings which is permissible with consent in Zone R2, pursuant to SEPP (HSPD)*

*The objectives of Zone R2 are as follows:*

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

We contend that the proposed development by the very nature of proposing a rear setback that does not accord with SEPP HSPD and indeed Council controls, that removes multiple healthy trees in the 6.5m rear setback zone, and causes considerable privacy loss, does not accord with the aims of Zone R2.

The Proposed development does not present itself to Wickham Lane in a Low-Density Residential Environment, but one of a Medium to High Density Environment. The very essence of a low-density environment is the 6.5m rear setback control, along with a preservation of the protected trees in that zone. This proposed development does not achieve that aim.

The character of Wickham Lane is of a heavily vegetated streetscape, and no neighbour's building encroach onto the 6.5m rear setback provision.

The precedent that would be set to allow a non-compliant rear setback to SEPP HSPD and PLEP and DCP controls would change the pleasant R2 Zone environment for ever more, as more Developers would simply use this non-compliant rear setback as the guideline precedent, and Council would have little ability to stop that future overdevelopment, that would destroy Wickham Lane providing a very important buffer to the urban area of Avalon Beach commercial area.

We bring to Council attention numerous NSWLEC decisions on this matter.

In the appeal dismal, **Jigari Pty Ltd v City of Parramatta Council [2018] NSWLEC 1568** Dickson C preferred the consideration that:

*".. the purpose of the control is to provide an appropriate scale of built forms at the rear of the site, to respond to the fact that areas that do not permit RFB (residential flat buildings) are typically of a lower density, and the control is to address the potential inconsistency in terms of built form relationships- the rear of sites being typically backyards with few if any structures."*

Tuor C in **Manderrah Pty Ltd v Woollahra Municipal Council and Anor [2013] NSWLEC 1196** at [70] concludes that:

*“The primary objective of cl 40(4)(c) is to limit the bulk and scale of a building to protect the amenity of the rear of adjoining properties.”*

***De Stoop v Ku-ring-gai Council [2010] NSWLEC 1019 at [60]***; that concludes that the underlying purpose of the standard in cl 40(a) is:

*“to provide a development that will be compatible with the adjoining residential area and not create adverse impacts having regard to the desirable elements of the location and character of the area.”*

In ***Nanevski Pty Limited v Rockdale City Council [2010] NSWLEC 1220 at [47]*** Tuor C adopts the evidence of the applicant’s town planning expert that the objectives from the SLP are relevant to determining the underlying objectives of the subclauses of cl 40(4) of SEPP (HSPD). She concludes these objectives are relevant to the consideration of the variation to the standards in cl 40 of SEPP (HSPD).

The objectives of the SLP she relies on are:

- *to minimise impacts on the privacy and amenity of existing neighbouring dwellings,*
- *to minimise overshadowing of existing dwellings and private open space by new dwellings,*
- *to retain neighbours’ views and outlook to existing mature planting and tree canopy,*
- *to reduce the apparent bulk of development and its impact on neighbouring properties,*
- *to provide adequate building separation.*

We contend that Council cannot be satisfied by this threshold issue, and no power is available to grant consent to the development application.

The proposals do not comply with development standards, and the poor amenity impact is due to the non-complying element of the proposal.

The Proposed Development does not comply.

## **PITTWATER 21 DEVELOPMENT CONTROL PLAN**

The *Pittwater 21 Development Control Plan* (PDCP) applies to all land to which the Pittwater Local Environmental Plan 2014 applies, including the subject site.

We have a significant concern on the following non-compliance to the PDCP.

#### **A4.1 Avalon Beach Locality**

We contend that the proposed development fails to meet the expectation of the desired character, particularly in Wickham Lane. The DCP states:

*“...the locality a leafy character that should be maintained and enhanced.*

*the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.”*

The removal of multiple trees in the 6.5m rear setback zone is a considerable concern, and fails the expectation set within this clause.

#### **B4.22 Preservation of Trees & Bushland Vegetation**

The outcomes of the DCP have not been met.

- *To minimise soil erosion and to improve air quality, water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.*
- *To protect, enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities.*
- *To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long-term.*
- *To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.*

The removal of multiple trees in the 6.5m rear setback zone is a considerable concern, and fails the expectation set within this clause.

#### **B6.3 Off Street Parking Requirements**



The provision of parking in the rear setback zone is unreasonable

### **C1.1 Landscaping**

The outcomes of the DCP have not been met.

*A built form softened and complemented by landscaping. (En)*

*Landscaping reflects the scale and form of development. (En)*

*Retention of canopy trees by encouraging the use of pier and beam footings. (En)*

*Development results in retention of existing native vegetation. (En)*

*Landscaping results in the long-term retention of Pittwater's locally native tree canopy. (En)*

*Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species (En)*

*Landscaping enhances habitat and amenity value. (En, S)*

The removal of multiple trees in the 6.5m rear setback zone is a considerable concern, and fails the expectation set within this clause.

### **C1.5 Visual Privacy**

The proposed development will result in direct overlooking.

This is our most serious concern.

The proposed residential units will look immediately and directly into our residence.

The non-compliant rear setback, and the removal of native trees accentuates this problem.

We contend that a full 6.5m rear setback be provided, the retention of the tree canopy, and significantly more dense landscape in deep soil planting to screen the property, with a dense canopy to fully cover the proposed wall heights in the facades facing our property.

An assessment of the privacy impact against the planning principle *Meriton v Sydney City Council* [2004] NSWLEC 313 follows:

*Principle 1: The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.*

Response: The development is located in a low-density area.

*Principle 2: Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)*

Response: The proposed development result in a privacy impact with the proposed windows facing neighbours without any screening devices being provided.

*Principle 3: The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.*

Response: The windows in question are windows of the main living areas, it is considered that the living areas will result in an unacceptable privacy breach. The proposed windows facing the rear private open spaces, land living zones for the neighbouring dwelling and will result in an unacceptable level of privacy impact.

*Principle 4: Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.*

Response: The proposed development is a new development and the proposed windows have been designed without any consideration to the privacy of the neighbouring property.

*Principle 5: Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.*

Response: It is considered that the private open space of the neighbouring dwellings could be protected through the provision of a compliant rear setback, retention of trees, and the provision of privacy screens.

*Principle 6: Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.*

Response: As mentioned above, the provision of a compliant rear setback, retention of trees, and the provision of privacy screens would reduce the impact of the dwelling.

*Principle 7: Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.*

Response: The provision of a compliant rear setback, retention of trees, and the provision of privacy screens would resolve the matter

*Principle 8: In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.*

Response: The area is not undergoing change that would warrant privacy impact such as the one presented.

Comment: As the development is considered to result in an unacceptable privacy impact due to the design, it is requested that the proposed development be redesigned to reduce amenity impact on the neighbouring properties.

## **C1.24 Public Infrastructure**

Clause C1.24 of PDCP states the following in relation to “other development” (including seniors housing) of less than 6 units:

*“Development with a frontage within a residential street is required to design and construct (Section 139 approval required from Council):*

- a footpath 1.5m wide, or*
- where a multi-use pathway is required the footpath is to be constructed to a 2.1m width, and*
- kerb and gutter to Council specification, and*
- landscaping for the full width of the development site on the public road reserve.”*

We are concerned that a 1.5m wide footpath is not provided. There are ample design options available to retain the existing trees, and install a 1.5m wide footpath to the three surrounding streets. The Developer could simply use some of the subject land to ensure that an adequate footpath zone, with the retention of trees could be maintained.

The proposed development does not comply

### **C1.21 Seniors Housing**

The outcomes of the DCP have not been met.

*Visual bulk and scale of development is limited. (En, S)*

*Restricted footprint of development on site. (En)*

*Retention of the natural vegetation and facilitate planting of additional landscaping where possible. (En)*

*Achieve desired future character of the locality. (En, S)*

The visual bulk and scale of the proposed development facing our property is unacceptable. This is a direct result of the non-compliant rear setback, and the removal of multiple protected trees in the 6.5m rear setback zone

## **D Locality Specific Development Controls D1 Avalon Beach Locality**

### **D1.1 Character as viewed from a public place**

The outcomes of the DCP have not been met.

*To achieve the desired future character of the Locality.*

*To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)*

*To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

*The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)*

The future character of Wickham Lane is a 6.5m rear setback of properties, with the retention of all trees.

The future character has not been preserved.

The proposed development fails to provide a sufficient rear setback, and fails to enhance the existing streetscape of Wickham Lane

The proposed development presents 2-storey development in the rear setback zone, contrary to this clause.

The proposed development is not softened by landscape, as insufficient rear setback zones with deep soil planting is provided to soften the impact.

#### **D1.4 Scenic Protection**

The outcomes of the DCP have not been met.

*Achieve the desired future character of the Locality.*

*Bushland landscape is the predominant feature of Pittwater with the built form being the secondary component of the visual catchment. (En, S)*

#### **D1.9 Side and Rear Building line**

Control D1.9 of PDCP provides that development in Avalon Beach on land zoned R2 Low Density Residential, R3 Medium Density Residential or E4 Environmental Living should have a rear setback of 6.5m.

*To achieve the desired future character of the Locality. (S)*

*The bulk and scale of the built form is minimised. (En, S)*

*To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)*

*Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)*

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

*A landscaped buffer between commercial and residential zones is achieved. (En,S)*

This of course is our most significant issue.

It is abundantly clear that the outcomes of this clause have not been met.

The proposed development fails to provide a proposed development with a non-compliant 3.25m rear setback, and the removal of multiple trees in the rear setback zone, fails to achieve the desired future character of the Locality, fails to ensure that the bulk and scale of

the built form is minimised, fails to ensure a reasonable level of privacy is provided within the development site and maintained to our residential properties, fails to maintain on Wickham Lane a substantial landscaping, a mature tree canopy and an attractive streetscape, fails to ensure that vegetation is retained and enhanced to visually reduce the built form, and fails to provide a landscaped buffer between commercial and residential zones is achieved.

#### **D1.11 Building Envelope**

The proposed development exceeds the outcomes and controls.

*To achieve the desired future character of the Locality. (S)*

*To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

*To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*

*The bulk and scale of the built form is minimised. (En, S)*

*Equitable preservation of views and vistas to and/or from public/private places. (S)*

*To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)*

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

#### **D1.13 Landscape Area - General**

The proposed landscaped area is a very low 42.83%, and the deep soil area of the site is an extremely poor 18.85%

The total landscaped area on land zoned R2 Low Density Residential shall be 50% of the site area, with the expectation that 44% should be deep soil.

The landscape solution fails to address the outcomes or controls, and this is clearly evident in the non-compliant rear setback zone.

*Achieve the desired future character of the Locality. (S)*

*The bulk and scale of the built form is minimised. (En, S)*

*A reasonable level of amenity and solar access is provided and maintained. (En, S)*

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

*Conservation of natural vegetation and biodiversity. (En)*

*Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)*

*To preserve and enhance the rural and bushland character of the area. (En, S)*  
*Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management. (En, S)*

## **NSW LEC PLANNING PRINCIPLES**

We bring to the attention of Council numerous **NSW LEC Planning Principles** that have relevance to this DA.

In **Veloshin, [Veloshin v Randwick Council 2007]**, NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:

*“Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.”*

### **Commentary:**

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

In **Davies, [Davies v Penrith City Council 2013]**, NSW LEC considered General Impact. Davies suggest that Council should consider:

*“Would it require the loss of reasonable development potential to avoid the impact?”*

*Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?*

*Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?”*

### **Commentary:**

The proposals do not comply with planning controls, and the impact is due to the non-complying element of the proposal.

In **Veloshin, [Veloshin v Randwick Council 2007]**, NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:



*“Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.”*

**Commentary:**

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

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”*

**Commentary:**

The non-compliant elements of the proposed development, particularly caused from the non-compliant rear setbacks, and removal of existing trees would have most observers finding *‘the proposed development offensive, jarring or unsympathetic in a streetscape context’*

**AMENDED PLANS: PROPOSED CONDITIONS OF CONSENT TO ANY APPROVAL:**

We ask that Council request that the Applicant submit Amended Plans to resolve these matters in full, prior to determination.

These conditions would preferably all be dealt with under resubmission of Amended Plans, or by a withdrawal of this DA and a submission of a new DA.

We present them for Council’s consideration.

1. Increase Rear Setback to 6.5m
2. Retain existing Trees in Rear Setback
3. Carpark to have a 6.5m Rear Setback
4. Landscape to fully cover the proposed development by dense vegetation screen facing Wickham Lane
5. Privacy Screens to windows facing Wickham Lane

## **ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000**

Applicable regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia and *Home Building Act 1989*, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection may be addressed by appropriate consent conditions in the event of an approval.

## **LIKELY IMPACTS OF THE DEVELOPMENT**

This assessment has found that the proposal will have a detrimental impact on the natural and built environments pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.

## **SUITABILITY OF THE SITE**

The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

## **PUBLIC INTEREST**

The proposal is not in the public interest because it results in a development of excessive bulk and scale which has adverse amenity impacts on adjoining properties and the broader locality.

## **CONCLUSION**

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, Council's LEP & DCP and other relevant policies.

The applicant's written requests pursuant to clause 4.6 of Council's LEP does not adequately address the matters required to be demonstrated in subclause 4.6(3). The assessment of the written requests has found that the proposed development will not be in the public interest as defined by clause 4.6 of the LEP because it is not consistent with the objectives of the particular standards and the objectives for development within the zone in which the development is proposed to be carried out.

The application must be recommended for refusal.

The proposed development does not satisfy the relevant objectives of the LEP and the relevant outcomes and controls contained in the DCP as they are reasonably applied to an application proposing a new dwelling.

If the Applicant does not give Council immediate confirmation that the above matters will be rectified by resubmission of Amended Plans based upon our consideration of a more skilful design, and corrects all incorrect information on the DA drawings, then Council has no other option than to **REFUSE** this DA for the reasons stated in this Written Submission

The outcome is a building that causes poor amenity outcomes and other amenity loss concerns due to non-compliance to multiple residential outcomes and controls.

The development does not satisfy the objectives of the standard and will present poor residential amenity consequences.

The identified non-compliances have not been appropriately justified having regard to the associated objectives, outcomes and controls.

The subject site is of a large size, and there is no reason, unique or otherwise, why a fully compliant solution cannot be designed on the site, to avoid amenity loss.

Having given due consideration to the relevant considerations pursuant to 4.15 of the Environmental Planning & Assessment Act 1979 (as amended) it has not been demonstrated that the proposed development is appropriate for approval.

This application results in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

In consideration of the proposal and the merit consideration of the development, the proposal is not considered to be consistent with the objectives, outcomes and controls of the SEPP HSPD, LEP and DCP.

The resultant development is not considered to be an appropriate outcome for the site as it fails the balance between the development of the site and the retention of significant natural features and the maintenance of a reasonable level of amenity for adjoining properties.

The processes and assessments have not been satisfactorily addressed.

The DA scheme submitted requires to be amended, and we ask Council to request that the Applicant submit Amended Plans to overcome the issues raised in this objection.

If the Applicant does not undertake a resubmission of Amended Plans to deal with the matters raised in this objection, then we ask Council to simply issue a refusal.

We expect that the final determination will be carried out by the LPP, due to the numerous excessive non-compliances to outcomes and controls, if not refused earlier for the reasons stated within this Submission.

We request these matters be closely considered in the assessment of the proposed development.

We expect that on such a sensitive site, the Applicant should be charged by Council to deliver a totally compliant scheme to SEPP HSPD, LEP and DCP outcomes and controls.

There is no excuse that neighbours amenity must suffer due to non-compliance to the controls.

We contend that the Development Application is not in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, LEP and DCP and other relevant policies.

We will welcome the opportunity to further expand on any of the issues once Amended Plans are submitted, and once templates and height poles are erected based upon the reductions identified within this Submission.

If this does not occur the Development Application should be REFUSED by Council.

Yours faithfully,

**Mr & Mrs John & Carol Williams**  
**12/15 Old Barrenjoey Road**  
**Avalon Beach NSW 2107**  
**Appendix A Conditions of Consent**

Compliance with other Departments, Authority or Service Requirement

Prescribed Conditions

General Requirements

### **Approved Land Use**

*Nothing in this consent shall authorise the use of the site as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house, as defined within the LEP. Any variation to the approved land use and/occupancy beyond the scope of the above definition will require the submission to Council of a new DA.*

### **Conditions to be satisfied prior to the issue of the CC**

Amendments to the approved plans [*\*see attached list above in main body of Submission*]

All windows facing neighbours to have obscured glazing

All privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.

Pre-commencement Dilapidation Report

Compliance with standards [demolition]

Compliance with standards  
Boundary Identification Survey

Structural Adequacy & Excavation Work  
Geotechnical Report Recommendations to be incorporated into designs and structural plans  
Engineering Assessment  
Engineers Certification of Plans, including all retaining walls  
Compliance with Ecologists Recommendations pre construction  
Tanking of Basement Level  
Installation & Maintenance of Sediment & Erosion Control

Demolition Traffic Management Plan  
Construction Traffic Management Plan  
Waste Management Plan  
Waste & Recycling Requirements  
Public Domain Plan  
Soil and Water Management Program

Shoring of Council's Road Reserve  
Vehicle Crossing Application  
Pedestrian sight distance at property boundary  
Location of security gate and intercom system  
Minimum driveway width  
Access driveway  
Allocation of parking spaces

On-site Stormwater Detention Details  
Stormwater Disposal  
Sydney Water  
Water Quality Management

External finishes to Roof  
Colours & Materials

New Landscaping Plan  
Project Arborist  
Tree Protection  
Tree Trunk, Root and Branch Protection  
Root Mapping  
Tree Removal within the Road Reserve  
On slab landscape planting and associated works

Mechanical plant location  
AC Condenser Units

Design Impact on processes and public/private amenity  
No excavation within 1m of boundary  
Protection of Neighbours assets

Pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the boundary

Plant room and equipment for operational conditions - Noise and vibrations

Noise from all plant rooms including roof top mechanical plant room, mechanical ventilation for car parks, extraction units and exhaust fans, air condition units and any motors of other equipment associated with the building must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open.

Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

### **Conditions that must be addressed prior to any commencement**

Pre-Construction Dilapidation Report  
Installation and maintenance of sediment and erosion control

Pedestrian Sight Distance at Property Boundary  
Demolition and Construction Traffic Management Plan  
On Street Work Zones and Permits  
Kerbside Parking Restrictions

Project Arborist  
Tree Removal  
Tree Removal in the road reserve  
Tree Trunk, Branch, and Root Protection  
Tree protection  
Tree and vegetation removal from property

### **Conditions to be complied with during demolition and building works**

Road Reserve  
Removing, handling and disposing of asbestos  
Demolition works – Asbestos

Property Boundary levels  
Survey Certificate

Implementation of Demolition Traffic Management Plan  
Implementation of Construction Traffic Management Plan  
Traffic Control during Road Works  
Vehicle Crossings  
Footpath Construction

Geotechnical issues  
Detailed Site Investigation, Remedial Action Plan & Validation  
Installation and maintenance of sediment controls  
Building materials  
Rock Breaking  
Protection of adjoining property  
Vibration at 2.5mm/sec with a halt at 2.0mm/sec  
No excavation within 3m of boundary

Ecologists Recommendations during construction  
Waste Management during development  
Waste/Recycling Requirements

Tree Protection – Arborist Supervision of Works  
Tree and vegetation protection  
Tree Condition  
Native vegetation protection  
Protection of rock and sites of significance  
Aboriginal heritage

Protection of Sites of Significance  
Notification of Inspections

**Conditions which must be complied with prior to the issue of the OC**

Post Construction Dilapidation Report

Certification of Structures  
Geotechnical Certificate  
Environmental Reports Certification  
Landscape Completion Certification  
Certification of Civil Works & Works as executed data on council land



Fire Safety Matters

Retaining Wall

Required Planting

Positive Covenant and Restriction as to User for On-site stormwater disposal structures

Positive Covenant for the maintenance of stormwater pump out facilities

Contamination Remediation, Validation and Site Audit Statement

Reinstating the damaged road reserve during construction

Condition of retained vegetation

Stormwater disposal

Works as executed drawings - stormwater

Installation of solid fuel burning heaters:

Certification of solid fuel burning heaters

Required Tree Planting

Required Planting

Acoustic treatment of pool filter

Noise Nuisance from plant

Lighting Nuisance

Swimming pool requirements

Garbage and Recycling Facilities

House number Building Number

Waste Management Confirmation

Waste and Recycling Facilities Certificate of Compliance

Waste/Recycling Compliance Documentation

Positive Covenant for Waste Services

Authorisation of legal documentation required for waste services

Privacy Screens

Reinstatement of Kerbs

Control of noise, odour and vibrations from equipment within plant rooms and ventilation systems connected with the building to ensure noise and vibration from this equipment does not impact on the health and well-being of persons living within the complex and other surrounding premises.

Noise and vibrations. Noise from all plant must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding

premises including when doors and windows to those rooms are open. Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

Mechanical Ventilation certification: Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668: the use of mechanical ventilation.

### **Ongoing Conditions that must be complied with at all times**

Approved Land Use

Maintenance of solid fuel heater

Operation of solid fuel heaters

Landscape maintenance

Landscaping adjoining vehicular access

Maintenance of stormwater treatment measures

Retention of Natural Features

No additional trees or scrub planting in viewing or solar access corridors of neighbours

Environmental and Priority Weed Control

Control of weeds

No planting environmental weeds

Maintain fauna access and landscaping provisions

Compliance with ecologists recommendation

Works to cease if heritage item found

Dead or injured wildlife

Noise

Noise Nuisance from plant

Swimming pool filter, pump and AC units [noise]

Outdoor lighting

Lighting Nuisance

Plant room and equipment for operational conditions - Noise and vibrations

Loading and Unloading vehicles