

---

**From:** [REDACTED]  
**Sent:** 21/02/2024 12:11:41 PM  
**To:** Council Northernbeaches Mailbox  
**Cc:** Mia  
**Subject:** DA2024/0044 25 Kevin Avenue AVALON BEACH NSW 2107  
**Attachments:** 25 KEVIN WS.pdf;

URGENT - Submission appears to have been misplaced

Kind regard ,

Bill Tulloch BSc[Arch]BArch[Hon 1]UNSW RIBA A oc RAIA  
[REDACTED]

# SUBMISSION

a written submission by way of objection

BILL TULLOCH BSC [ARCH] BARCH [HONS1] UNSW RIBA Assoc RAIA

prepared for

CHRIS & MIA STREET, 30 KEVIN AVENUE, AVALON BEACH NSW 2107

20 FEBRUARY 2024

NORTHERN BEACHES COUNCIL  
725 PITTWATER ROAD,  
DEE WHY  
NSW 2099

[council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

RE: DA 2024 0044  
25-27 KEVIN AVENUE, AVALON BEACH NSW 2107  
WRITTEN SUBMISSION: LETTER OF OBJECTION  
SUBMISSION: TULLOCH

Dear Sir,

This document is a written submission by way of objection lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

I have been instructed by my clients to prepare an objection to this DA.

I have been engaged by my clients to critically review the plans and documentation prepared in support of the above development application and to provide advice in relation to policy compliance and potential residential amenity impacts.

Having considered the subject property and its surrounds and the details of the development application currently before Council, I am of the opinion that the proposal, in its present form, does not warrant support. In addition, I am of the view that amendments would need to be made to the development proposal before Council was in a position to determine the development application by way of approval.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, my clients ask Council to REFUSE this DA.

## CONTENTS

### A. EXECUTIVE SUMMARY

### B. FACTS

#### 1. THE PROPOSAL

#### 2. THE SITE

#### 3. THE LOCALITY

#### 4. STATUTORY CONTROLS

### C. CONTENTIONS THAT THE APPLICATION BE REFUSED

#### 1. CONTRARY TO SEPP HOUSING

#### 2. CONTRARY TO AIMS OF LEP

#### 3. CONTRARY TO ZONE OBJECTIVES

#### 4. BUILDING BULK & SCALE

#### 5. CHARACTER & STREETScape

#### 6. EXCESSIVE HEIGHT OF BUILDING

#### 7. EXCESSIVE REMOVAL OF NATIVE TREES

#### 8. POOR TRAFFIC SAFETY

#### 9. PRECEDENT

#### 10. PUBLIC INTEREST

### D. CONTENTIONS THAT RELATE TO INSUFFICIENT INFORMATION

#### E. REQUEST FOR AMENDED PLANS TO BE SUBMITTED TO BETTER ADDRESS IMPACTS UPON ADJOINING PROPERTIES

### F. REASONS FOR REFUSAL

### G. CONCLUSION

## A. EXECUTIVE SUMMARY

The design of the proposed development does not ensure that the existing high levels of amenity to my clients' property are retained.

Having reviewed the documentation prepared in support of the application and determined the juxtaposition of adjoining properties I feel compelled to object to the application in its current form.

The site is assessed as being unsuitable for the proposal, having regard to the relevant considerations pursuant to the SEPP (Housing) 2021.

The proposal is considered to be inappropriate within the streetscape.

The bulk, scale, density and height of the proposed development is excessive and inconsistent with the established and desired future streetscape character of the locality.

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

The proposal is inconsistent with the desired future character of the locality.

The proposal is inconsistent with the objectives of the zone,

The proposed development represents an overdevelopment of the site and fails to accord with the relevant clauses of the Housing SEPP as follows:

- 93 Location and access to facilities and services
- 97 Design of in-fill self-care housing
- 99 Neighbourhood amenity and streetscape
- 100 Visual and acoustic privacy
- 102 Stormwater
- 104 Accessibility
- 106 Interrelationship of Division with design principles in Division 6
- 108 non-discretionary development standards for independent living units: parking

The proposed development represents an overdevelopment of the site and the relevant provisions of LEP as follows:

- Zone R2 Low Density Residential
- Height of Building

The proposed development represents an overdevelopment of the site and the relevant provisions of DCP as follows:

- A4.1 Avalon Beach Locality
- B4.5 Landscape & Flora & Fauna Enhancement Category 3 Land
- B5.15 Stormwater
- B6 Access & Parking

- o C1.21 Seniors Housing
- o D1.1 Character as viewed from a public place

My clients are very concerned with the poor traffic safety impacts to the narrow 8m wide Kevin Avenue. The Avenue is considered too narrow to cope with the increased traffic, particularly as visitor parking would fill both sides of Kevin Avenue.

Council will recall the SEPP Housing proposal: DA 2023 0868 at 37 Hay St Collaroy.

This DA was refused by NBC.

One of the major issues on the 37 Hay Street DA was the narrowness of Hay Street, having regard for the narrow carriageway width of Hay Street, which includes parallel parking along both kerbsides.

Council will note that Kevin Avenue is narrower than Hay St Collaroy.

DA 2023 0868 at 37 Hay St Collaroy was proposing less cars than this DA in Kevin Avenue, so this would present an even greater problem to Kevin Avenue, than the DA refused in Collaroy.

I contend that the proposal:

- o has not been demonstrated by swept path analysis that satisfactory two-way passing of vehicles can be achieved at the proposed vehicle access onto Kevin Avenue having regard for the narrow carriageway width of Kevin Avenue, which includes parallel parking along both kerbsides, as per Appendix B of AS 2890.4- 2004.
- o has not been demonstrated that the compliant entering sight distance as per Figure 3.2 of AS 2890.1-2004 will be achieved for motorists exiting from the basement car park having regard for the vertical curvature of the frontage road, and gradient of the driveway between the property boundary and Kevin Avenue which will inhibit sight lines.

The applicant has also not provided adequate survey or design to show how access to the bus stops will be achieved to satisfy the very important clause in the SEPP: 93 Location and access to facilities and services.

The simple line drawing provided by the applicant, would appear:

- o To be in excess of 400m;
- o Transverse land zones that exceed 1:14 in slope;
- o The gradient at the end of Kevin Avenue where it meets Barrenjoey Road is significantly steeper than the 1:14 slope specified in SEPP and would not be suitable for wheel chair users, particularly if this was a part of a significant 400m journey for wheel chair users;
- o Requires removal of significant trees and landscaping in the Council reserve, including the large native tree between 28 Kevin Avenue & 30 Kevin Avenue;
- o Cuts through power pole locations;
- o Places pedestrian crossings adjacent to or across existing driveways

The site is not suitable for the proposed development pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979. The site is not considered suitable for the proposed development in terms of its size, scale and design, despite it being residential development in the zone.

Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest. The extent of issues identified with the proposed development are such that the public's interest is not served by way of approval of the development application.

The proposed development represents an unreasonably large building design, for which there are design alternatives to achieve a reasonable development outcome on the site without having such impacts.

The proposed development does not satisfy the objectives of the zone or contribute to a scale that is consistent with the desired character of the locality and the scale of surrounding development.

My clients agree with Roseth SC in NSWLEC *Pafbum v North 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 my clients had as a neighbour was for a development that would not result in very poor amenity outcomes.

My clients wish to emphasise the fact that my clients take no pleasure in objecting to their neighbour's DA.

The proposed DA has a deleterious impact on the amenity of their property caused by the DA being non-compliant to controls.

Council and NSWLEC Commissioners regularly concede that development standards and building envelopes provide for maximums and that there is no entitlement to achieve those maximums.

Council's development controls relating to managing building bulk and scale are designed to ensure that buildings are consistent with the height and scale of the desired character of the locality, are compatible with the height and scale of surrounding and nearby development, respond sensitively to the natural topography and allow for reasonable sharing of views and visual amenity.

Council's DCP with respect to the locality, requires that development respond to the natural environment and minimise the bulk and scale of buildings. The proposed development in its current form does not achieve this and provides inadequate pervious landscaped area at ground level.

The proposal does not succeed when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, does not succeed on merit and is not worthy of the granting of development consent.

The proposed development fails the fundamental principles of design excellence in terms of:

- Context and local character
- Built form, scale and public domain, urban design response
- Density
- Landscape integration
- Architectural expression, in terms of excessive built form
- Amenity impacts on neighbours

My clients ask Council to seek modifications to this DA as the proposed development does not comply with the planning regime, by non-compliance to development standards, and this non-compliance leads directly to my clients' amenity loss.

Section E of this submission titled '*Request for amended plans to be submitted to better address impacts upon adjoining properties*', addresses the amendments that my clients seek to better resolve their amenity issues.

If any Amended Plan Submission is made by the Applicant, and re-notification is waived by Council, my clients ask Council to inform them immediately by email of those amended plans, so that my clients can inspect those drawings on the Council website.

## B. FACTS

### 1. THE PROPOSAL

The development application seeks approval for the demolition of the existing dwellings and the construction of a seniors housing development incorporating ten (10) in-fill self-care housing units and basement car parking for 21 vehicles including a visitor space pursuant to the provisions of State Environmental Planning Policy (Housing) 2021 (SEPP Housing).

### 2. THE SITE

The properties upon which the proposed development is to be located are legally described as Lots 10 and 11, DP 12435, 25 and 27 Kevin Avenue, Avalon. The consolidated allotment is rectangular in shape with frontage of 36.58 metres, depth of approximately 76 metres and a combined area of 2789sqm.

### 3. THE LOCALITY

The existing character of the local area, including the immediate visual catchment (generally within 150 metres of the site) is of a well-established neighbourhood, made up of a heterogeneous mix of dwelling types within domestic landscaped settings.

My clients' property is immediately across Kevin Avenue with the subject site.

### 4. STATUTORY CONTROLS

The following Environmental Planning Instruments and Development Control Plans are relevant to the assessment of this application:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2021
- All relevant and draft Environmental Planning Instruments;
  
- SEPP (Building Sustainability Index: BASIX) 2004;
- SEPP (Resilience and Hazards) 2021;
- SEPP (Biodiversity and Conservation) 2021.
  
- State Environmental Planning Policy (Housing) 2021 (SEPP Housing)
- Seniors Living Policy Urban Design Guidelines for Infill Development.
  
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
- Pittwater 21 Development Control Plan (P21DCP)



## C. CONTENTIONS THAT THE APPLICATION BE REFUSED

### 1. CONTRARY TO SEPP HOUSING

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the relevant clauses of the Housing SEPP are as follows:

- CI 93 Location and Access to facilities and services & 104 Accessibility
- CI 97 Design of in-fill self-care housing
- CI 99 Neighbourhood amenity and streetscape
- CI 100 Visual and acoustic privacy
- CI 102 Stormwater
- CI 108 non-discretionary development standards for independent living units: parking

#### 1.1 CLAUSE 93 LOCATION AND ACCESS TO FACILITIES AND SERVICES & CLAUSE 104 ACCESSIBILITY

I contend that pursuant to clause 93(1) of SEPP Housing, development consent must not be granted for a development proposing independent living unit unless the consent authority has considered whether residents will have adequate access to facilities and services by a transport service that complies.

The applicant has not provided adequate survey or design to show how access to the bus stops will be achieved to satisfy this very important clause in the SEPP.

The simple line drawing provided, would appear:

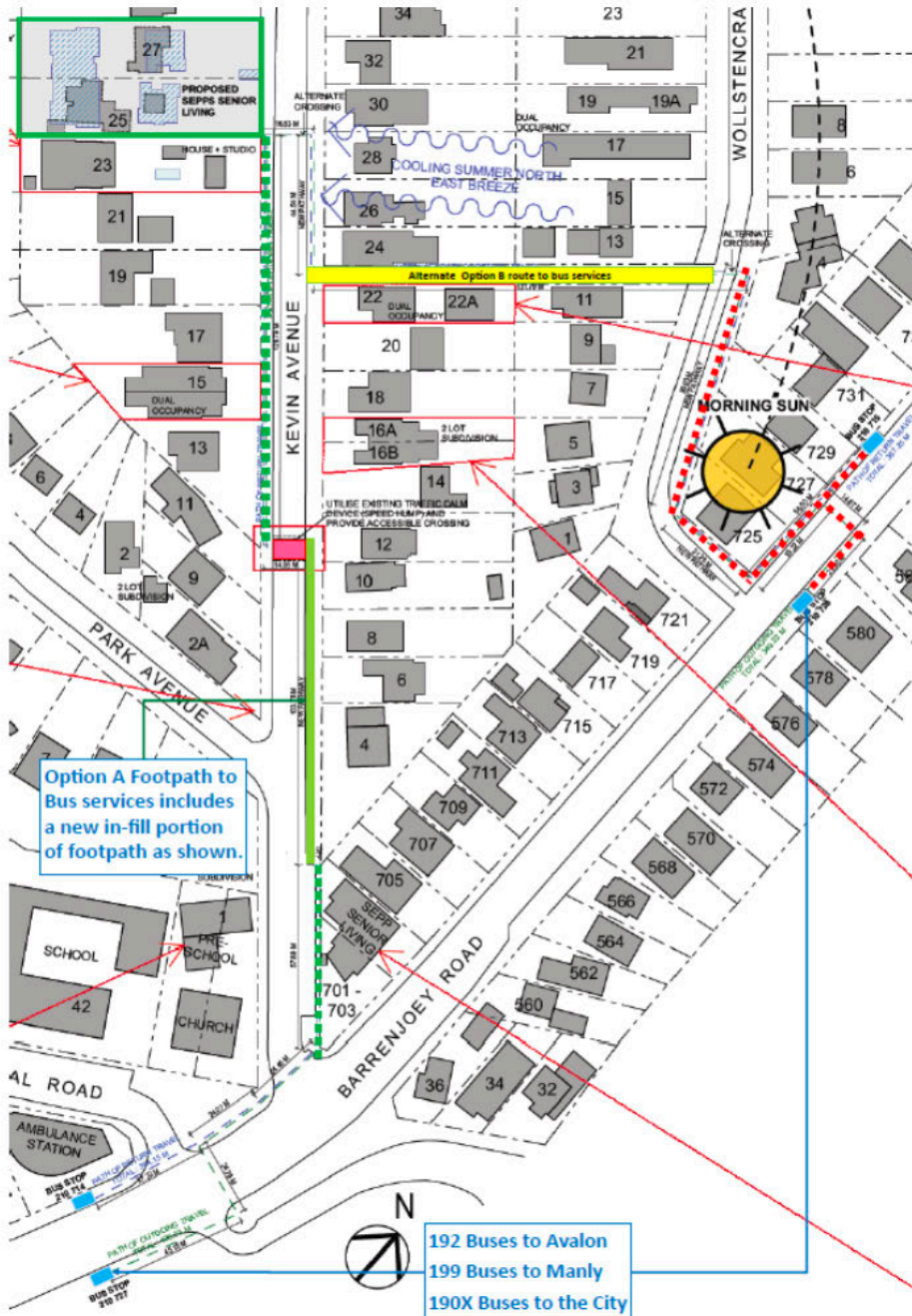
- To be in excess of 400m;
- Transverse land zones that exceed 1:14 in slope;
- The gradient at the end of Kevin Avenue where it meets Barrenjoey Road is significantly steeper than the 1:14 slope specified in SEPP and would not be suitable for wheel chair users, particularly if this was a part of a significant 400m journey for wheel chair users;
- Requires removal of significant trees and landscaping in the Council reserve, including the large native tree between 28 Kevin Avenue & 30 Kevin Avenue;
- Cuts through power pole locations;
- Places pedestrian crossings adjacent to or across existing driveways







Site Related requirements



Footpath access to Bus Stops, to shops and services

- 2.6 The site analysis of footpaths is provided in two parts;
- Option A Kevin Avenue to Barrenjoey Road;
  - Option B public right of way to Wollstenkraft Avenue to Barrenjoey Road;

## 1.2 CLAUSE 97 DESIGN OF IN-FILL SELF-CARE HOUSING

Pursuant to clause 97 of SEPP Housing, the consent authority is to have regard to the Urban Design Guideline for Infill Development in its consideration of the application.

I contend that the proposed design presents a built form that is 30m wide, that is does show consistency of built form, massing and scale to the neighbourhood.

The SEE suggests there are a series of 'pavilions', however because of the bridge links and roof structures across the front building, the building 'reads' as an extended built form 30m wide.

The rear building makes no effort to reduce the 30m wide built form to the neighbours.

The architectural solution should be to provide four separate pavilions each with their own lift and stair, so that full separation can occur between four pavilions.



*The proposed development gives the impression of a residential flat building. The proposed design presents a built form that is 30m wide, and there are no other 30m wide dwellings in Kevin Avenue*

## 1.3 CLAUSE 99 NEIGHBOURHOOD AMENITY AND STREETScape

I contend that the neighbourhood amenity and design principles prescribed by clause 99 of SEPP Housing to '*recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the are*' has not been adequately addressed.

I refer to comments made above under Clause 97.

#### 1.4 CLAUSE 100 VISUAL AND ACOUSTIC PRIVACY

My clients are particularly concerned on the light nuisance and other visual privacy concerns, as their dwelling immediately faces the entrance to the 21-space car park, with car lights streaming into their dwelling during the evening hours.

#### 1.5 CLAUSE 102 STORMWATER

The proposed development is not supported by sufficient information to demonstrate compliance with Council's stormwater management requirements regarding the provision of onsite stormwater detention (OSD).

Particulars

- (a) A DRAINS model is required for development. The pre-existing flow condition is to be modelled as state of nature up to the 1/100 AEP storm event.
- (b) The stormwater drainage plans are to detail all the minimum information as required by the DCP;
- (c) The drainage catchment plan should also include the footpath catchment area that will drain into the development site and is to be included into the site OSD Drains model calculations.
- (d) Calculations in the form of a Hydraulic Grade Line analysis are required to demonstrate that the OSD tank pipe outlet is not affected by tail water levels from the any proposed extension works. The OSD pipe outlet is free draining to demonstrate the proposed OSD storage tank volumes are not compromised.

The proposed development is not supported by sufficient information to demonstrate compliance with Council's stormwater management requirements regarding the proposed connection to Council's drainage system.

#### 1.6 CLAUSE 108 NON-DISCRETIONARY DEVELOPMENT STANDARDS FOR INDEPENDENT LIVING UNITS: PARKING

There are insufficient visitors parking spaces, and my clients consider that this will result in the immediate on-street parking area being overused, creating unsafe outcomes in the narrow 8m roadway of Kevin Avenue.

### 2. CONTRARY TO AIMS OF LEP

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the aims under the LEP.

- o The development compromises amenity impacts on neighbours

- The development is not compatible with the desired future character of the locality in terms of building height and roof form.
- The development does not minimise the adverse effects of the bulk and scale of buildings

### 3. CONTRARY TO ZONE OBJECTIVES

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the objectives of the zone of the LEP.

- The proposal is of a bulk and scale which is inconsistent with development in this location and therefore fails to achieve the desired future character of the neighbourhood.
- The development compromises amenity impacts on neighbours
- To provide for the housing needs of the community within a low density residential environment.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment

### 4. BUILDING BULK & SCALE

The proposed development should be refused due to its excessive bulk and scale and its failure to comply with the numerical standards and controls.

The proposal will present excessive bulk and scale that is not representative of the type of development anticipated by the zone or the applicable controls.

The proposal will result in unreasonable bulk and scale for the type of development anticipated in the R2 zone.

The proposal does not respond to *DCP D1.1 Character as viewed from a public place* as the proposal does not provide adequate articulation of the built form to reduce its massing, and provides built form that is 30m in length in a R2 zone. The proposal presents a Residential Flat Building – and that use is prohibited in an R2 Zone.

The proposal does not allow for enough landscaping to suitably reduce the bulk and scale of the development.

The proposal fails to encourage good design and innovative architecture to improve the urban environment.

The proposal fails to minimise the visual impact of development when viewed from adjoining properties and streets.

As earlier stated, I contend that the proposed design presents a built form that is 30m wide, that is does show consistency of built form, massing and scale to the neighbourhood. The SEE suggests there are a series of 'pavilions', however because of the bridge links and roof structures across the front building, the building 'reads' as an

extended built form 30m wide. The rear building makes no effort to reduce the 30m wide built form to the neighbours.

## 5. CHARACTER & STREETScape

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate streetscape outcome, presenting non-compliant envelope controls that are visible from the Avenue.

The proposed development will have unacceptable impacts upon the amenity of neighbours' property, specifically with regard to visual bulk impact.

The proposed development should be refused due to its excessive bulk, scale and resulting impacts upon the amenity of adjoining properties and the character of the surrounding locality.

The proposal does not meet the streetscape character and key elements of the precinct and desired future character.

The proposal is excessive in scale, has adverse impacts on the visual amenity of the environment, does not positively contribute to the streetscape in terms of an adequately landscaped setting. The proposal is visually dominant, and is incompatible with the desired future townscape area character.

The development has excessive bulk and scale and fails to comply with development standards set out LEP, resulting in a building which has unacceptable adverse impacts on neighbouring properties and the locality.

The non-compliant building envelope will lead to unacceptable visual bulk impact to neighbours.

The multiple non-compliances arising from the proposed upper floor level resulting in an unacceptable building bulk when viewed from adjoining and nearby properties.

The development presents an inappropriate response to the site and an unsatisfactory response to the desired future character of the area.

The proposed development should be refused because it is incompatible with the desirable elements of the current character of the locality and is inconsistent with the standards and controls:

### Particulars

(a) The design of the proposal does not recognise or complement the desirable elements of the subject site's current character.

(b) The proposal does not employ a building form that relates to the landform as it does not step down with the slope of the site.

(c) The proposal offers little visual relief of the resultant building bulk. Such building bulk is not compatible in scale with adjacent and surrounding development.

(d) The proposal will present as a large building with insufficient building articulation and landscaping to break up and visually reduce the building bulk.

(e) The proposal will not appear as low density and, therefore, does not achieve consistency or compatibility with the general built form within the locality or the R2 zone. The development does not present as detached in style with distinct building separation and areas of landscaping.

## 6. EXCESSIVE BUILDING HEIGHT

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to comply with the building height development standard under the LEP.

The proposed development should be refused due to its excessive height and failure to comply with the *Height of Buildings* set out in the LEP, and in particular:

- The proposed development, by virtue of its height and scale, will not be consistent with the desired character of the locality
- The development will not be compatible with the height and scale of surrounding and nearby development.

The proposal is inconsistent with the objectives of the Height of Buildings development standard pursuant to LEP.

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact
- The development is not compatible with the desired future character of the locality in terms of building height
- The development does not minimise the adverse effects of the bulk and scale of buildings

The adverse impacts of the proposed development, including on the amenity of neighbouring property and public property, are directly attributable to the exceedance of the height of buildings development standard.

The proposal is inconsistent with the LEP as there is a public benefit in maintaining the Height of Buildings development standard in this particular case.

The proposed portion of the building above the maximum height is not 'minor'. The building does not adequately step down the slope.

My clients contend that the proposal fails to adequately demonstrate that compliance with each standard is unreasonable or unnecessary nor that there are sufficient environmental planning grounds to justify contravening each of the standards. Variation of the development standards is not in the public interest because the proposed development is not consistent with the objectives of each development standard nor the objectives of the zone. The proposed development has not sought adequate variations to development standards. The proposal is excessive in bulk and scale, and is inconsistent with the desired future character of the area resulting in adverse impacts on the streetscape. The proposal results in an unacceptable



dominance of built form over landscape. The proposal fails to minimise the adverse effects of bulk and scale resulting in adverse amenity impacts.

The proposed development should be refused due to its excessive visual impact and impacts on the character of the locality, adjoining properties and the surrounding environment.

The form and massing of the proposal does not appropriately respond to the low-density character of the surrounding locality

The form and massing of development is also inconsistent with the provisions of the DCP which prescribe that new development should complement the predominant building form in the locality.

The proposal would not recognise or protect the natural or visual environment of the area, or maintain a dominance of landscape over built form. The proposal has not been designed to minimise the visual impact on the surrounding environment.

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.”*

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”.*

The non-compliant elements of the proposed development, particularly caused from non-compliant excessive heights would have most observers finding *‘the proposed development offensive, jarring or unsympathetic’*.

The planning controls are not limited to preventing offence and the like; and are concerned with establishing a certain physical and landscape character. In this instance I am not convinced that there are strong environmental planning grounds to justify a contravention of the scale proposed.

The proposed development should be refused due to its excessive bulk and scale and its failure to comply with the LEP development standard

Particulars

- (a) The main LEP standards that control bulk have been exceeded;
- (b) The request is not well-founded as it does not satisfactorily demonstrate:

- *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case* because it does not achieve consistency with the objectives of the R2 zone or the objectives of the equivalent development standard contained LEP (in the absence of objectives for clause 108 of the Housing SEPP).
- *that there are sufficient environmental planning grounds to justify contravening the development standard* because the provided justification is insufficient and disagreed with.

(c) The proposal will present excessive bulk and scale that is not representative of the type of development anticipated by the zone or the applicable controls.

(d) The proposal does not comply with requirement set out within the DCP, as it does not step down with the topography of the site

(e) The proposal does not comply with requirement set out within the DCP as it does not allow for enough landscaping to suitably reduce the bulk and scale of the development.

(f) The proposal does not comply with requirement set out within the DCP as it does not provide adequate articulation of the built form to reduce its massing.

(g) The proposal is inconsistent with the following objectives of the DCP:

- *To encourage good design and innovative architecture to improve the urban environment.*
- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

## 7. EXCESSIVE REMOVAL OF NATIVE TREES

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to retain existing native trees.

The proposal removes the following 12 major trees, between 12m to 20m in height, many at a moderate to high importance:

- Tree 9 Spotted Gum [H] -14m high
- Tree 12 Cheese Tree – 18m high
- Tree 22 Spotted Gum [H] -18m high
- Tree 51 Apple Myrtle [M] – 12m high
- Tree 52 Red Bloodwood [M] – 16m high
- Tree 53 Red Bloodwood [M] – 12m high
- Tree 54 Turpentine [H] – 16m high
- Tree 55 Turpentine [H] – 14m high
- Tree 56 Turpentine [H] – 20m high
- Tree 57 Turpentine [H] – 13m high
- Tree 58 Turpentine [H] – 18m high
- Tree 59 Turpentine [H] – 15m high

The proposed overdevelopment of the site causes the extensive removal of high valued trees.

A proposal for dwellings on the subject site would be able to build around many of these trees, and preserve many of the trees and canopy structures. A dwelling design would not require an extensive carpark for 21 cars, and therefore the SRZ and TPZ zones of many of these trees would be able to better protected. The site is not suitable of an intrusive SEPP Seniors development, as it removes 12 specimen trees in great condition.

## 8. POOR TRAFFIC SAFETY

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the design does not provide for traffic safety.

The proposed development should be refused because it does not provide satisfactory car parking and will result in unacceptable traffic safety impacts.

My clients are very concerned with the poor traffic safety impacts to the narrow 8m wide Kevin Avenue. The Avenue is considered too narrow to cope with the increased traffic, particularly as visitor parking would fill both sides of Kevin Avenue.

Council will recall DA 2023 0868, a proposed SEPP Seniors development at 37 Hay St Collaroy. This was DA was refused by NBC. One of the major issues was the narrowness of Hay Street. Council will note that Kevin Avenue is narrower than Hay St Collaroy. DA 2023 0868 at 37 Hay St Collaroy was proposing less cars than this DA in Kevin Avenue. Vehicle access from Hay Street has been deleted from that proposal.

I contend that

- It has not been demonstrated that the compliant entering sight distance as per Figure 3.2 of AS 2890.1-2004 will be achieved for motorists exiting from the basement car park having regard for the vertical curvature of the frontage road, and gradient of the driveway between the property boundary and Kevin Avenue which will inhibit sight lines.
- It has not been demonstrated by swept path analysis that satisfactory two-way passing of vehicles can be achieved at the proposed vehicle access onto Kevin Avenue having regard for the narrow carriageway width of Kevin Avenue, which includes parallel parking along both kerbsides, as per Appendix B of AS 2890.4- 2004.

## 9. PRECEDENT

The Development Application should be refused because approval of the proposal will create an undesirable precedent for similar inappropriate development in the area.

## 10. PUBLIC INTEREST

The proposal is contrary to the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*. The proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest.

#### D. CONTENTIONS THAT RELATE TO INSUFFICIENT & INADEQUATE INFORMATION

The applicant has not submitted sufficient and/or adequate information as requested by Council under Part 6, Division 1 Clause 54 of the EPA Regulation 2000 to enable a reasonable assessment under the applicable legislation.

The application lacks sufficient detail to make an informed assessment particularly with respect to determining the extent of the following matters and the relationship and impact to adjoining neighbours.

#### CLAUSE 93 LOCATION AND ACCESS TO FACILITIES AND SERVICES & CLAUSE 104 ACCESSIBILITY

The applicant has not provided adequate survey or design to show how access to the bus stops will be achieved to satisfy this very important clause in the SEPP.

The simple line drawing provided, would appear:

- To be in excess of 400m;
- Transverse land zones that exceed 1:14 in slope;
- The gradient at the end of Kevin Avenue where it meets Barrenjoey Road is significantly steeper than the 1:14 slope specified in SEPP and would not be suitable for wheel chair users, particularly if this was a part of a significant 400m journey for wheel chair users;
- Requires removal of significant trees and landscaping in the Council reserve, including the large native tree between 28 Kevin Avenue & 30 Kevin Avenue;
- Cuts through power pole locations;
- Places pedestrian crossings adjacent to or across existing driveways

#### POOR TRAFFIC SAFETY

My clients are very concerned with the poor traffic safety impacts to the narrow 8m wide Kevin Avenue. The Avenue is considered too narrow to cope with the increased traffic, particularly as visitor parking would fill both sides of Kevin Avenue.

Council will recall DA 2023 0868, a SEPP Seniors Housing proposal at 37 Hay St Collaroy. This DA was refused by NBC's NBLPP on 13 December 2023. The applicant has appealed the decision to NSWLEC. One of the major issues was the narrowness of Hay Street. Council will note that Kevin Avenue is narrower than Hay St Collaroy. DA 2023 0868 at 37 Hay St Collaroy was proposing less cars than this DA in Kevin Avenue. Vehicle access from Hay Avenue has been deleted from that proposal.

I contend that:

- It has not been demonstrated that the compliant entering sight distance as per Figure 3.2 of AS 2890.1-2004 will be achieved for motorists exiting from the basement car park having regard for the vertical curvature of the frontage road, and gradient of the driveway between the property boundary and Kevin Avenue which will inhibit sight lines.
- It has not been demonstrated by swept path analysis that satisfactory two-way passing of vehicles can be achieved at the proposed vehicle access onto Kevin Avenue having regard for the narrow carriageway width of Kevin Avenue, which includes parallel parking along both kerbsides, as per Appendix B of AS 2890.4- 2004.

## E. REQUEST FOR AMENDED PLANS TO BE SUBMITTED TO BETTER ADDRESS IMPACTS UPON ADJOINING PROPERTIES

My clients contend that the proposal is fundamentally flawed due to:

- unsatisfactory two-way passing of vehicles can be achieved at the proposed vehicle access onto Kevin Avenue having regard for the narrow carriageway width of Kevin Avenue, which includes parallel parking along both kerbsides, as per Appendix B of AS 2890.4- 2004.
- The applicant has not provided adequate survey or design to show how access to the bus stops will be achieved to satisfy this very important clause in the SEPP. The simple line drawing provided, would appear: To be in excess of 400m; Transverse land zones that exceed 1:14 in slope; Requires removal of trees and landscaping in the Council reserve; Cuts through power pole locations; Places crossing adjacent to or across driveways

The proposed development would need to be substantially redesigned as follow:

### 1. REDUCTION OF BUILT FORM

- provide four separate pavilions each with their own lift and stair, so that full separation can occur between four pavilions.
- Reduce the Height of Building to LEP standards

### 2. CONDITIONS OF ANY CONSENT

My client asks for a complete set of Conditions to be included within any consent, including, but not limited to, the following:

Conditions which must be satisfied prior to the demolition of any building or construction

- Acoustic Certification of Mechanical Plant and Equipment
- Arborists Documentation and Compliance Checklist
- BASIX Commitments
- Checking Construction Certificate Plans – Protecting Assets Owned by Sydney Water
- Construction Certificate Required Prior to Any Demolition
- Electric vehicle circuitry and electric vehicle charging point requirements
- Engineer Certification
- Establishment of Tree Protection Zone (TPZ) Fence
- Geotechnical and Hydrogeological Design, Certification and Monitoring
- Ground Anchors
- Identification of Hazardous Material
- Light and Ventilation
- No Underpinning works
- Noise Control - Acoustic Protection of adjoining residential units-Operation of Air Conditioning Plant
- Noise Control - Swimming pool/spa pool pumps and associated equipment
- Parking Facilities

- Payment of Long Service Levy, Security, Contributions and Fees
- Professional Engineering Details
- Public Road Assets Prior to Any Work/Demolition
- Road and Public Domain Works
- Soil and Water Management Plan – Submission and Approval
- Stormwater Management Plan
- Tree Management Plan
- Ventilation - Internal Sanitary Rooms
- Utility Services Generally
- Waste Storage – Per Single Dwelling

Conditions which must be satisfied prior to the commencement of any development work

- Adjoining Buildings Founded on Loose Foundation Materials
- Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)
- Compliance with Building Code of Australia and insurance requirements under the
- Dilapidation Reports for Existing Buildings
- Erosion and Sediment Controls – Installation
- Establishment of Boundary Location, Building Location and Datum
- Home Building Act 1989
- Notification of Home Building Act 1989 requirements
- Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection
- Site Signs
- Engineer's Certification of Plans
- Structural adequacy & Excavation work
- Toilet Facilities
- Works (Construction) Zone – Approval and Implementation

Conditions which must be satisfied during any development work

- Asbestos Removal Signage
- Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum
- Classification of Hazardous Waste
- Compliance with Australian Standard for Demolition
- Compliance with BCA and Insurance Requirements under the Home Building Act 1989
- Compliance with Council's Specification for Roadworks, Drainage and
- Compliance with Geotechnical / Hydrogeological Monitoring Program
- Miscellaneous Works, Road Works and, Work within the Road and Footway
- Critical Stage Inspections
- Disposal of Site Water During Construction
- Disposal of Asbestos and Hazardous Waste
- Dust Mitigation
- Erosion and Sediment Controls – Maintenance



- Footings in the vicinity of trees
- Hand excavation within tree root zones
- Hours of Work –Amenity of the Neighbourhood
- Installation of stormwater pipes and pits in the vicinity of trees
- Level changes in the vicinity of trees
- Notification of Asbestos Removal
- Maintenance of Environmental Controls
- Placement and Use of Skip Bins
- Prohibition of Burning
- Public Footpaths – Safety, Access and Maintenance
- Replacement/Supplementary trees which must be planted
- Requirement to Notify about New Evidence
- Site Cranes
- Site Waste Minimisation and Management – Construction
- Site Waste Minimisation and Management – Demolition
- Support of Adjoining Land and Buildings
- Tree Preservation
- Vibration

Conditions which must be satisfied prior to any occupation or use of the building (Part 6 of the Act and Part 8 Division 3 of the Regulation)

- Amenity Landscaping
- Certification of Electric Vehicle Charging System
- Commissioning and Certification of Public Infrastructure Works
- Commissioning and Certification of Systems and Works
- Occupation Certificate (section 6.9 of the Act)
- Letter Box

Conditions which must be satisfied prior to the issue of the Occupation Certificate for the whole of the building

- Fulfillment of BASIX Commitments – clause 154B of the Regulation
- Landscaping
- Positive Covenant and Works-As-Executed Certification of Stormwater Systems
- Removal of Ancillary Works and Structures
- Road Works (including footpaths)

Conditions which must be satisfied during the ongoing use of the development

- Maintenance of BASIX Commitments
- Noise Control
- Noise from mechanical plant and equipment, including swimming pool plant
- Ongoing Maintenance of the Onsite Stormwater Detention (OSD) System, Rain Garden and Rainwater Tank
- Outdoor Lighting – Residential
- Outdoor Lighting – Roof Terraces

## Advising

- Asbestos Removal, Repair or Disturbance
- Builder's Licences and Owner-builders Permits
- Building Standards - Guide to Standards and Tolerances
- Commonwealth Disability Discrimination Act 1992
- Criminal Offences – Breach of Development Consent and Environmental Laws
- Dial Before You Dig
- Dilapidation Report
- Dividing Fences
- Lead Paint
- NSW Police Service and Road Closures
- Pruning or Removing a Tree Growing on Private Property
- Pruning or Removing a Tree Growing on Private Property
- Recycling of Demolition and Building Material
- Release of Security
- Roads Act 1993 Application
- SafeWork NSW Requirements
- Workcover requirements

## F. REASONS FOR REFUSAL

My clients ask Council to refuse the DA as the proposal is contrary to the Environmental Planning and Assessment Act:

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the LEP

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone R2 Low Density Residential of the LEP

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Housing) 2021, with respect to:

The proposed development represents an overdevelopment of the site and fails to accord with the relevant clauses of the Housing SEPP as follows:

- 93 Location and access to facilities and services
- 97 Design of in-fill self-care housing
- 99 Neighbourhood amenity and streetscape
- 100 Visual and acoustic privacy
- 102 Stormwater
- 104 Accessibility
- 106 Interrelationship of Division with design principles in Division 6
- 108 non-discretionary development standards for independent living units: parking

The proposed development represents an overdevelopment of the site and the relevant provisions of LEP as follows:

- Zone R2 Low Density Residential
- Height of Building

The proposed development represents an overdevelopment of the site and the relevant provisions of DCP as follows:

- A4.1 Avalon Beach Locality
- B4.5 Landscape & Flora & Fauna Enhancement Category 3 Land
- B5.15 Stormwater
- B6 Access & Parking
- C1.21 Seniors Housing
- D1.1 Character as viewed from a public place

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Development on Sloping Land of the Warringah Local Environmental Plan 2011, with reference to subclause (b). Insufficient information has been provided to demonstrate

that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that the proposal would not satisfy the matters for consideration under Biodiversity & Conservation SEPP 2021 and Resilience & Hazards SEPP 2021

The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that it will have an adverse impact through its bulk, scale and siting on the built environment, and through lack of landscape provision, and adverse impact on the natural environment. The proposed development will have a detrimental impact on the visual amenity of the adjoining properties by virtue of the excessive building bulk, scale and mass of the upper floor and its associated non-compliant envelope.

The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* in that this area of the site is unsuitable for a development of such excessive bulk and scale.

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 does not satisfy Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not adequately address the amenity of neighbours

The proposal is contrary to the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*. The proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest. The proposed development will have a detrimental impact on the amenity of adjoining residential properties, and for this reason is contrary to the public interest.

## G. CONCLUSION

The proposed dwelling is not consistent with the intent of the SEPP Housing standards, LEP standards and DCP controls as they are reasonably applied to the proposal.

The variations to SEPP Housing standards, LEP standards and DCP controls are considered unreasonable in this instance. The cumulative effect on these non-compliances causes considerable amenity loss to my clients' property.

The development will not sit well within the streetscape with non-compliance to SEPP Housing standards, LEP standards and DCP controls causing considerable concern. In this regard, the proposal is considered excessive in bulk and scale and would be considered jarring when viewed from the public domain.

Commissioner Moore revised the NSWLEC planning principle for assessing impacts on neighbouring properties within *Davies v Penrith City Council* [2013] NSWLEC 1141

*"The following questions are relevant to the assessment of impacts on neighbouring properties:*

*How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?*

*How reasonable is the proposal causing the impact?*

*How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?*

*Does the impact arise out of poor design? 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?"*

It is considered that the proposal is inappropriate on merit and unless amended plans are submitted, this DA must be refused for the following reasons:

- The application has not adequately considered and does not satisfy the various relevant planning controls applicable to the site and the proposed development.
- The proposed dwelling is incompatible with the existing streetscape and development in the local area generally.
- The proposed dwelling will have an unsatisfactory impact on the environmental quality of the land and the amenity of surrounding properties.
- The site is assessed as unsuitable for the proposal, having regard to the relevant land use and planning requirements.

It is considered that the public interest is not served.

The proposed development does not follow the outcomes and controls contained within the adopted legislative framework.

Having given due consideration to the matters pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended, it is considered that there are multiple matters which would prevent Council from granting consent to this proposal in this instance.

The proposed development represents an overdevelopment of the site and an unbalanced range of amenity impacts all of which would result in adverse impacts on my clients' property. Primarily,

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with SEPP Housing
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the DCP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the EPAA1979

The proposed development does not satisfy the appropriate controls. Furthermore, the proposal would result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community, and is therefore not in the public interest. The proposal therefore must be refused.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have not been satisfactorily addressed.

I ask that if Council in their assessment of this application reveals unsupported issues, which prevent Council from supporting the proposal in its current form, and writes to the applicant describing these matters, I ask for that letter to be forwarded to me.

My clients trust that Council will support my clients' submission and direct the proponent to modify the DA plans, as outlined above. My clients ask Council Officers to inspect the development site from my clients' property so that Council can fully assess the DA.

It is requested that Council inform both myself, and my clients directly, of any amended plans, updates or Panel meeting dates. My clients request that they present to the Panel, should the DA proceed to the LPP.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, my clients' ask Council to REFUSE this DA.

Yours faithfully,

*Bill Tulloch*

Bill Tulloch BSc [Arch] BArch [Hons1] UNSW RIBA Assoc RAIA  
PO Box 440 Mona Vale  
NSW 1660



