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**Sent:** 28/01/2021 8:04:23 AM

**Subject:** 45 Lantana Avenue, Wheeler Heights NSW 2097 DA 2020/1743 WRITTEN  
SUBMISSION: LETTER OF OBJECTION Submission: Walton

**Attachments:** Walton Submission.docx;

S U B M I S S I O N : W A L T O N  
a written submission by way of objection to DA 2020/1743

Steven & Tania Walton  
49 Lantana Ave  
Wheeler Heights  
NSW 2097

27 January 2021

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:  
45 Lantana Avenue, Wheeler Heights NSW 2097  
DA 2020/1743

WRITTEN SUBMISSION: LETTER OF OBJECTION

Submission: Walton

This document is a written submission by way of objection to DA 2020/1743  
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:

*the construction of a seniors housing development incorporating 8 x 3 bedroom in-fill self-care  
apartment style dwellings and basement car parking for 17 vehicles pursuant to the provisions of State  
Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ("SEPP HSPD")*

Construction Cost: \$4m

The subject site is zoned R2 pursuant to the LEP, and there is no reason, unique or otherwise, why a fully compliant solution to pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ("SEPP HSPD") and LEP and DCP controls, as appropriate, cannot be designed on the site.

## SECTION 1: EXECUTIVE SUMMARY

This Written Submission asks Council to request that the Applicant submits Amended Plans to resolve the matters raised within this Submission, and failing a comprehensive set of amendments undertaken by the Applicant as identified within this Submission, to ask the Applicant to withdraw the DA, or if that is not forthcoming, to **REFUSE** this DA.

We are being assisted by a very senior experienced consultant assisting us in the preparation of this Written Submission.

Our neighbour is using the same consultant, and we advise Council that the submissions are identical.

Our submission primarily deals with the entry zone and the Northern Pavilion facing our property.

The bulk and design of the proposed works are not compatible with neighbouring development and will be a negative contribution to the scenic amenity of the area when viewed from surrounding viewpoints, particularly our property.

The proposed development is a clear case of overdevelopment:

### 1. Height

>8m. Non-compliant exceeds 8m. Roof @  $71.8 - 63.5 = 8.3\text{m}$  [East Elevation, Section 1, Section 4]

2. **FSR.** Non-compliant. Strict compliance is necessary

3. **Northern Setback.** Non-compliant. Unit 1 1.9m high Raised Decks 1.8m setback. Unit 3 Deck 6.075m.

4. **Landscape.** Proposes 20-25m high trees on our boundary

6. **Three Storey and raised plinth.** The ground floor is positioned 1.9m above ground level existing, presenting a significant walled frontage to the boundaries.

The non-compliance to standards leads directly to our amenity loss. Our main concerns are:

- Visual & Acoustic Privacy
- Visual Bulk

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

The Applicant has had no prior discussion with us regarding to this 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 multiple controls.

It does seem very unreasonable that this proposed development will remove our amenity to improve the amenity of the proposal, and is proposing a catalogue of non-compliant outcomes that would poorly affect our amenity

The proposed development is considered to be inconsistent with the outcomes, controls and objectives of the relevant legislation, plans and policies.

The DA scheme submitted requires to be substantially amended due to the non-compliant Building Height, FSR, and Setback.

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 refuse the DA or condition the consent.

We are concerned to the non-compliance to SEPP HSPD

- Clause 2 Aims of Policy
- Clause 29 Character
- Clause 30 Site Analysis
- Clause 31 Design of in-fill self-care housing
- Clause 32 Design of residential development
- Clause 33 Neighbourhood Amenity and Streetscape
- Clause 34 Visual and Acoustic Privacy
- Clause 40 Development Standards
- Clause 50b FSR
- Clause 50h Visitor Parking

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

- 1.2 Aims of Plans
- 2.3 Zone Objectives Zone R2 Low Density Residential
- 4.3 Height of Buildings
- 4.4 Floor Space Ratio
- 6.2 Earthworks

We are concerned to the non-compliance of the DCP.

- B7 Front Boundary Setbacks
- C2 Traffic, Access and Safety
- D3 Noise
- D8 Privacy

The non-compliance to the SEPP, LEP and DCP outcomes and controls forms the basis of our objection. Our loss of amenity will suffer from these non-compliances to outcomes and controls.

Our major amenity concerns are the privacy issues that arise through the poor design choices, and non-compliant envelope and the incomplete consideration of architectural devices to better provide privacy.

This design approach has led directly to the non-compliance in Building Height, Wall Height, FSR, Earthworks and Setback.

We support the Urban Design Officers recommendation:

#### *Urban Design Referral Response*

*The proposal's responses to the Urban Design Comments highlighted during the Pre-Lodgement Meeting are provided below:*

*1. The overall building bulk and scale should be reduced to be similar to the next door development (comprising of 7 units within four smaller building blocks) to be contextually fitting with the surrounding free-standing houses. The proposed FSR is over the 0.5:1 requirement so the proposed 8 number of units could be reduced to 7. The top floor units should be reduced in area to allow a less top-heavy look by having single storey elements incorporated. Roof overhang could also be reduced to maximise sunlight access to neighbouring properties and comply strictly with the building envelope controls. Response: Proposed FSR is 0.55:1. The proposal is still top heavy with the top floor units not reduced in size. Balconies to upper units need privacy treatment to minimise overlooking issues.*

*2. The 30% landscape calculation should be based on landscaped area that is 2m minimum width. As such the footpath along the eastern boundary could be more integrated into the landscape concept.*

*The existing tree courtyard could be taken advantage of being the entry court leading to the units and lift lobbies. One of the ground floor unit in the rear block could be deleted to create a more welcoming entrance.*

*Response: No ground floor unit in the rear block has been deleted. The entry to the rear block lift lobby is long and narrow resulting in an unpleasant environment.*

*3. Unit 07 has bedroom and utilities windows opening into the entry passage which is not desirable. Sunlight access to this unit could be improved further.*

*Response: Unit 08 layout has been revised to avoid windows facing the entry passage.*

*4. Pedestrian footpath entry from the shared driveway could potentially be dangerous having to cross two basement entry ramps. Consider collaborating with the next door neighbour to combine the basement ramp entry point and creating less of a bottle-neck effect improving the entry experience for both developments.*

*Response: The suggestion has not been explored.*

*5. Proposed built forms to comply with the 8m building height and two storey requirement by making sure basement do not protrude above natural ground by more than one metre. Strict compliance with Building envelopes to be demonstrated on drawings.*

*Response: Proposed basement/ planter box protrudes above natural ground by more than one metre on the northern boundary (Section A). The proposed entry walkway is hard up against the northern boundary and elevated from natural ground (East Elevation) creating overlooking privacy and noise nuisance issues to neighbouring property at No. 47 Lantana Avenue. The elevated privacy fence proposed along the north boundary is also a concern. No side boundary building envelope controls have been indicated on drawings.*

In addition to these matters, we bring to Council's attention numerous design choices that have seriously impacted on our privacy:

### **Pedestrian Footpath Entry**

The proposed height of the elevated Pedestrian Footpath Entry from 64.00 through to 64.45, would enable Pedestrians to view immediately over the 1.8m high boundary fence into Neighbours Properties. The ground level exiting is at 63.31, resulting that the Pedestrian Footpath Entry is elevated 1.14m above Neighbours levels, and this height would increase the further west the Entry proceeds. This would require retaining walls to be built along the boundary, and these are not shown on DA drawing A04. The retaining walls would remove all soft landscaping zones to the north of the Pedestrian Footpath Entry

### **Unit 1**

The proposed Unit 1 is at 64.30, with ground level existing at 62.42. This ground floor unit is 1.88m above the ground level existing, resulting in a non-compliant three -storey configuration as the basement is considerably in excess of 1m above ground level existing. Unit 1 ground level is greater

than the height of the 1.8m high boundary fence and therefore this Unit can look immediately and directly into neighbour's private open space, set only 3m away from the boundary

## **Unit 2**

The proposed Unit 2 is at 63.5, with ground level existing at 62.41. This ground floor unit is 1.09m above the ground level existing, resulting in a three -storey configuration as the basement is considerably in excess of 1m above ground level existing. Unit 2 ground level can look immediately and directly into neighbour's private open space from the elevated decks, set only 1.8m away from the boundary

## **Unit 3**

The proposed Unit 3 is at 67.3, with decks and windows within 6m of the boundary without privacy screening, looking directly into the Neighbours private open space.

## **Unit 4**

The proposed Unit 4 is at 67.3, with decks and windows without privacy screening, looking directly into the Neighbours private open space.

## **Acceptability of 32 cars in one driveway**

There is a substantial increase in traffic along the driveway. This side of the neighbour dwelling has three bedrooms. SEPP HSPD states within Section 34 (b) *ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths*. We contend that the site is unsuitable for this development due to the substantial increase in noise from the driveway.

## **The location of garbage bins.**

The location proposed is underneath our bedrooms, and we significant concerns to odour and acoustics. We contend that the garbage bins be located in the basement and a method statement provided to identify how this will operate considering neighbours bedrooms along the driveways

## **Murraya hedge to driveway**

All hedging plants to be retained as they are providing essential privacy from the approved DA on 43 Lantana Avenue. This is of utmost importance to us.

## **Common Teatree on northern boundary to be retained**

We ask that this tree be retained and protected as it assists with privacy

In this Written Submission we ask Council to request the Applicant to submit Amended Plans to bring the proposed development back into a more generally compliant envelope including:

1. Pedestrian Footpath Entry to be repositioned to southern side of Vehicle Ramp
2. Increase ramps to bring basement to RL 59.4
3. 1m clear deep soil planting zone along northern boundary at existing grades, adjacent any ramp construction. Screen planting to 3m height.
4. Unit 1 & 2 to be reduced to RL 62.4 to match ground level existing
5. Unit 3 & 4 to be reduced to RL 65.6 [3.2m storey height], with ceiling height to RL 68.3.
6. Ridge Heights to RL 69.5
7. Northern setback to increase to 9m to decks and terraces at both levels, with additional articulation to 12m setback, to allow 3m wide decks.
8. New 1.8m high solid masonry wall to be built along boundary, to the northern boundary and driveway, rendered and painted both sides, built on subject site.
9. Delete 20m high canopy trees in northern rear setback zone, replace with 3m to 6m high screening trees to better screen wall heights
10. Privacy screens on decks and windows facing north to 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. All balustrades to be obscured glazing.
11. New planters in Units facing north at both levels to have landscape to a 1.8m height with 9m setbacks
12. Location of garbage bins. Garbage bins be located in the basement and a method statement provided to identify how this will operate considering neighbours bedrooms along the driveways
13. Murraya hedge to driveway. All hedging plants to be retained as they are providing essential privacy
14. The structural design is to be reviewed by a geotechnical engineer prior to the Construction Certificate (Council Policy Section 6.5(g)(ii)), provide conditions for ongoing management as per Section 6.5(g)(iv).
15. Temporary anchors be used in piling and that no permanent anchors are installed as they would then reduce the ability for development within the adjoining property.
16. Until subsurface investigations prove that good quality rock is present, assume that the rock will be of poor quality and shoring should be allowed for the full depth of the excavation.
17. Vibration monitoring should be carried out until it can be demonstrated that the transmitted vibrations to the adjoining properties are within tolerable limits. Vibration levels to reduce to 2.5mm/sec, with a stop work halt at 2.0mm/sec, with full-time monitoring, and daily reports to Certifier and Council
18. The dilapidation survey should comprise a detailed inspection of all Neighbours both externally and internally with all defects rigorously described and photographed. The completed dilapidation report should be provided to the Neighbours to allow them to confirm that the dilapidation report represents a fair record of actual conditions.



We 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 we had as a neighbour was for a development that would not result in outcomes as noted above in respect to non-compliant Building Height, FSR, Setback, and other non-compliances leading to poor amenity outcomes.

The ‘*legitimate expectation*’ that we had as a neighbour was for the bulk and scale of the proposed development and in accordance with the locality, to be under 8m in height, with adequate setbacks, without raised entry features built on Neighbours boundary creating unacceptable privacy outcomes. and to have an FSR that does not cause amenity harm.

The ‘*legitimate expectation*’ that we had as a neighbour was for a development that integrates with the landscape character of the locality, and an expectation that the proposal would support landscape planting of a size that is capable of softening the built form. Our expectation was that the proposed development would not propose 20-25m high new trees onto our boundary, but 3m-6m screening landscape to better screen the proposed development.

The ‘*legitimate expectation*’ that we had as a neighbour was for the bulk and scale of the proposed development and in accordance with the locality, to be a requirement to incorporate and enhance the built form through planting to mitigate the impacts of the building bulk and scale, particularly along the boundaries.

We ask Council to refuse this DA as the proposed development does not comply with the *planning regime*, by multiple non-compliance to development standards, and this non-compliance leads directly to our amenity loss.

## **SECTION 2: CHARACTERISTICS OF OUR PROPERTY**

Our property shares a common boundary with the subject property.

The subject site lies to the south of our property.

We enjoy good levels of privacy and daylight over the subject site.

## **SECTION 3: SITE DESCRIPTION, LOCATION AND CONTEXT**

The SEE states:

*The property is currently occupied by brick residence with pitched and tile roof with an inground swimming pool deck and water tank located between the dwelling and a detached garage and carport structure located adjacent to the northern boundary. Vehicular and pedestrian access to the property is via an existing shared reciprocal right of carriageway from Lantana Avenue with the proposal relying on this existing lawful access arrangement.*

#### **SECTION 4: DEVELOPMENT PROPOSAL**

The SEE states:

*The construction of a seniors housing development incorporating 8 x 3 bedroom in-fill self-care apartment style dwellings and basement car parking for 17 vehicles pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ("SEPP HSPD")*

#### **SECTION 5: OUTSTANDING INFORMATION**

##### **Height Poles**

We ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor.

The Height Poles will need to define:

- All Roof Forms, and all items on the roof
- Extent of all Decks, Balustrades, Privacy Screens

The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

##### **Geotechnical Report**

We ask for the Geotechnical Report to be revised to give greater clarity on the items raised in this Submission.

## **Survey Levels**

The Applicant has not adequately located the registered surveyor's levels on plans, sections or elevations, particularly along the northern boundary.

The survey is inadequate as it does not survey 47 & 49 Lantana Ave dwellings in full.

We are greatly concerned that the Applicant has modified the Registered Surveyors Plan to misrepresent neighbours' dwellings.

We ask Council to ensure that the Registered Surveyors drawing is shown precisely as drawn by the Registered Surveyor. The applicant's drawings have been altered in these respects so as not to clearly define external wall zones, decks, and eaves, and in doing so presents false and misleading drawings to Council. We ask that Council obtain amended plans to clearly define neighbour's dwellings precisely as the Registered Surveyor has presented them, to avoid proper consideration of the DA.

## **SECTION 6: 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:

1. The extent of the proposed building envelopes
2. The siting and extent of the proposed development without having sufficient consideration for maintaining amenity, with substantial non-compliance of controls
3. Non-compliant Height >8m.
4. FSR. Non-compliant. Strict compliance is necessary
5. Northern Setback. Non-compliant.
6. Trees up to 25m proposed near boundary
7. Visual & Acoustic Privacy
8. Visual Bulk

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 & 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 compliant 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.

## SECTION 7: STATUTORY PLANNING FRAMEWORK

### State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The following section of this Written Submission assesses the proposed development against the relevant provisions of the SEPP 2004 (as amended).

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Provision	Compliance	Consideration
2 Aims of Policy	No	<p>The design principles that should be followed to achieve built form that responds to the characteristics of its site and form, have not been followed</p> <p>The proposed built form does not minimise or, reduce the impacts on the amenity and character of the area and is considered to be not of a good design.</p> <p>When considered against the aim of achieving a good design, the development must also be considered in context with the provisions of SEPP (HSPD). The aim of the policy is to encourage seniors housing achieving a good design outcome which respects the character of the locality it is located in and seeks to minimise the impacts on amenity and the character of the area. The proposed built form does not minimise impacts on the character as</p>

		detailed within this report and is therefore considered inconsistent with the aims of this policy.
29 Character	No	<p>The development as proposed is considered to be inconsistent with the requirements contained within Clause 25 (5) for the following reasons:</p> <p>The proposed bulk and scale of the development is considered excessive and inconsistent with the character within the immediate locality which is demonstrable with the non-compliant FSR of 0.55:1</p>
30 Site Analysis	No	<p>Fails to adequately address Privacy Loss</p> <p>Fails to properly assess Setbacks</p> <p>Fails to properly assess Built Form &amp; Character of Adjoining Development</p> <p>Fails to consider the Built Form patterns of neighbouring developments, and proposes a scheme with little articulation of the built form</p>
31 Design of Infill Self Care Housing	No	<p>Pursuant to Clause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the Seniors Living Policy: Urban Design Guidelines for Infill Development published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.</p> <p>The provisions of the Seniors Living Policy: Urban Design Guidelines for Infill Development have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken hereunder.</p> <p>Responding to context</p>

		<p>The proposed development provides a two &amp; three storey development with basement parking. The building form represents two substantial building mass oriented east west across the site providing no integration with the natural environment or achieving a balance between landscapes and built form. The lack of architectural devices to break up the continuous 'block' forms is a major concern with the proposal. The massive block forms are completely 'foreign' to the neighbourhood that is single residential dwellings</p> <p>The proposed built form is considered inconsistent with the desired character of the locality which seeks low density development forms. The scale of the development is excessive even allowing for the additional density discretions provided by SEPP HSPD and the beneficial and faculative nature of this instrument.</p> <p>The overall height and scale of the proposed building is considered excessive and is not consistent with development that currently exists on this site and on the adjoining development.</p> <p>Building bulk is considered not acceptable, with the massing of the buildings not being broken-up by variation in the building form.</p> <p>Site Planning and design</p> <p>The proposed development does not minimise the impact on the neighbourhood character which integrates older established medium density developments with single low density forms of development.</p> <p>The developments presentation to the frontages is reflective of a large residential flat building elevated above existing level and framed by a raised platform built on the boundary seeking to obscure the substantial ramp access required for the site.</p> <p>Impacts on streetscape</p> <p>As identified above, the development does not provide a sympathetic presentation to the neighbours or integration</p>
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		<p>with the landform in a landscaped setting. The building does not reflect a low density residential character.</p> <p>The landscape plans submitted with the application do not provide for a high-quality landscape outcome for the site, which will ensure that the proposed development is characterised by a landscape setting. Inappropriate planting of tree up to 25m are proposed on neighbours boundaries, rather than 3m to 6m high screening trees</p>
32 Design of Residential Development	No	<p>Fails to give adequate regard has been given to the principles set out in Division 2.</p> <p>In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2</p>
33 Neighbourhood Amenity & Streetscape	No	<p>The building form at the front of the site is not considered to adequately respond to the land form with an elevated ground floor above a basement level and imposing front wall structure forming a barrier to the extensive accessible ramp which requires a substantial amount of the front setback.</p> <p>Fails to be designed so that the front building of the development is set back</p> <p>Fails to maintain building height under 8m</p> <p>Fails to propose landscape that protects neighbours amenity</p> <p>The proposed development is offensive, jarring or unsympathetic to the neighbours or having regard to the built form characteristics of development throughout the immediate locality</p>

		<p>The proposed development is not considered to appropriately respond to the existing character of the area.</p> <p>The lack of substantive articulation of the built form relates unfavourably to its context and will negatively contribute to the quality and identity of the site.</p> <p>The current proposal represents an unsatisfactory design outcome for the site and locality from that presently existing on the site currently by virtue of the lack of articulation and façade treatment to street frontages, and the over development</p> <p>The siting and location of buildings within the site has not given regard to maintain height controls, and has not provided sufficient landscape buffer at a suitable height in order to preserve the amenity of the adjoining properties in terms of privacy, and solar access.</p> <p>The proposed setbacks to the front of the development and the extent of landscaping provided within the setback are considered not satisfactory to minimise the visual impact of the development.</p> <p>The lack of articulation and stepping of the built form are not sympathetic to the character in the area and does not provide an effective and sensitive transition between the subject development and surrounding development.</p> <p>The proposal does not include areas of landscaping which are consistent and sympathetic to the existing provision of landscaping throughout the streetscape.</p> <p>Impacts on neighbours</p> <p>The proposed development fails to respond to the character of development in this locality and results in numerous impacts on the neighbouring properties. Our property suffers significant privacy concerns</p> <p>Internal site amenity</p> <p>The site layout creates pedestrian access which is overwhelming the front setback of the site and channels occupants into a single gun barrel access path, to an</p>
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		elevated entry above neighbours boundary fences causing devastating privacy loss
34 Visual & Acoustic Privacy	No	<p>The development has not been designed to maintain a reasonable level of acoustic and visual privacy between properties. Inappropriate building setbacks, and ineffective use of privacy treatments do not maintain a satisfactory level of privacy to adjoining properties.</p> <p>Incomplete consideration of proposed windows and decks that will look immediately into neighbours dwellings</p> <p>Concern to mechanical plant noise</p> <p>Visual privacy concerns to Pedestrian Footpath Entry, and to Terraces, Decks and Windows facing north</p> <p>Acoustic Privacy concerns to noise from additional cars, and noise from ramp access and light spill.</p> <p>Section 34 (b) <i>ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.</i> We contend that the site is unsuitable for this development due to the substantial increase in noise from the driveway.</p>
40 Development Standards	No	<p>Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.</p> <p>Non-compliance</p> <p>[a] Heights 8m</p> <p>The building height exceeds the 8m maximum at various sections of the building.</p> <p>&gt;8.0m 3 storeys at boundary, as ground level 1.88m higher than ground level existing.</p>

		<p>The proposed density is assessed as being unacceptable, as development does not fit comfortably within its local context. The overall height and scale of the proposed development is considered excessive and is not consistent with the area.</p> <p>The extent of non- compliance contributes to the bulk and scale of the building form which is considered inconsistent with the character of the locality both established and future character.</p>
FSR [Clause 50b]	No	0.55:1
Visitor Parking [Clause 50h]	No	2 spaces to be provided

## LEP

Whilst the Development Application has been made pursuant to the SEPP (HS&PD), the following LEP controls have been considered.

The land is zoned R2 Low Density Residential. Seniors housing as defined by the LEP is a prohibited use in the zone. However, the use remains permissible with consent via the operation of SEPP (HS&PD) 2004 and the operation of Clause 1.9 of the LEP. SEPP (HS&PD) 2004 is not omitted from operation by Clause 1.9(2) of the LEP and accordingly is the operative planning instrument.

The following matters are relevant to the development under the MLEP 2012:

Provision	Compliance	Consideration
1.2 Aims of Plans	No	The proposal does not comply with the aims of the plan as it fails to promote a high standard of urban design that responds to the existing or desired future character of areas, to ensure all development appropriately responds to environmental constraints and does not adversely affect the character, amenity of the area or its existing permanent residential population particularly to our property, and fails to ensure high quality landscaped areas in the residential environment particularly along the northern boundary.
2.3 Zone Objectives Zone	No	The proposal does not satisfy the zone objectives. The proposed development is offensive, jarring or unsympathetic, having

R2 Low Density Residential		regard to the built form characteristics of development within the site's visual catchment, particularly from our property
4.3 Height of Buildings	No	A maximum height of 8.5m is permitted.  A height greater than 8.5m is proposed.
4.4 Floor Space Ratio	No	The proposal is >0.55:1, a substantial non-compliance.  The GFA calculations are understated.
6.2 Earthworks	No	The proposal does not comply.

### Aims of the Plan

The proposal does not comply with the aims of the plan as it fails to promote a high standard of urban design that responds to the existing or desired future character of areas, to ensure all development appropriately responds to environmental constraints and does not adversely affect the character, amenity of the area or its existing permanent residential population particularly to our property, and fails to ensure high quality landscaped areas in the residential environment particularly along all setback zones.

We contend that the proposed development does not accord with this clause due to the multiple non-compliances to development standards, that cause direct amenity harm to our property.

### Zone and Objectives

The proposal does not satisfy the zone objectives. The proposed development is offensive, jarring or unsympathetic, having regard to the built form characteristics of development within the site's visual catchment, particularly from our property

The subject property is zoned R2 pursuant to LEP.

We contend that the proposed development does not accord with this clause due to the multiple non-compliances to development standards, that cause direct amenity harm to our property.

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 the non-compliant height, setbacks, and FSR and would have most observers finding *‘the proposed development offensive, jarring or unsympathetic’*

### **4.3 Height of Buildings**

The proposed development does not provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality. The proposed development does not control the bulk and scale of buildings.

We contend that the DA fails the objectives of this control as follows:

Pursuant to Clause 4.3 of LEP the height of a building on the subject land is not to exceed 8.5 metres in height.

No Clause 4.6 Variation Request has been prepared by the applicant, however even if it was provided, the Request would not demonstrate that the development is consistent with the objectives of the zone, and consistent with the objectives of the building height standard.

Strict compliance is reasonable and necessary, to ensure amenity outcomes.

There are insufficient environmental planning grounds exist to justify the variation sought.

We contend that the proposed development does not accord with this clause due to the multiple non-compliances to development standards, that cause direct amenity harm to our property.

### **Clause 4.4 Floor Space Ratio**

We contend that the proposed development does not ensure the bulk and scale of development is consistent with the existing and desired streetscape character.

We contend that the proposed development does not control building density and bulk in relation to the site area to ensure the development does not obscure important landscape and townscape features.

We contend that the proposed development does not maintain an appropriate visual relationship between new development and the existing character and landscape of the area.

We contend that the proposed development does not minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.

The FSR is under calculated as there are stairs, lifts, excess garage size, basement storage areas, garbage areas, areas within the lower two floors, and excessive plant that when included within the FSR calculation, render the FSR grossly in excess of LEP

We contend that there is additional GFA to be added to the Applicant's calculations that take the GFA and FSR way over the development standard, in particular:

- Stairs & Lifts: *Chami v Lane Cove Council* [2015] NSWLEC 1003
- Excess Garage Size: *Parking Station Pty Ltd v Bayside Council* [2019] NSWLEC 1268
- Basement Storage areas that are <1m above ground: *Glenn McCormack v Inner West Council* [2017] NSWLEC 1559
- Storage below stairs: *Dwyer v Sutherland Shire Council* [2018] NSWLEC 1543
- Garbage Areas <1m above ground: *Landmark Group Australia Pty Ltd v Sutherland Shire Council* [2016] NSWLEC 1577

All these areas must be INCLUDED in the calculation of GFA. They all add bulk to the proposed development. This requires careful assessment by Council.

We ask Council to check these calculations.

In *Parking Station Pty Ltd v Bayside Council* [2019] NSWLEC 1268 the Court held that the floor area of car parking provided above the quantity required by the relevant Council DCP was to be INCLUDED in the calculation of GFA (at [23]). This again is straightforward, meaning that if a developer chooses to provide extra parking spaces, such as this Developer, they will be utilising their available GFA.

In *Glenn McCormack v Inner West Council* [2017] NSWLEC 1559 the Court held that the floor area of waste management and storage areas contained within a basement; but in an area of the basement 1m or more above the ground level, were to be INCLUDED in the calculation of GFA (at [103]). In reaching its decision, the Court took into consideration the definition of 'basement' as defined by the relevant LEP to confirm if the exclusion at (e) was enlivened. Put simply, areas more than 1m above ground level are not a 'basement' as defined.

In *Dwyer v Sutherland Shire Council* [2018] NSWLEC 1543 the Court held that the floor area of storage under stairs: on the ground floor; and greater than 1.4m in height, was to be INCLUDED in the calculation of GFA (at [35] and [60]).

In *Landmark Group Australia Pty Ltd v Sutherland Shire Council* [2016] NSWLEC 1577 the Court held that internal garbage storage areas not within a basement were to be INCLUDED in the calculation of GFA (at [63]).

In *Chami v Lane Cove Council [2015] NSWLEC 1003* the Court held that the floor area of stairs and a lift well inside of a dwelling house; at each habitable level; and which were not shared between multiple occupancies; were to be INCLUDED in the calculation of GFA (at (273) – (280)).

In light of the absence of appropriately considered Clause 4.6 FSR applications, and other outstanding information, Council may need to reject the Development Application as being beyond power on grounds that Council, as consent authority, has not been provided with sufficient probative material to form a proper basis for lawful action.

We bring to Council attention that the FSR calculations, do not take into consideration the substantial storey heights of every floor plate. The storey heights are excessive, and this leads to the proposals not complying with the objectives of the FSR.

We also bring to Council's consideration **Salanitro-Chafei v Ashfield Council [2005] NSWLEC 366**. We contend that the under forecast of GFA is a considerable concern. We contend that the proposals '*appears so incongruous in its surrounding*' due to the excessive FSR.

Commissioner Roseth within Salanitro-Chafei stated the following:

*26 The standard of 0.5:1 FSR has found expression in numerous planning instruments and policies whose aim is to integrate increased density housing into low-density residential areas without destroying the existing open character. The Seniors Living State Environmental Planning Policy adopts a FSR of 0.5:1 as a "deemed to comply" standard. State Environmental Planning Policy 53 – Metropolitan Residential Development adopts it as the maximum permissible density in relation to dual occupancy. Many local planning instruments and policies guiding dual occupancy development in suburban areas also contain a maximum FSR control of 0.5:1*

*27 The above suggests that there is a general acceptance by the planning profession that an open suburban character is most easily maintained when the FSR of buildings does not exceed 0.5:1. The question raised above may therefore be answered thus:*

*The upper level of density that is compatible with the character of typical single-dwelling areas is around 0.5:1. Higher densities tend to produce urban rather than suburban character. This is not to say that a building with a higher FSR than 0.5:1 is necessarily inappropriate in a suburban area; only that once 0.5:1 is exceeded, it requires high levels of design skill to make a building fit into its surroundings.*

*28 The proposed building has a FSR significantly in excess of 0.5:1. It does not exhibit any special design skills. This is one of the explanations why it appears so incongruous in its surroundings.*

In these respects, we contend that the excessive heights with excessive deep basements, with non-compliant setbacks, produces a FSR that '*is one of the explanations why the proposal appears so incongruous in its surroundings.*'

The assessment of the proposal has identified a discrepancy in the methodology of area calculations undertaken by the applicant. In this respect, the applicant has not included GFA associated with the stair and lift, and areas following the application of any GFA concession to meet parking requirements. The assessment has cited Stairs & Lifts: *Chami v Lane Cove Council* [2015] NSWLEC 1003; Excess Garage Size: *Parking Station Pty Ltd v Bayside Council* [2019] NSWLEC 1268; Basement Storage areas that are <1m above ground: *Glenn McCormack v Inner West Council* [2017] NSWLEC 1559; Storage below stairs: *Dwyer v Sutherland Shire Council* [2018] NSWLEC 1543; Garbage Areas <1m above ground: *Landmark Group Australia Pty Ltd v Sutherland Shire Council* [2016] NSWLEC 1577, and other criteria with respect to the interpretation of GFA.

The variation to the FSR development standard is not assessed to be reasonable, necessary or in the public interest. Being a knock down rebuild development, there is no justifiable reason for the additional floor area proposed. The departure from the FSR development standard should not be supported.

We contend that the DA fails the major objectives of this control as follows:

#### 4.4 Floor space ratio

The calculation of FSR is significantly understated.

Unreasonable visual bulk, and privacy loss that is a direct result of a non-compliance should not be supported by Council.

We contend that the DA fails the major objectives of this control as follows:

#### 4.6 Exceptions to development standards

No Clause 4.6 Exceptions to Development Standards request has been submitted for the non-compliant FSR.

The GFA grossly under forecasts the non-compliance to the numerical standard, and therefore cannot be relied upon.

The proposed development does not comply:

- compliance with the development standard is reasonable or necessary in the circumstances of the case;
- there are insufficient environmental planning grounds to justify contravening the development standard.
- The SEE has not adequately addressed the matters in this respect as the request has not addressed the significant under forecast of GFA

- the proposed development is not in the public interest because it is inconsistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, as identified within this Submission

This is contrary to LEP controls.

## 6.2 Earthworks

The substantial extent of the earthworks will have a detrimental impact on environmental functions and processes, neighbouring uses, and features of the surrounding land.

We are greatly concerned on the vibration risks associated with this quantity of excavation close the neighbours boundaries.

The continuous vibration from many, many months of excavation would be intolerable, and totally unreasonable. Vibration would make many neighbours house unliveable during this extensive excavation period. We are concerned to the damage to our house.

The noise would be horrendous, and not only affect neighbours, but also the amenity of those at the nearby public domain zones.

We are concerned on the likely disruption, or any detrimental effect on, existing drainage patterns and soil stability in the locality.

We are concerned that the changed water flows through the property, we are concerned that no extensive study commissioned to assess the issue.

We are concerned that altered subsoil water flows will damage our property.

We are concerned on the intensity and extended programme to extract and recover excavated material and bedrock from the proposed development, and the number of truck movements to extract this considerable amount of spoil.

The proposal fails to limit excavation, “cut and fill” and other earthworks.

We refer to the Geotechnical Report.

We contend that the Geotechnical Report is not complete.

We consider that the potential landslide hazards associated with the site are:

1. Instability of existing boundary retaining walls.
2. Instability of new retaining walls.
3. Instability of ‘floaters’.



4. Instability of temporary cut batters.

We strongly question the '*assessed likelihood and assessed consequences*' of these matters.

We are concerned that there should be an *assessment of risk to life*. This has not been provided.

Dilapidation Surveys recommends Dilapidation Surveys on our property. We ask that a full photographic survey is undertaken. We ask Council to condition any consent appropriately.

We ask for the applicant to fully consider, alternative excavation techniques to reduce vibrations including using a rock grinder on the excavator, or a large excavator mounted rock saw to grid saw the bedrock into blocks that could then be removed using a ripping tyne attachment to the excavator, or by the use of drill and split techniques. We ask for this technique be not considered as an alternative, but be recommended as the preferred technique, if this technique gives the highest chance of success to reduce vibration risk.

We ask the Geotechnical Engineer give guidance as to techniques required to bring the vibration levels to boundaries to a halt of works at 2mm/sec. We ask for Vibration Emission Design Goals to reduce from 5mm/sec to 2.0mm/sec [halt to works] due to the older fabric of neighbouring dwellings, the full-time occupation of the neighbours dwelling during daylight hours, and the risk of 'floaters' extending under our property from the subject site.

Further geotechnical work must be carried out:

- Dilapidation reports of adjoining buildings and structures.
- Inspection of the test pits exposing the rear of existing boundary walls and existing footings.
- Continuous vibration monitoring during use of rock breakers for bedrock excavation.
- Inspection of cut faces and directing rock cut face stabilisation measures, if required.
- Monitoring of groundwater seepage into bulk excavations.
- Inspection of footing bases.
- Proof rolling of exposed sub-grade.
- Density testing of engineered fill.

Comment:

We ask the Geotechnical Report to address the following matters:

1. The report does not state that the structural design is to be reviewed by a geotechnical engineer prior to the Construction Certificate (Council Policy Section 6.5(g)(ii)), nor does it provide conditions for ongoing management as per Section 6.5(g)(iv).
2. We contend that only temporary anchors be used in piling and that no permanent anchors are installed as they would then reduce the ability for development within the adjoining property.

3. Until subsurface investigations prove that good quality rock is present, we contend that it be assumed that the rock will be of poor quality and shoring should be allowed for the full depth of the excavation.
4. Vibration monitoring should be carried out until it can be demonstrated that the transmitted vibrations to the adjoining properties are within tolerable limits, but should commence at a maximum of 2mm/sec.
5. The dilapidation survey should comprise a detailed inspection of neighbours property both externally and internally with all defects rigorously described and photographed. The completed dilapidation report should be provided to the owner of No. 58 to allow them to confirm that the dilapidation report represents a fair record of actual conditions.
6. We request that the Geotechnical Engineer inspect on a daily basis during excavation, considering the significant geotechnical hazards.
7. We request that no excavation be allowed in the 3m side setback zone.
8. We ask the Geotechnical Engineer give guidance as to techniques required to bring the vibration levels to boundaries to a halt of works at 2mm/sec, such as “reduce vibration monitoring could include using a rock grinder on the excavator, or a large excavator mounted rock saw to grid saw the bedrock into blocks that could then be removed using a ripping tyne attachment to the excavator, or by the use of drill and split techniques.”
9. Geotechnical and structural requirements to maintain works and not to damage works along the boundary and the dwelling itself.
10. ‘Assessed likelihood and Assessed consequences’ to be reconsidered
11. An assessment of risk to life to be reconsidered

We ask for the Geotechnical Report to be revised to give greater clarity on these items, and give greater consideration to the works proposed to the boundary, that have not been adequately considered by the Geotechnical Report, nor in the SEE.

### **Overland Flood Assessment Report**

We are also concerned that no Overland Flood Assessment Report has been submitted, to identify the potential Impacts.

## **SECTION 7.2 DCP**

The following matters are relevant to the development under DCP:

Provision	Compliance with Control	Compliance with Objectives
D8 Privacy	No	No
B7 Front Boundary Setbacks	No	No
C2 Traffic, Access and Safety	No	No

D3 Noise	No	No
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## D8 Privacy

The proposed development does not ensure that the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours. The siting of the non-compliant development is positioned too close to the boundary, and will not provide acoustic or visual privacy to our dwelling.

The proposed building layout has not been designed to optimise privacy for occupants of the development and occupants of adjoining properties.

The windows facing our property at all levels must have privacy screens, and need to be reduced in size.

The proposed development has not properly considered the effective location of doors, windows and balconies to avoid overlooking. We prefer the use of screening devices, high sills or obscured glass to these areas, and for Council to carefully consider all these matters.

The proposed development windows provide direct or close views into the windows of our property. We are concerned on all windows overlooking our dwelling, private open space and deck.

The design of the development gives rise to unreasonable privacy outcome by elevated decks and windows elevated within non-compliant envelope beyond controls giving direct line of sight into neighbours property.

The design does not ensure the siting and design of buildings to provide a high level of visual and acoustic privacy for occupants and neighbours facing our property.

The elevated entry is unacceptable, as users would be able to overlook into our private open space.

Proposed decks within 9m of our private open space must be provided with full height privacy screens.

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, with height, setback, and side boundary envelope control.

*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.*

Response: The proposed development result in a privacy impact with the proposed decks and entry zones facing neighbours without any screening devices being provided, looking directly into private open space of neighbours.

*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 highly used rooms, it is considered that the highly used rooms will result in an unacceptable privacy breach. The proposed windows facing 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 poor design 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 complaint heights and setbacks.

*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 use of privacy screens would reduce the impact of the development.

*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: Little landscaping is proposed, to screen the proposed decks.

*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.

As Dickson C pointed out in *Rose & Sanchez v Woollahra Municipal Council* [2016] NSWLEC 1348 (19 August 2016) at [78]:

*In applying these criteria Meriton v Sydney City Council [2004] NSWLEC 313 at [45] clarifies the scope of visual privacy in the context of residential design as: the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.*

That is our great concern - the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.

### **B7 Front Boundary Setback**

We are concerned that the setbacks to the northern boundary are inadequate, with elevated entry zones, terraces and other built form built into the northern setback zone

### **C2 Traffic, Access & Safety**

We are concerned that the elevated entry is unsafe, as it crosses the main ramped entry.

### **D3 Noise**

We are concerned to the noise from the additional car movements and to the elevated entry structure immediately adjacent our boundary

## **SECTION 8: 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 setbacks, would have most observers finding *‘the proposed development offensive, jarring or unsympathetic in a streetscape context’*

## **SECTION 9: 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. We do hope that Council will advise the Applicant that unless an amended plan submission is promptly forwarded, that refusal may be the outcome.

In this Written Submission we ask Council to request the Applicant to submit Amended Plans to bring the proposed development back into a more generally compliant envelope including:

In this Written Submission we ask Council to request the Applicant to submit Amended Plans to bring the proposed development back into a more generally compliant envelope including:

1. Pedestrian Footpath Entry to be repositioned to southern side of Vehicle Ramp
2. Increase ramps to bring basement to RL 59.4
3. 1m clear deep soil planting zone along northern boundary at existing grades, adjacent any ramp construction. Screen planting to 3m height.
4. Unit 1 & 2 to be reduced to RL 62.4 to match ground level existing
5. Unit 3 & 4 to be reduced to RL 65.6 [3.2m storey height], with ceiling height to RL 68.3.
6. Ridge Heights to RL 69.5
7. Northern setback to increase to 9m to decks and terraces at both levels, with additional articulation to 12m setback, to allow 3m wide decks.
8. New 1.8m high solid masonry wall to be built along boundary, to the northern boundary and driveway, rendered and painted both sides, built on subject site.

9. Delete 20m high canopy trees in northern rear setback zone, replace with 3m to 6m high screening trees to better screen wall heights
10. Privacy screens on decks and windows facing north to 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. All balustrades to be obscured glazing.
11. New planters in Units facing north at both levels to have landscape to a 1.8m height with 9m setbacks
12. Location of garbage bins. Garbage bins be located in the basement and a method statement provided to identify how this will operate considering neighbours bedrooms along the driveways
13. Murraya hedge to driveway. All hedging plants to be retained as they are providing essential privacy
14. The structural design is to be reviewed by a geotechnical engineer prior to the Construction Certificate (Council Policy Section 6.5(g)(ii)), provide conditions for ongoing management as per Section 6.5(g)(iv).
15. Temporary anchors be used in piling and that no permanent anchors are installed as they would then reduce the ability for development within the adjoining property.
16. Until subsurface investigations prove that good quality rock is present, assume that the rock will be of poor quality and shoring should be allowed for the full depth of the excavation.
17. Vibration monitoring should be carried out until it can be demonstrated that the transmitted vibrations to the adjoining properties are within tolerable limits. Vibration levels to reduce to 2.5mm/sec, with a stop work halt at 2.0mm/sec, with full-time monitoring, and daily reports to Certifier and Council
18. The dilapidation survey should comprise a detailed inspection of all Neighbours both externally and internally with all defects rigorously described and photographed. The completed dilapidation report should be provided to the Neighbours to allow then to confirm that the dilapidation report represents a fair record of actual conditions.

## SECTION 10

### 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.

## SECTION 11 CONCLUSION

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

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 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.

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

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

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

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

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

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

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

In the case of the present development proposal:

1. the magnitude of impact upon the amenity, use and enjoyment by us of our property is certainly not insignificant, in that:
  - the visual and acoustic privacy, and visual bulk impacts from the proposed development into our property well above controls,
  - The extent of the proposed building envelopes
  - The siting and extent of the proposed dwelling without having sufficient consideration for maintaining amenity, with non-complaint height, FSR, and front setbacks taking amenity from neighbours
2. our property is vulnerable, being directly adjacent to the subject site;
3. the lack of attention in the design of the development proposal as regards the impacts of the proposed development on our property in terms of height, bulk, visual privacy, acoustic privacy, visual bulk, is relevant to the assessments of those impacts, such that even a small impact should be avoided if a more skilful design can reduce or eliminate it;
4. the fact that the proposal fails to comply with a number of important planning controls is much more difficult to justify than would otherwise be the case with a complying proposal; and
5. the proposal involves non-compliance with a number of principal planning control and this is an indicator of overdevelopment of the site.

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

We contend that the Development Application should be refused on the following grounds.

Council cannot be satisfied that:

No written requests under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify contraventions of clause 26 under the SEPP (Housing for Seniors and People with a Disability) 2004 development standards has been submitted, nor would it be able to adequately address and demonstrate that:

- compliance with the development standard is reasonable or necessary in the circumstances of the case;
- there are insufficient environmental planning grounds to justify contravening the development standard.
- the applicant's written request has not adequately addressed the matters in this respect as the request has not addressed the significant under forecast of GFA
- the proposed development is not in the public interest because it is inconsistent with the objectives of the particular standard and the objectives for development within R2 Low Density Residential zone

Pursuant to Section 4.15(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2014:

- Clause 2 Aims of Policy
- Clause 29 Character
- Clause 30 Site Analysis
- Clause 31 Design of in-fill self-care housing
- Clause 32 Design of residential development
- Clause 33 Neighbourhood Amenity and Streetscape
- Clause 34 Visual and Acoustic Privacy
- Clause 40 Development Standards

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the LEP:

- 1.2 Aims of Plans
- 2.3 Zone Objectives Zone R2 Low Density Residential
- 4.3 Height of Buildings
- 4.4 Floor Space Ratio

- 6.2 Earthworks

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the DCP

- B7 Front Boundary Setbacks
- C2 Traffic, Access and Safety
- D3 Noise
- D8 Privacy

The proposed development is contrary to the Environmental Planning and Assessment Act 1979 NSW having regard to s 4.15 (1)(b), (c), (d) and (e) given the insufficient information provided with the development application to address the likely impacts of the development on the adjacent natural environment, the suitability of the site and matters raised by the public with respect to the likely impacts that would be caused.

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

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

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

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 will welcome the opportunity to further expand on any of the issues once Amended Plans are submitted, identified within this Submission.

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

Yours faithfully,

Steven & Tania Walton  
49 Lantana Ave  
Wheeler Heights  
NSW 2097

## SECTION 12: APPENDIX:

### 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 in body of written submission*]

In this Written Submission we ask Council to request the Applicant to submit Amended Plans to bring the proposed development back into a more generally compliant envelope including:

In this Written Submission we ask Council to request the Applicant to submit Amended Plans to bring the proposed development back into a more generally compliant envelope including:

1. Pedestrian Footpath Entry to be repositioned to southern side of Vehicle Ramp
2. Increase ramps to bring basement to RL 59.4
3. 1m clear deep soil planting zone along northern boundary at existing grades, adjacent any ramp construction. Screen planting to 3m height.
4. Unit 1 & 2 to be reduced to RL 62.4 to match ground level existing
5. Unit 3 & 4 to be reduced to RL 65.6 [3.2m storey height], with ceiling height to RL 68.3.
6. Ridge Heights to RL 69.5
7. Northern setback to increase to 9m to decks and terraces at both levels, with additional articulation to 12m setback, to allow 3m wide decks.
8. New 1.8m high solid masonry wall to be built along boundary, to the northern boundary and driveway, rendered and painted both sides, built on subject site.
9. Delete 20m high canopy trees in northern rear setback zone, replace with 3m to 6m high screening trees to better screen wall heights
10. Privacy screens on decks and windows facing north to 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. All balustrades to be obscured glazing.

11. New planters in Units facing north at both levels to have landscape to a 1.8m height with 9m setbacks
12. Location of garbage bins. Garbage bins be located in the basement and a method statement provided to identify how this will operate considering neighbours bedrooms along the driveways
13. Murraya hedge to driveway. All hedging plants to be retained as they are providing essential privacy
14. The structural design is to be reviewed by a geotechnical engineer prior to the Construction Certificate (Council Policy Section 6.5(g)(ii)), provide conditions for ongoing management as per Section 6.5(g)(iv).
15. Temporary anchors be used in piling and that no permanent anchors are installed as they would then reduce the ability for development within the adjoining property.
16. Until subsurface investigations prove that good quality rock is present, assume that the rock will be of poor quality and shoring should be allowed for the full depth of the excavation.
17. Vibration monitoring should be carried out until it can be demonstrated that the transmitted vibrations to the adjoining properties are within tolerable limits. Vibration levels to reduce to 2.5mm/sec, with a stop work halt at 2.0mm/sec, with full-time monitoring, and daily reports to Certifier and Council
18. The dilapidation survey should comprise a detailed inspection of all Neighbours both externally and internally with all defects rigorously described and photographed. The completed dilapidation report should be provided to the Neighbours to allow them to confirm that the dilapidation report represents a fair record of actual conditions.

Boundary Fences to be installed prior to excavation.

All windows and doors 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

Tanking of Basement Level  
Installation & Maintenance of Sediment & Erosion Control

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

Vehicle Crossing Application  
Pedestrian sight distance at property boundary  
Location of security gate and intercom system  
Minimum driveway width  
Access driveway

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

Mechanical plant location  
AC Condenser Units

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

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 to reduce to 2.0mm/sec  
No excavation within 1m of boundary

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

Reinstating the damaged road reserve during construction

Condition of retained vegetation  
Stormwater disposal  
Works as executed drawings - stormwater

Installation of solid fuel burning heaters: No approval is granted for the installation of a solid/fuel burning heater. 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

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.

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.

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

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