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**Sent:** 27/06/2021 5:17:30 PM

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

**Attachments:** Moss & Walton WS 28 June 21.docx;

**SUBMISSION: MOSS & WALTON**  
a written submission by way of objection to DA 2020/1743

**Linda & David Moss  
47 Lantana Ave  
Wheeler Heights  
NSW 2097**

**Steven & Tania Walton  
49 Lantana Ave  
Wheeler Heights  
NSW 2097**

**28 June 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: Moss & 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].

This is a joint submission from the two immediate neighbours to the north of the subject site. 47  
Lantana Ave Wheeler Heights also borders the main access to the site.

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

We refer Council to our earlier Submissions dated 27 January 2021 that still remain objections to DA 2020/1743 lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

We are aware of Louise Kerr's letter of 25 June 2021 to NBC Councillor de Luca. The letter states:

*Amended plans have recently been submitted to Council following a preliminary assessment of the application by Council staff and the identification of a number of issues with the proposed development.*

*Issues identified included*

- *excessive scale, height, built form and bulk;*
- *privacy impacts to neighbours;*
- *inadequate vehicular access;*
- *landscaping;*
- *unit design and internal amenity.*

*There were also other issues raised by Council's internal referral experts including the Design and Sustainability Advisory Panel.*

We totally agree with this assessment, and wish to raise additional matters under some of these headings.

### **Council Traffic Engineer Unsupportive**

Council Traffic Engineer states the proposal is unsupported due to the proposed access and rampways arrangements.

*Pedestrian footpath entry from the shared driveway could potentially be dangerous having to cross two basement entry ramps.*

We contend that on this issue alone the DA must be immediately refused at Officer level.

## DSAP Unsupportive

The DSAP states:

*The proposal does not comply with a number of development standards and is in excess of the 0.5:1 SEPP HSPD threshold which contributes to the impact on amenity, privacy and solar access that would be more easily resolved by a reduction in the floor area and overall building bulk. It could be argued that the SEPP HSPD requirement for a single story at the 'rear of the site' should also apply to the 'front' of the site given that the intention is to minimise overlooking overshadowing and general visual intrusion on adjoin properties.*

The issues that DSAP have raised are extremely valid.

The proposed development has 2m elevated walkways along the boundary of 47 Lantana Ave to gain entry to main circulation levels of the proposed development. Obviously, this matter is totally unreasonable and unacceptable from amenity loss of privacy and visual bulk to neighbours.

Furthermore, the proposed development presents elevated terraces, again approaching 2m high, with a 1.8m setback to our rear boundaries. Obviously, this matter is totally unreasonable and unacceptable from amenity loss.

The design is fundamentally flawed in this respect.

The subject site is zoned R2 pursuant to the LEP, and there is no reason, unique or otherwise, why a fully compliant solution 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.

Designing 2m high entry walkways and 2m high terraces on, or close to, neighbours boundaries in an R2 Zone is totally unreasonable.

We agree with the DSAP that under the *'SEPP HSPD requirement for a single story at the 'rear of the site' should also apply to the 'front' of the site given that the intention is to minimise overlooking overshadowing and general visual intrusion on adjoining properties.'*

Our boundary to the subject site is obviously our rear boundary, and we contend the Clause 40 [4] [c] 'Rear 25%' clause must be considered to our rear boundary in any assessment.

SEPP HSPD gives great latitude to Developers however Clause 40 makes it very clear under Clause 40 [4] [c] that:

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

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

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

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

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

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

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

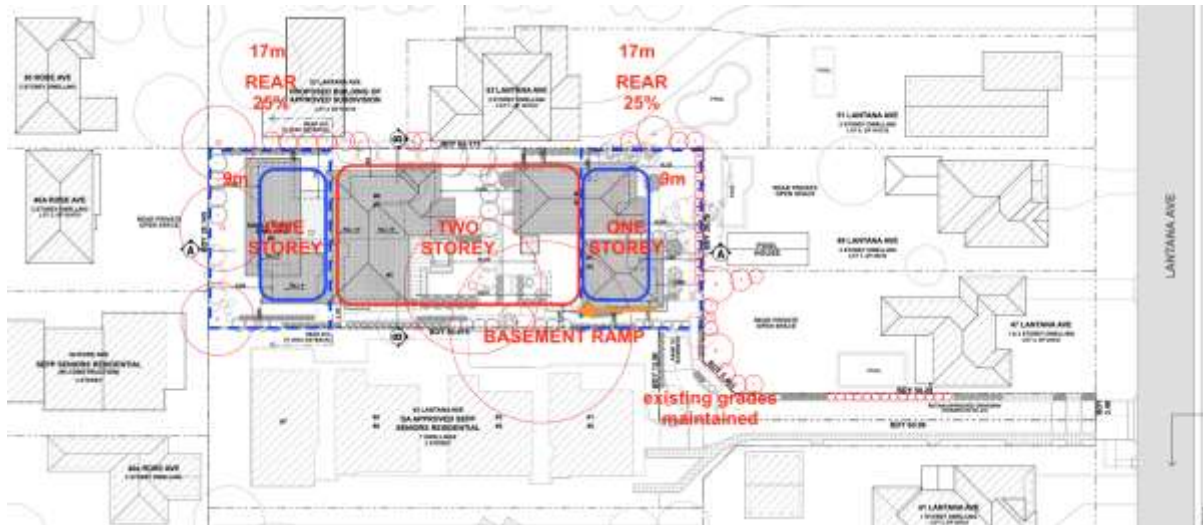
In **Nanevski Pty Limited v Rockdale City Council [2010] NSWLEC 1220** at [47] Tuor C adopts the evidence of the applicant’s town planning expert that the objectives from the SLP are relevant to determining the underlying objectives of the subclauses of cl 40(4) of SEPP (HSPD). She concludes these objectives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

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

It is for the above reasons, as described by NSWLEC Commissioner Annelise Tuor in the above case, [and now NBLPP Expert Member], that we contend that the proposed development should be refused. The proposed development fails:

- to minimise impacts on the privacy and amenity of existing neighbouring dwellings,
- to reduce the apparent bulk of development and its impact on neighbouring properties,
- to provide adequate building separation.

We contend that a *More Skilful Design* solution exists, that might be based on the sketch below:



To overcome the 2m high entry zones built upon the boundary to 47 Lantana Avenue, and to avoid the 2m terraces that are positioned above the fence level to both 47 Lantana Avenue and 49 Lantana Avenue, we suggest the only alternative is to maintain the existing grades on the site, and for the main basement ramp and entry sequence to begin with a 9m setback to the subject site's northern boundary.

We contend that the Clause 40 [4] [c] 'Rear 25%' restriction [14m] be enacted to the subject site's northern boundary, with the provision of a single storey envelope setback 9m to the subject site northern boundary. These single storey units facing to the subject site's northern boundary must match the ground level existing at RL 62.4 to avoid overlooking to our properties.

The two-storey component can then be positioned centrally to the subject site, with allowances for the TPZ of both major retained trees.

Any redesign would require the garbage storage area to be relocated to the basement. The current solution positions a very large storage zone immediately adjacent opening windows to neighbour's bedroom and highly used rooms. This is both unreasonable and unacceptable.

The outcome described above would require a complete redesign.

How the Developer can resolve the major impediment of safety is still a major concern: "*Pedestrian footpath entry from the shared driveway could potentially be dangerous having to cross two basement entry ramps.*"

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 26
- 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 Development Application should be immediately **REFUSED** by Council.

Yours faithfully,

**Linda & David Moss**  
**47 Lantana Ave**  
**Wheeler Heights**  
**NSW 2097**

**Steven & Tania Walton**  
**49 Lantana Ave**  
**Wheeler Heights**  
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