



Tony Moody BTP (UNSW), LL.B (UTS) (Hons.), MPIA
Email: tonymoody@tonymoody.com.au or tony@tonymoody.com.au
Mobile: 0414 330 807

ATTENTION: ADELA MURIMBA, ASSESSMENT OFFICER

**RE: OBJECTION TO RESIDENTIAL DEVELOPMENT WITH IN-FILL
AFFORDABLE HOUSING – REID STREET AND WOODSIDE AVENUE,
LINDFIELD, SSD-79261463**

PPTIES: 2-4 WOODSIDE AVENUE & 1-3 REID STREET, LINDFIELD

Dear Adela,

I refer to the abovementioned State Significant Development (SSD).

I was requested by concerned local residents under the community group known as Lindfield Estate Appropriate Development (LEAD) to provide my professional opinion on the above proposed SSD and the adjoining proposed SSD at 2-8 Highgate Road, Lindfield.

This submission relates to the proposed SSD at 2-4 Woodside Avenue & 1-3 Reid Street, Lindfield.

I stress that the opinions expressed in this submission are my professional opinions based on my qualifications and experience contained in my attached Curriculum Vitae marked "A".

I should add that a number of my comments in response to the above proposed development are also contained in my comments in response to the adjoining proposed development at 2 – 8 Highgate Road, Lindfield, due to the fact that the 2

sites are adjoining, are similar proposed developments, and are subject to the same set of Planning Controls.

My 2 primary objections are as follows: -

1. Failure to consider the Draft Amendments to KLEP 2015 and Draft Amendments to SEPP (Housing 2021).

- Ku-ring-gai Council (Council) has recently adopted a set of alternative preferred Planning Controls to *“explore alternative ways to accommodate new housing as an alternative to the TOD scenario”*. Council has previously exhibited various alternative sets of Planning Controls and have recently adopted a preferred set of Planning Controls which require amendments to KLEP and SEPP (Housing). The Council preferred set of Planning Controls will be made by the Minister for Planning by way of a *“self-repealing”* SEPP.
- Given the above circumstances, I strongly consider that the Draft Amendments must be given weight under Section 4.15(1)(a)(ii) of the EP&A Act as a *“proposed instrument”* or under Section 4.15(1)(e) being within *“the Public Interest”* of the EP&A Act. The EIS and associated documents have **not** considered the above Draft Amendments.
- When the proposed development is assessed against the set of Council’s preferred set of Planning Controls referred to above, I strongly consider that the proposed development cannot *“exist in harmony with its surroundings”*, as held in the Court’s Planning Principle in *“Project Ventures Developments v Pittwater Council [2005] 141 LGER 80”*. The proposed development would represent a gross overdevelopment in terms of bulk and scale compared to the adjoining existing developments and likely future development under Council’s preferred set of Planning Controls.

2. Failure to properly address the SEAR's requirements for the proposed development

- I note the list of SEAR's requirements which must be assessed in the documents, plans and reports accompanying the SSD Application.
- For the reasons referred to in my submission, I strongly consider that the SSD Application has not addressed a number of relevant requirements under the SEAR's document.
- My previous comments in section 1 relate to "**Statutory Context**" under issue 1) of the SEAR's document.
- In relation to the other issues raised in the SEAR's document, I consider that the proposed development does not properly address a number of the mandatory requirements set out in the SEAR's document. Specifically, I note the following: -

5) "**Design Quality**". I consider that the proposed development is not of "*good design*" for the reasons referred to in this submission, including the numerous breaches of relevant Planning Controls, particularly the Apartment Design Guide (ADG), Council's LEP and Council's DCP. The EIS and accompanying documents, plans and reports make numerous claims that particular elements of the proposed development comply, but I disagree and note the following numerous breaches: -

- Breach of the Height of Buildings Standard.
- Breaches of the Solar Access Control in relation to the following: -
 - i. The Applicant had highlighted in yellow colour those proposed units which are claimed to receive the requisite level of sunlight, but many of the windows are associated with bedrooms which are not "*living rooms*". In fact, the claimed "*compliance*" is only achieved when including

sunlight into bedrooms which is **not** the correct approach under the ADG.

- ii. The Applicant has also miscalculated the duration of sunshine into a number of proposed units.
- Minor breaches of the Separation Control under the ADG.
- Breaches of the Communal Open Space (COS) Controls under the ADG in relation to the following: -
 - i. The provision of part of the COS on the proposed rooftop generates adverse Acoustic Impact and Overlooking Impact to adjoining properties which does not achieve the *“high level of amenity”* as required under issue 7 entitled *“Environmental Amenity”*. In fact, the Planning Consultant for the Applicant has advised that *“importantly, no roof top areas are proposed meaning there will be no opportunities for additional Overlooking from shared spaces”*. But this application and the adjoining application both have roof top COS. Thus, the Applicant’s own Planning Consultant has expressed the opinion that roof top open space areas generate adverse Overlooking Impact. In addition, I consider that the roof top COS will also generate adverse Acoustic Impact.
 - ii. Part of the COS is also provided within the eastern side setback adjacent to the adjoining proposed development at 2-8 Highgate Road. This eastern COS will be in shade for the great majority of the day and will also be subject to direct Overlooking Impact from the adjoining proposed development at 2-8 Highgate Road.

- iii. Part of the COS is also provided adjacent to the corner of Lindfield Road and Reid Street. This part of the COS will be subject to adverse Overlooking Impact from the public domain unless high screen walls are erected which would have a consequential adverse Streetscape Impact. The same is true for the proposed COS fronting Lindfield Road and Woodside Avenue. Both of the proposed COS areas will also be subject to noise from passing traffic and passing trains.
- iv. The above deficiencies in the proposed COS areas and the associated adverse impacts have **not** been considered in the EIS. Simply put, the proposed areas of the COS are of poor design and generate unreasonable adverse impacts.
- v. The need for a high amenity COS as part of the proposed development is particularly important given the fact that the nearest public park is significantly greater than the accepted 400m walking distance from the proposed development to the nearest public open space.
- Breaches of the Visual Privacy Controls under the ADG in relation to the following: -
 - i. Again, I note the advice of the Applicant's own Planning Consultant who advises that *"importantly, no roof top areas are proposed meaning there will be no opportunities for additional Overlooking from shared spaces"*. Thus, based on the comments of the Applicant's own Planning Consultant, the proposed rooftop COS in this application, and the adjoining application, are contrary to the Visual Privacy Controls.

- Objection is raised to the proposed Basement Levels for the following reasons: -
 - i. Part of the proposed Basement Levels is close to part of the eastern Common Boundary and also underneath part of the proposed Deep Soil Zone. This is not in accordance with the definition of Deep Soil Zone under the ADG which does not allow structures underneath the Deep Soil Zone.
 - ii. Part of the proposed Basement Levels extend outside of the proposed building footprint above, which is a further breach of the ADG.
- Thus, contrary to the claims in the Applicant's application, there are numerous breaches of the ADG (and other Planning Controls). These breaches generate adverse impacts on the future occupants of the proposed development, as well as generating adverse impacts on existing adjoining owners.
- As noted below, the application also does **not** include an assessment of the Visual Impact and View Loss generated by the proposed development on **adjoining properties**. This is one of the inadequacies in the application.
- I strongly consider that the above breaches and inadequacies result in poor internal amenity and also do not achieve the requisite "high amenity" for surrounding residential developments as required under issue 7 of the SEAR's document.

6) **"Built Form and Urban Design"**. The proposed development does not comply with issue 6 of the SEAR's document for the following reasons: -

- The DA Documentation does not contain a *"table that demonstrates how **each dwelling** (including affordable*

housing) performs against the ADG Design Criteria” (emphasis added).

- The ADG Guidelines require 70% of the apartments **living rooms** and **private open space area** achieve 2 hours of Solar Access. As previously advised, compliance with the above guideline is not achieved. The Applicant has highlighted in yellow the proposed units which it claims will receive the requisite level of sunlight, but many of the windows are associated with bedrooms which are not *“living rooms”*. In fact, the claimed *“compliance”* is only achieved when including sunlight into bedrooms which is not the correct approach. The Applicant has also miscalculated the duration of sunshine into a number of units.
- As previously advised, the proposed COS is inadequate and unsatisfactory when assessed against the ADG guidelines for the following reasons: -
 - i. The provision of part of the COS on the proposed rooftop generates adverse Acoustic Impact and Overlooking Impact to adjoining properties which does not achieve the *“high level of amenity”* as required under issue 7 entitled *“Environmental Amenity”*. In fact, the Planning Consultant for the Applicant has advised that *“importantly, no roof top areas are proposed meaning there will be no opportunities for additional Overlooking from shared spaces”*. But this application and the adjoining application both have roof top COS. Thus, the Applicant’s own Planning Consultant has expressed the opinion that roof top open space areas generate adverse Overlooking Impact. In addition, I consider that the roof top COS will also generate adverse Acoustic Impact.

- ii. Part of the COS is also provided within the eastern side setback adjacent to the adjoining proposed development at 2-8 Highgate Road. This proposed eastern COS will be in shade for the great majority of the day and will also be subject to direct Overlooking Impact from the adjoining proposed development at 2-8 Highgate Road.
- iii. Part of the COS is also provided adjacent to the corner of Lindfield Road and Reid Street. This part of the COS will be subject to adverse Overlooking Impact from the public domain unless high screen walls are erected which would have a consequential adverse Streetscape Impact. The same is true for the proposed COS fronting Lindfield Road and Woodside Avenue. Both of the above proposed COS areas will also be subject to noise from passing traffic and passing trains.
- iv. The above deficiencies in the COS areas and the associated adverse impacts on existing and future adjoining properties have **not** been considered in the EIS. Simply put, the proposed areas of the COS are of poor design.
- v. The need for a high amenity COS as part of the proposed development is particularly important given the fact that the nearest public park is significantly greater than the accepted 400m walking distance from the subject site to the nearest public open space.

7) **“Environmental Amenity”**. The proposed development does not achieve a ***“high level of environmental amenity for any surrounding residential uses”*** for the following reasons: -

- In terms of “*Visual Impact*”, I reiterate the Visual Impact Analysis (VIA) has **not** included an analysis from nearby residential properties.
- Furthermore, the VIA has not included an analysis of “*View Loss*” from nearby residential properties.
- The SEAR’s requirement does **not** limit the assessment of Visual Impact and View Loss merely from public locations. On this point, I note that the VIA refers to the Court’s Planning Principal in “*Tenacity Consulting v Warringah Council [2004] NSWLEC 140*” (*Tenacity*) which deals with View Loss from private properties. The VIA also refers to private properties being within the “context”. But the VIA has failed to consider View Loss and Visual Impact from private properties. In other words, the VIA must include an assessment from both public and private locations and has not done so and is therefore flawed.
- As previously noted, there will be direct Overlooking Impact between the eastern façade of the proposed development into the existing private rear yards of adjoining lots. The eastern facade of the proposed development will also generate adverse Overlooking Impact into the proposed COS area of the adjoining proposed development to the east at 2-8 Highgate Road.
- As previously noted, the provision of part of the COS on the rooftop generates adverse Acoustic Impact and Overlooking Impact into adjoining properties.
- For the above-mentioned reasons, the proposed development does not achieve “*high level of amenity*” as required under issue 7. “*Environmental Amenity*” of the SEAR’s document.

8) **“Visual Impact”**. As previously noted, the proposed development does not include a proper VIA for the following reasons: -

- The VIA has **not** included an assessment of the Visual Impact and View Loss from nearby residential properties. Again, the Applicant’s VIA refers to the Court’s Planning Principle in Tenacity which deals with View Loss from private properties, but the VIA has **not** considered the View Loss and Visual Impact from private properties.
- The SEAR’s document does **not** limit itself to public domain locations to assess impacts. The SEAR’s document clearly requires an assessment from both the public domain **and** the private domain. There is no assessment from the private domain, contrary to issue 7 of the SEAR’s document which requires “a high level of environmental amenity for any **surrounding residential** or other sensitive land uses” (emphasis added).

9) **“Transport”**. On the issue of Transport, I express concern relating to the adequacy of the Traffic Assessment for the following reasons: -

- Local residents were invited by the Applicant for community consultation. Whilst a number of the residents raised concern about the adequacy of the consultation process, I note that local residents did express observations and concerns relating to adverse Traffic Impact generated by the proposed development.
- The Traffic Report does not appear to acknowledge the specific observations and concerns expressed by local residents.
- The views of local residents should be given weight as they have personal experiences of the local traffic

system. In fact, the comments and observations of local residents were given seminal weight by the then Senior Commissioner Moore, subsequently Judge Moore, in the decision in *“The Presbyterian Church (New South Wales) Property Trust v Woollahra Municipal Council [2014] NSWLEC 1218”*. The Senior Commissioner Moore refused the proposed development based primarily on the evidence of local residents.

- In the Traffic Report for this proposed development and the adjoining proposed development, the Traffic Consultant correctly considered the cumulative impact of both proposed developments. I, however, note that both Traffic Reports have **not** considered the cumulative impacts of the additional proposed developments in the immediate locality under the TOD legislation. This is a further flaw in the Traffic Report.

11) **“Water Management”**. A number of residents have raised concerns about wastewater and water facilities in the area and I refer to these concerns.

12) **“Ground and Ground Water Conditions”**. The Applicant’s Geotechnical Site Investigation states that *“due to limited site access, the field investigation was conducted using hand augers and bore hole drilling was restricted to shallow depths. Given that the proposed development includes 2 basement levels a further Geotechnical Site Investigation to deeper depths is advised”*. Thus, the Geotechnical Site Investigation is an inadequate assessment for the following reasons: -

- The SEAR’s requirement does **not** limit investigations to a “shallow depth” as undertaken by the Applicant.
- The recommendation by the Applicant’s Geotechnical Consultant for a *“further Geotechnical Site Investigation to deeper depth”* is deferring an essential matter.

Deferring an essential matter for later consideration is not in accordance with the SEAR's document and is legally impermissible.

- Furthermore, the proposed excavation for the proposed Basements Levels is, in part, to be undertaken within close proximity to the eastern common boundary which prohibits Deep Soil Landscaped Area.
- The proposed extensive excavation on both adjoining proposed sites raises a risk of potential instability on each of the adjoining properties. Due to the inadequate sub-surface investigations, this risk has not been properly assessed.

14) **“Trees and Landscaping”**. The EIS has not properly considered the SEAR's requirements for the following reasons:-

- 9 of the 13 *“important”* trees are proposed to be removed. A synonym of *“important”* is *“significant”*. The expression *“significant”* is used in the SEAR's document. Thus, 9 significant trees are to be removed.
- The SEAR's document requires that the Applicant must provide evidence that *“opportunities have been investigated to retain significant trees has been explored and or inform the plan”*. There is no discussion in the Arboricultural Impact Assessment that *“opportunities have been investigated to retain significant trees”* as required under the SEAR's document. For example, the Arborist Report does **not** say it considered modifying the proposed development to retain a number of significant trees.
- The Arboricultural Impact Assessment does not include *“Tree Root Mapping”* of the significant trees to be removed as required under the SEAR's document.

19) **“Flood Risk”**. A number of residents have raised concerns about wastewater and water facilities in the area and I refer to these concerns.

In conclusion, I strongly consider that the SSD application has failed to consider the Draft Amendments to KLEP 2015 and SEPP (Housing 2021) which were recently adopted by Council. When one considers these Draft Amendments, the proposed 9-storey development is totally inconsistent and incompatible with the bulk and scale of the existing developments and/or likely future development under Council’s Draft Amendments.

Irrespective of the first significant concern above, the proposed development also fails to properly address various SEAR’s requirements. This failure to provide adequate information and assessment as required under the SEAR’s document represents a breach of the EP&A Regulation 2021 and State Significant Development guidelines.

Thus, in its current form, I strongly consider the application is not worthy of approval.

If, however, the Applicant seeks to lodge additional information which was not part of the original notification, the community is entitled as a matter of procedural fairness to be given time to assess and comment on any additional information.

Yours faithfully,

TONY MOODY
BTP (UNSW), LL.B (UTS) (Hons.), MPIA
Tony Moody Planning & Development Pty Ltd

