Tony Moody
PLANNING & DEVELOPMENT

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ATTENTION: PRITY CLEARY, SENIOR PLANNING OFFICER

RE: CONCEPT PROPOSAL FOR A RESIDENTIAL FLAT BUILDING WITH INFILL AFFORDABLE HOUSING, SSD-82899468, PPTIES: 1-5 NELSON ROAD, LINDFIELD

Dear Prity,

I refer to the abovementioned State Significant Development Application 82899468 (SSD Application) at properties known as 1-5 Nelson Road, Lindfield (subject site).

I was requested by local residents to provide my professional opinions in response to the above SSD Application on the subject site.

The opinions expressed in this submission are my professional opinions based on my qualifications and experience contained in my attached Curriculum Vitae marked *"A".*

Briefly, I am a Consultant Planner with 15 years' experience in 3 Local Government Councils, including 9 years as a Senior Development Control Planner. I hold a Bachelor of Town Planning Degree from the University of NSW and a Bachelor of Laws Degree (Hons) from the University of Technology, including a High Distinction in Environmental Studies.

I have appeared as an Expert Planning Witness for 9 Councils in the Land and Environment Court (Court), and I have also appeared in numerous Appeals as a Court Appointed Expert.

My objections against the SSD Application are outlined in the following sections of this submission.

History of Draft Amendments to Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) and Draft Amendments to SEPP (Housing 2021).

- Ku-ring-gai Council (Council) has publicly exhibited various Alternate Planning Controls for community consultation. Following the most recent public exhibition, I understand that the following events have occurred in recent times: -

  i. On 5 June 2025, the Extraordinary Council Meeting adopted Alternate Planning Controls to the Transport Orientated Development TOD which were subsequently submitted to the Department of Planning, Housing and Infrastructure (DPHI).
  ii. The DPHI is currently reviewing Council's Alternate Planning Controls and will provide advice to the Minister about whether Council's Alternate Planning Controls are acceptable to replace the TOD Controls. As of 5 June 2025, the DPHI indicated that it may take up to 3 months until Alternate Planning Controls are in place.
  iii. On 13 June 2025, DPHI *"turned off"* the TOD for new applications. Based on the advice of Council, this means that for the time being new Local Development Applications and State Significant Applications can no longer be lodged under the TOD Controls. Nor can applications be lodged under Council's Alternate Planning Controls until such time as they are implemented by the DPHI.
  iv. Thus, the Local Development Applications and SSD Applications that were lodged prior to turning off the TOD on 13 June 2025 have been *"saved"* and the TOD Controls will still apply to these applications.
  v. Council's legal challenge in the Court to the TOD SEPP is ongoing. The Court has listed the matter for hearing on 25-27 November 2025.
  vi. Council's TOD alternative LEP maps appear to indicate that the subject site is outside the TOD area and will be retained as Residential R2 Low Density.
  vii. Please also refer to Council's website relating to the current status of the above.

Concerns re Election by Applicant to Submit a Concept Development Application

- I note that the current DA is a *"Concept Development Application"* (CDA) due to the election of the Applicant to submit a CDA.
- The reason why the Applicant has submitted a CDA is not due to any positive Planning justification, but rather the Applicant's objective to avoid consideration of the proposed development under the set of Alternate Planning Controls prepared by Council. This fact is clearly evidenced by the following comments of Emma Ziegenfusz, Consultant Planner for the Applicant, who states the following: -

"*We would just like to advise that the timing for this initial engagement phase is impacted by the forthcoming changes to the applicable Planning Policies which the NSW Department are making in the coming weeks. We are very much so under pressure to prepare and lodge our application as soon as possible to ensure that it can be considered by the Department to be under the current controls*".

- Thus, it is clearly the case that the Applicant did not have sufficient time to lodge a full set of documents, plans and reports which are normally submitted as part of a standard Development Application but rather took the simpler option of submitting a CDA. As you are aware, a CDA takes significantly less time to prepare than a standard Development Application given that a CDA involves less detail than a standard Development Application.
- I am of the strong professional opinion that the current CDA does not contain adequate details to properly address all the requirements under SEARs which have been established by the Planning Secretary. As you are aware, the Applicant must address all the mandatory *"key issues"* under SEARs and provide all relevant required supporting documentation, plans and reports.
- For the reasons referred to in this submission, I am of the strong professional opinion that the CDA does not provide adequate details to

properly address all the *"key issues"* under SEARs and the CDA does not provide the required supporting documentation referred to in SEARs.

- Of particular concern is the fact that the proposed building envelope diagrams and associated documents, plans and reports do not provide adequate details to assess all the requirements under SEARs for both internal amenity for future occupants and also amenity impacts on adjoining properties.
- Whilst a CDA is legally allowed to be lodged by an Applicant, the CDA must still contain adequate plans, documents and reports which address all the requirements under SEARs. I strongly consider that the CDA is not of sufficient detail for a proper assessment of the likely impacts of the proposed development on adjoining properties, the public domain and the local environment.
- I refer to the following sections of this submission which I consider demonstrates the inadequate details of the EIS when assessed against the mandatory requirements under SEARs.

Failure to Properly Address SEARs under the Concept Development Application.

- I note the list of requirements under SEARs which must be addressed in the documents, plans, reports and EIS accompanying the SSD Application.

1. ***"Statutory Context"***. I refer to my previous comments relating to *"Statutory Context"* under *"History of Draft Amendments to Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) and Draft Amendments to SEPP (Housing 2021)."*

5. ***"Design Quality".*** I consider that the proposed development is not of *"Good Design"* for the reasons referred to in this submission.

   I strongly consider that the proposed development exhibits the following elements of Poor Design: -

   - The proposed development breaches the Height of Buildings Standard, particularly on the proposed northern facade which adjoins low density residential development. For the reasons referred to in this submission, I consider that the Clause 4.6 Request is not well founded and should not be supported.
   - Due to the fact that there is low density residential development in the locality, I consider that the proposed facades are required to have a sensitive interface with the neighbouring dwellings. The need for sensitive interfaces is particularly important due to the fact that the properties in the locality are within a Heritage Conservation Area and comprise a number of Heritage Items. I consider that the proposed facades exhibit an insensitive response for the reasons referred to in this submission.
   - In terms of Overshadowing Impact, I raise significant concerns relating to the Applicant's Shadow Diagrams on a number of grounds including, but not limited to, the following;

i. The Shadow Diagrams are not in Elevation Form, which is a standard requirement of Council. Of particular note is the fact that the Shadow Diagrams show significant impact on the rear yards of a number of properties fronting Tryon Road and also show significant impact on the northern facade of a number of dwellings fronting Tryon Road. I have personally inspected the properties fronting Tryon Road and all of them have their primary living rooms, including kitchens, facing towards the subject site.

ii. Furthermore, the existing northern windows of the Tryon Road dwellings are the primary windows which enjoy expansive sunlight and views of the adjoining locality. Due to the lack of Elevation Shadow Diagrams, one cannot assess the degree and nature of the Overshadowing Impact into the northern primary living rooms of the Tryon Road dwellings.

iii. The building footprints indicating the outlines of the existing adjoining dwellings in the Shadow Diagrams are not accurate. It is standard practice that the outlines of the existing adjoining dwellings are based on Survey Plans. Clearly, the building footprints of the adjoining dwellings shown in the Shadow Diagrams are not based on Survey Plans.

- In terms of Overlooking Impact, my Clients and I cannot make an assessment as to whether there will be unreasonable Overlooking Impact due to the fact that the CDA has not provided the location and design of any windows and balconies which may have direct lines of sight into my Clients' properties as well as a number of immediately adjoining Heritage Items. Furthermore, there is a proposed roof top communal open space area and there are no sight line diagrams submitted as part of the CDA to test whether, in fact, there will be unreasonable Overlooking Impact into adjoining properties. The Applicant elected to lodge a CDA due to time constraints, but this does not justify an application which does not contain adequate information for proper assessment.

- In terms of Visual Impact and View Loss, the Visual Impact Assessment (VIA) has not considered the above impacts on the adjoining residential properties. Whilst the VIA has included a range of photomontages from the public domain, some of these public domain locations are significantly distanced from the subject site. Furthermore, there has been no assessment of the Visual Impact and View Loss from private properties. The omission of preparing photomontages or perspectives from private properties to properly assess likely impacts is very perplexing given the following: -

  i. The VIA states at page 7 that *"visually sensitivity provides reference points to potential Visual Impact of the Design Proposal to both the public and **residents**, located within and near to the viewpoint locations"* (emphasis added).

  ii. The *"site inspections"* carried out for the VIA refers *to "the streetscapes and **houses** most likely to be effected by the proposal"* (emphasis added).

  iii. The VIA states that *"as a result of the site's topography, the Visual Impact is primarily relevant to the **residential properties** to the south and east of the subject site"* (emphasis added).

  iv. The VIA refers to the Court's Planning Principle in Tenacity Consulting v Warringah Council (Tenacity). As you are aware, Tenacity deals with View Loss from residential properties, and not the public domain.

  v. It is inexplicable to me that the VIA has not prepared photomontages or perspectives of the likely Visual Impact and View Loss from adjoining properties.

  vi. Furthermore, SEARs at Issue 8 states that the EIS must provide visual analysis of the concept building envelope from key viewpoints, including photomontages or perspectives showing the proposed and likely future development. Clearly, as acknowledged in the VIA, residential properties are *“key viewpoints”,* particularly as all the adjoining residential properties are within a Heritage Conservation Area, which include a number of Heritage Items. Again, it is inexplicable to me that photomontages or perspectives required under Issue 8 of SEARs have not been prepared for the adjoining residential properties.

- In terms of Acoustic Impact, I consider there will be likely Acoustic Impact resulting from proposed plant and equipment. On this point, the Applicant’s Acoustic Design and Construction Advice (Acoustic Report) advises that details of the proposed plant and equipment have **not** yet been prepared and therefore the Acoustic Report has made various *“assumptions”*. It is most unreasonable for assumptions to be made about future proposed plant and equipment which have the potential to create adverse Acoustic Impact on the adjoining properties. The Applicant should have provided details of the proposed plant and equipment for assessment by its Acoustic Consultant so as to avoid assumptions being made about the potential acoustic levels. Simply put, the Acoustic Report is based on inadequate information and assumptions, and thus the issue of Acoustic Impact is unresolved.
- Furthermore, I am also concerned about the likely Acoustic Impact arising from the use of the proposed roof top communal open space area. The Acoustic Impact generated by the roof top communal open space area has not been properly considered. Please refer to additional comments in response to Issue 10 of SEARs.
- There is also a concern arising as to the impact on Air Quality Impact due to the proposed Basement Levels. In particular, concern is raised in relation to the potential impact on Air Quality in the immediate low-density locality arising from

proposed openings and vents associated with the proposed Basement Levels. The issue of Air Quality Impact is also unresolved.

- Despite claims in the EIS that the proposed setbacks comply, the proposed development does not comply with Control 2F entitled *"Building Separation"* under the Apartment Design Guide (ADG) which states that *"at the boundary between a change in zone from an apartment building to a lower density area, increase the building setback from the boundary by 3m"*. Whilst there is not a *"change in zone"*, the proposed development has, in effect, created the same scenario contemplated by Control 2F by having a proposed multi storey residential flat building on the subject site immediately next to a lower density area. Thus, I consider the increased building setback of an additional 3m under the ADG must apply. The proposed development does not comply with Control 2F of the ADG.
- The proposed front setback does not comply with other residences along Nelson Road, and this fact is acknowledged in the HIS.
- The proposed *"storage/service"* area at the Lower Ground Level is very excessive in area. Furthermore, this very excessive proposed storage/service area is not included in the floor space ratio calculation but still contributes to the excessive bulk and scale of the proposed development.
- Parts of the proposed carparking spaces at the Basement Level extend within the required side boundary setback, particularly along the southern boundary. This is a further breach which reduces the ability of the southern side setback area to be established with deep soil landscaped area including tree canopy. I also note that the proposed storage/service area referred to above also breaches the Side Setback Control along the southern boundary which also contributes to a diminution in the area of deep soil landscaped area and tree canopy. Thus,

there is an incorrect assessment of proposed deep soil landscaped area and tree canopy area.

- A further element which decreases the deep soil landscaped area calculation is that of the existing 8.2m-4.578m wide easement which traverses the whole of the northern boundary and part of the northeastern corner. An assessment has not been made as to whether landscaping, including tree canopy, can be established within this easement.
- I also note the document entitled *"Errors and Inadequacies"* prepared by a group of local residents which not only highlights errors and inadequacies, but also a number of the elements of the proposed development which are objectionable.
- For the abovementioned reasons, and other reasons raised in this submission, I am strongly of the opinion that the proposed development does not achieve the required *"Good Design"* for adjoining residential properties as required under SEARs.
- Again, the lack of adequate information submitted under the CDA is a further reason for objection against the proposed development. Due to the lack of adequate information, my Clients and I cannot properly assess potential impacts on adjoining properties including adjoining Heritage Items.
- I consider that the above objectionable elements exhibited by the proposed development, and other elements, represent a *"Poor Design"*. It certainly cannot be said that the SSD Application has demonstrated that adjoining residential properties will enjoy "*high amenity"* as required under Issue 7 of SEARs.

6. ***"Built Form and Urban Design"***. I also consider that the proposed development does not comply with Issue 6 of SEARs for the following reasons: -

    - The proposed development breaches the Height of Buildings Standard. For the reasons referred to in this submission, I consider that the Clause 4.6 Request is not well founded and should not be supported.

- The proposed development breaches the Side Setback Control under the ADG in circumstances were there is a proposed multi-storey flat building adjoining 1 to 2 storey residential dwellings. Of particular concern is the fact that the adjoining low density residential dwellings are also within a Heritage Conservation Area which comprises a number of Heritage Items, thus increasing the need for sensitivity.
- As previously advised, I consider that there is a range of likely adverse environmental amenity impacts including Overlooking Impact, Overshadowing Impact, Acoustic Impact, Air Quality, Visual Impact and View Loss. I again reiterate that the CDA has not provided adequate information to properly assess a number of these potential adverse impacts.
- When one considers the sensitive locality exhibited by a number of Heritage Items within a Heritage Conservation Area, the above adverse impacts are most insensitive.

7. ***"Environmental Amenity"***. For the reasons referred to in this submission, I consider that the CDA has not demonstrated the required "***high level*** *of environmental amenity for any surrounding residential uses"* as required under SEARs (emphasis added).

8. ***"Visual Impact"***. As previously noted, the proposed development does not include a proper VIA as to the likely impacts on adjoining properties. Please refer to previous comments in relation to Issue 5 under SEARs.

9. ***"Transport"***. On the issue of Transport, I express concern relating to the adequacy of the Traffic Impact Assessment (TIA) for the following reasons:-

- In relation to *"Traffic"*, I consider the TIA is inadequate due to the lack of assessment of the Cumulative Impact of the proposed development **and** other TOD applications in the vicinity of the subject site. Table 6 in the EIS shows current SSDs and Development Applications *"in proximity to the site"*, but no analysis of the Cumulative Impact of all these applications has been undertaken, particularly in terms of Traffic and adequacy of Infrastructure Services.
- The EIS accepts that the principle of Cumulative Impact is relevant for consideration, but the TIA fails to undertake this Cumulative Impact assessment in terms of the proposed development and other adjoining TOD applications in the locality.
- 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 concerns relating to adverse Traffic Impact generated by the proposed development.
- The TIA does not appear to have addressed the specific concerns expressed by local residents, particularly the Cumulative Impacts of Traffic and Infrastructure Services.
- 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" (Scots College).* The then Senior Commissioner Moore refused the proposed development based primarily on the evidence of local residents.

10. ***"Noise and Vibration".*** I raise concerns relating to potential Noise and Vibration, particularly noting the following: -

- As previously advised, the Acoustic Report has not considered the potential noise from proposed plant and equipment. On this point, the Acoustic Report acknowledges that *"as no details of mechanical plant have been determined at this early stage of the project, likely sources of mechanical noise from the proposed development have been* ***assumed*** *as follows" (emphasis added)*.
- Given the high sensitivity of the Heritage Conservation Area, including a number of Heritage Items, I consider that to defer the issue of Acoustic Impact (and other impacts) for later consideration and to make *"assumptions"* of such impacts is most unreasonable.
- The Acoustic Report states that *"air intake and discharge vents located within the basement will be located on the development roof top"*. Query the potential adverse Acoustic Impact and Odour Impact generated by roof top vents on the use of the communal open space area on the roof and on adjoining properties.
- In terms of noise associated with the proposed use of communal roof top open space, the Acoustic Report does identify various *"offensive behaviour that may occur"* but merely proposes a list of conditions relating to the management of the communal roof top open space. Again, I consider that such management measures are deferring an essential matter. The Acoustic Report should have made an assessment of the likely Acoustic Impact from users of the proposed roof top communal open space (and also the ground level communal open space) and provided a more constructive set of acoustic measures (such as acoustic screens) to mitigate potential impacts.

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

12. ***"Ground and Ground Water Conditions"***. The Geotechnical Report is only a *"desktop study"*. Furthermore, the Geotechnical Consultants for the Applicant advised that its firm *"did not perform a complete assessment of all possible conditions or circumstances that may exist at the site referenced in the Document. The scope of services may have been limited by such factors as time, budget, site access or other site conditions"*. Again, I consider that deferral of proper Geotechnical Investigations is not an appropriate response given that the CDA contemplates proposed significant excavation for the proposed Basement Levels. Furthermore, I consider that the sensitivity of the immediate locality requires adequate assessment of the proposed excavation.

14. ***"Trees and Landscaping"***. I consider that the EIS has not properly considered SEARs requirements for the following reasons: -

    - In terms of Trees and Landscaping, there is a range of trees proposed to be removed. I raise concern about the significant loss of trees and vegetation particularly given the sensitive locality comprising a Heritage Conservation Area and a number of Heritage Items. On this point, please refer to my previous comments.
    - As previously advised, I raised a concern relating to the fact that proposed Basement Levels along the southern boundary extend within the required Side Setback Control. This is a further breach of the ADG.
    - I also raise concern relating to the proposed landscaping within the existing easement that runs along the northern boundary and within the northeastern corner of the subject

site. Query whether deep soil landscaped area and tree canopy can be provided within the easement confines.

17. ***"Waste Management"*** A number of residents have raised concerns about wastewater and water facilities in the area. I refer to these concerns.

19. "Flood Risk"

- In terms of Flood Risk, I note the submissions by a number of adjoining owners who have personally experienced flooding generated by the adjoining creek. Again, based on the judgement of the then Senior Commissioner Moore in Scots College, I consider that the evidence of adjoining owners should be given significant weight.
- It is clearly the case that the Flood Expert for the Applicant has not personally viewed the flooding incidences as a result of the adjoining creek. This is not a criticism of the Flood Consultant for the Applicant as one cannot expect a consultant to personally observe all incidences of flooding, but this fact places more weight on the personal observations of adjoining owners.
- In the Applicant's Flood Risk Assessment, there is a comment that *"the site is classified as Commercial/Industrial and falls within the Upper Parramatta River Catchment"*. I acknowledge that I am not a Flood Expert, but I raise a concern relating to the accuracy of the above comment. Surely, the subject site is not classified as *"Commercial/Industrial"* and I query whether the subject site *"falls within the Upper Parramatta River Catchment"*.

Responses to EIS

I wish to make the following responses to the EIS which forms part of the CDA:-

- In the 2nd last paragraph on page 1, the EIS refers to SEARs. I consider that the CDA is not of sufficient detail to properly assess the mandatory requirements under SEARs. Please refer to additional comments in this submission.
- In the 2nd paragraph on page 2, the EIS notes that one of the properties of the subject site (1 Nelson Road) is located within the TOD precinct and therefore *"as a result of amalgamation the TOD provisions apply to the site"*. I assume that Legal Advice will be obtained to ensure that the above interpretation is correct, that is the 2 lots outside of the required distance would still be located within the TOD precinct.
- In the 4th paragraph on page 2, the EIS refers to the *"alternate preferred scenario for the TOD area"* developed by Council. As previously noted, the Applicant elected to lodge a CDA due to time constraints to avoid Council's Alternate Planning Controls.
- In the 2nd paragraph on page 2, the EIS states that *"the surrounding locality is anticipated to vastly change to provide for greater residential density"*. It is important to note that neither this CDA, nor any other TOD application, has considered the Cumulative Impacts of all the TOD applications, particularly in terms of Traffic and Infrastructure Services. Simply put, each application has been prepared in isolation of the other TOD applications. There has been no analysis undertaken of the Cumulative Impacts of all the TOD applications.
- In the 3rd last paragraph on page 2, the EIS claims that it *"provides an assessment of the environmental impacts of the proposed residential development in accordance with the SEARs"*. I strongly disagree. Due to the inadequacy of the documents and plans within the current CDA, I consider that there are numerous requirements under SEARs which have not been properly addressed.

- At the bottom of page 2, the EIS refers to the *"Housing Crisis"*. On this point, I totally support the proposition that additional housing stock, including affordable housing, should be encouraged, but I consider that the design of the proposed development is a most insensitive response to a sensitive locality.
- In the first paragraph on page 3, the EIS notes that *"following determination of this application, a detailed DA submission will be prepared with will exhibit specific architectural elements and features to achieve design excellence"*. I strongly consider that this is not the appropriate process. Based on SEARs, *"Design Excellence"* is a requirement for the current CDA and cannot be deferred to a later application. In other words, the Applicant must demonstrate the current proposed development achieves Design Excellence.
- The Applicant is also required under SEARs to demonstrate *"A high level of environmental amenity for any surrounding residential or other sensitive land uses"*. Rather than surrounding residential properties maintaining a high level of amenity, I consider that the proposed development will result in *"poor amenity"* for adjoining properties contrary to SEARs.
- In the 2nd last paragraph on page 5, the EIS refers to the proposed communal open space proposed at ground floor and at the roof top level. As with a number of other potential impacts, I consider that there has been an inadequate assessment of the potential impacts generated by the use of the roof top communal open space.
- In the 4th bullet point on page 6, the EIS claims that the proposed development is *"without **any** adverse impacts on the amenity of the community, in particular surrounding properties"* (emphasis added). This claim is wrong. I strongly consider that there are numerous adverse impacts generated by the CDA. Furthermore, there are a number of amenity impacts which cannot be properly assessed due to the inadequacy of the plans and reports accompanying the CDA.
- Chapter 2 of the EIS entitled *"Strategic and Site Context"* refers to relevant Strategic Planning Policies, with particular reference to the need for additional housing. I again reiterate my professional opinion that the

provision of additional housing stock, particularly affordable housing, is desirable. Clearly, Planning Controls must contemplate additional housing stock. My issue is that the current design is most objectionable on a range of grounds, contrary to the requirements of SEARs. Furthermore, there are a number of requirements under SEARs which cannot be properly assessed due to the inadequacy of the CDA. In other words, I am not objecting, in principle, to the need for additional housing. Rather, I am objecting to the specific design and adverse impacts generated by this specific design.

- In the middle of page 18, the EIS notes that *"while only one of the properties (No.1 Nelson Road) is mapped within the TOD areas, the Department of Planning Housing and Infrastructure has confirmed that where the lots are consolidated, then the controls apply to all consolidated lots"*. Again, I assume that legal advice is sought on this issue.
- In the middle of page 18, the EIS claims that *"indeed, the emerging and anticipated character of the locality is for high density residential development given its location within close proximity to Lindfield Railway Station, high frequency bus routes and established mixed use typical of a town centre"*. Again, I fully support the principle of higher density residential development, but of an appropriate design. For the reasons referred to in this submission, I strongly consider that the current CDA is a most inappropriate design, particularly given the objectionable elements of the proposed design and the location of the subject site in a Heritage Conservation Area comprising a number of Heritage Items. Furthermore, I strongly consider that the CDA is of inadequate details for proper assessment against a number of requirements under SEARs.
- At the top of page 20 in the section entitled *"Flora and Fauna"*, the EIS refers to the Arborist Report and the Biodiversity Assessment Report. I am not an expert in these fields, but I do note the comments of local residents who take issue with a number of comments contained in both reports. I can, however, say unequivocally that the immediate locality exhibits high sensitivity in terms of flora and fauna and I was surprised by the high quality of the local environment.

- At the top of page 21 entitled *"Access to Services"*, the EIS states that *"as the site is within an established urban area, electricity, gas, sewer, communication and potable water services are readily available to the subject site"*. I raise the following concerns: -

  i. I consider that the EIS should have included advice from the relevant service authorities as to whether, in fact, there are adequate services in the locality to service the increase demand generated by the current CDA and other TOD applications.
  ii. I again reiterate that the EIS does not consider the Cumulative Impacts of the numerous TOD applications in the locality. No TOD application has undertaken an assessment of the Cumulative Impacts should all the TOD applications be approved particularly in terms of Traffic and Infrastructure Services. As you are keenly aware, the consideration of the Cumulative Impacts of the proposed developments is a very relevant Planning matter.
- There are numerous photographs of adjoining residential dwellings in the EIS. I, however, note that neither the author of the EIS nor any of the Applicant's Consultants have taken photographs from within each of the adjoining residential properties looking towards the subject site. Furthermore, no photomontages or perspectives of the proposed development have been prepared reflecting the Visual Impact and View Loss when viewed from within the adjoining residential properties.
- At the bottom of Section 2.4 entitled *"Cumulative Impacts"*, the EIS at the bottom of page 28 claims that *"the technical studies and reports accompanying the EIS have impacts within the context of the proposal and the surrounding locality"*. I strongly disagree and respond as follows;

  i. No assessment has been made of the Cumulative Impacts should all TOD applications be approved.
  ii. In terms of Overshadowing Impact, I consider that there are adverse and unreasonable impacts on a number of the primary rear yards of adjoining properties immediately to the south. For

the EIS to claim that the *"proposal continues to **maintain** appropriate levels of solar access to surrounding properties"* is simply unfounded.

iii. The Shadow Diagrams also do not show Elevation Shadow Diagrams on the northern facades of the adjoining dwellings which is a standard requirement of Council.

iv. In terms of Visual Privacy, the CDA does not contain sufficient details of the proposed windows and balconies to properly assess Visual Privacy. Simply put, no proper assessment can be made as to whether the proposed development complies with ADG without incorporation of the location of proposed windows and balconies. How can adjoining owners make an informed assessment as to the potential Overlooking Impact, when they do not know the location of the proposed windows and balconies?

v. In terms of Visual Impact, I reiterate that there is no assessment undertaken from the adjoining residential properties. The VIA has been based on views from the public domain. Given the fact the adjoining residential properties are *"key viewpoints"* and *"sensitive receptors"*, I consider that the VIA should have included photomontages or perspectives reflecting the impacts of the proposed development on adjoining residential properties. Based on my inspection of my Clients' adjoining residential properties, I consider that there will be significant impacts generated on adjoining properties.

vi. In terms of Traffic, I again say that there has been no Cumulative Impact assessment undertaken of the additional Traffic on the local roads generated by the TOD applications.

vii. In terms of other Amenity Impacts, please refer to my previous comments.

- In the 2nd last paragraph on page 9, the EIS again states that *"the subject site is permitted additional density"*. But, again, my issue is not with the principle of increased density but is rather directed to the insensitive design of the current CDA and the fact that the CDA is not of a sufficient detail to properly assess all the matters raised in SEARs.

- At the last paragraph on page 29, the EIS refers to the *"u-shaped built form"*, but this u-shaped form is not present on other facades and is only limited to one elevation. Furthermore, the residential properties to the north of the subject site will be looking up at the proposed northern elevation, which will exacerbate the adverse bulk and scale.
- In the last paragraph on page 29, the EIS claims that *"when compared to a compliant envelope with the central component filled in, the concept proposal performs better in terms of solar access, ventilation, landscape area provision, visual bulk and overall amenity for both future residents and the public domain"*. This claim is without any foundation and there has been no empirical analysis to corroborate this claim.
- In the 2nd last paragraph on page 32 in the section entitled *"Residential Apartments"*, the EIS states that *"all apartments are capable of achieving the minimum internal area requirements and private open space requirements in accordance with the ADG"*. I, however, reiterate the fact that due to the lack of details of the location and area of windows and balconies, one cannot make an assessment as to whether each of the proposed units will achieve satisfactory internal amenity as required under the ADG. Furthermore, the degree of Overlooking Impact into adjoining properties cannot be determined. I strongly consider that these 2 issues have not properly been addressed under the CDA. Simply put, the internal amenity for future occupants and the external amenity for adjoining residents cannot be properly assessed due to the election by the Applicant to lodge a CDA.
- In the section entitled *"Landscaping"* on page 33, the EIS makes reference to *"deep soil planting around the side boundaries"*. Please refer to my previous concerns.
- At the top of page 34, there is again reference to the proposed communal open space on the roof top. Again, I note that the Acoustic Report has not considered potential Acoustic Impact generated by users of the proposed roof top communal open space area on adjoining residential properties.

- Furthermore, there is a concern relating to Overlooking Impact from the proposed roof top communal open space into adjoining residential properties.
- In the bottom of page 34 in the section entitled *"Water Management"*, there is reference to flood affectation. On this point, I refer to the submissions from a number of adjoining owners who have personal evidence of the flood affectation due to the creek that runs in the immediate locality.
- At page 36, the EIS claims that the proposed development is *"consistent with the objects of the EP&A Act"*. I strongly disagree for the reasons raised in this submission. I particularly note that the proposed development does not exhibit *"Good Design"* with respect to the amenity of the surrounding built environment for the reasons referred to in this submission.
- At the bottom of page 41, the EIS refers to *"mandatory considerations"*. I consider that a number of these mandatory Planning Controls are breached by the proposed development, particularly their objects.
- In the 1st paragraph on page 50, the EIS claims that section 6 *"collates the potential impacts"* and *"demonstrates how the SEARs requirements have been addressed by the relevant specialist technical reports"*. For the reasons referred to in this submission, I consider that the EIS and associated reports do not properly address the mandatory requirements under SEARs.
- In the middle of page 54, there is again reference to the Clause 4.6 Request for the breach of the Height of Buildings Standard. For the reasons referred to in this submission, I consider that the Clause 4.6 Request is not reasonable, particularly due to the negative Environmental Planning Grounds generated by the proposed development.
- In the 2nd last paragraph on page 57, the EIS acknowledges that the *"significant uplift facilitated by the TOD scheme ultimately result in a scale of built form that is far greater than the immediate surrounding properties"*. A similar comment was made by the Applicant's Heritage Consultant. A continuing point raised by the Applicant's Consultants is that there is likely to be a number of TOD developments in the immediate locality which will

be approved in future years. Given the fact that the TOD legislation for future TOD applications has been *"turned off"* for the moment, one cannot assume that TOD developments will be approved in the future in the immediate locality. Furthermore, the fact that the immediate locality is within a Heritage Conservation Area and contains a number of Heritage Items is a further fact which is likely to reduce the prospects of TOD approved developments even if the TOD legislation was *"turned on"*. Finally, if the Minister adopts the Council Alternate Planning Controls for Lindfield, rather than the TOD legislation, the subject site and immediate locality north of Tryon Road will be maintained as Low Density Residential. Thus, for the abovementioned reasons, I consider that the claim by the Applicant's Consultants that there will be a number of TOD approved developments in the near future is speculative.

- In the 2nd last paragraph on page 58, the EIS claims that *"the proposed concept building envelope is considered to provide a built form outcome that achieves an appropriate balance minimising impacts on surrounding properties and the public domain while developing an envelope that is anticipated by the Housing SEPP"*. I strongly disagree. I consider that the proposed design will generate a range of adverse impacts on surrounding properties.
- The author of the EIS claims that there will be *"high levels of amenity for future residents"* of the proposed development. I consider that there is inadequate information to support this claim. Even if this claim was correct, I strongly consider that the adjoining owners will not achieve *a "high level of amenity"* as required by SEARs. Simply put, a range of likely impacts on adjoining owners will result in adverse impacts on the amenity of the adjoining owners and thus adjoining owners will not achieve the *"high level of amenity"* required under SEARs.
- In the 3rd last paragraph on page 61, the EIS claims that *"the proposal has been designed to be compatible with the future character of the locality as envisaged by the changes in the Housing SEPP"*. SEARs requires that the proposed development must achieve a *"high level of amenity"* for adjoining residents. I strongly consider that this requirement has not been demonstrated.

- In Section 6.8 entitled *“Views and Visual Impact Assessment”*, the EIS claims that the proposed development *“will not result in any unreasonable impacts on any significant views enjoyed from surrounding properties or the public domain”*. This claim is wrong for the following reasons;

  i. There are no photographs taken from within the adjoining residences and their rear private open space areas evidencing their existing views.
  ii. The VIA provides no proper assessment of the Loss of Views and Visual Impact likely to be generated onto adjoining properties.
  iii. SEARs require a *“high level of amenity”* to be demonstrated by the EIS. This requirement has not been demonstrated.
  iv. I consider that, based on my inspection of the adjoining rear yards and primary living areas, there will be *“significant”* View Loss and Visual Impact arising from the proposed development.
- At Section 6.9 entitled *“Solar Access”* I again note that the Shadow Diagrams are not prepared in Elevation Form as required by Council.
- In the 2nd last paragraph on page 63, the EIS states *that “further refinement during the detailed SSDA stage and careful planning of the built form is capable of maximising morning sun”*. This essential matter must be resolved now, not at a later stage. SEARs require a high level of amenity to be enjoyed by adjoining residents. The likely adverse impacts on adjoining properties generated by the CDA is contrary to SEARs.
- The EIS at the bottom of page 63 again states that adjoining sites *“could be capable of being amalgamated with adjacent properties for redevelopment to a scale similar to the current proposal”*. I disagree, and refer to my previous comments.
- In the last paragraph on page 64, the author of the EIS claims that Overshadowing Impact *“is an expected and largely unavoidable outcome for surrounding developments”*. I strongly disagree.
- At Section 6.12 entitled *“Visual Privacy”*, lack of details of proposed windows and balconies will not allow proper assessment of this issue.

- Again, there is no evidence to establish that adjoining properties will achieve a *"high level of amenity"* as required by SEARs. The decision by the Applicant to proceed with a CDA due to the objective of avoiding Council's alternative Planning Controls, results in a set of plans and reports which I consider are not adequate for a proper assessment of a range of Amenity Impacts.
- In terms of Section 6.15 entitled *"Traffic, Parking and Access"*, I reiterate the fact that there has been no assessment of the Cumulative Impact of Traffic on the local road system generated by the current CDA and other TOD applications.
- In terms of Section 6.16 entitled *"Biodiversity"*, I again note the comments of adjoining owners in terms of the highly sensitive values of their locality.
- At Section 6.21 entitled *"Geotechnical"*, the EIS acknowledges that there are *"uncertainties remain regarding ground water depth and subsurface soil parameters"*. These uncertainties should not be deferred for later consideration. I consider that the CDA should have been accompanied by an appropriate level of Geotechnical Investigations.
- In terms of Section 6.23 entitled *"Flooding"*, I refer to my previous comments.
- In terms of Section 6.26 entitled *"Access to Services"*, there has been no assessment of the Cumulative Impact of the proposed development and other current TOD applications on existing Infrastructure Services.
- In terms of Section 7.1 entitled *"Design of the Project"*, I again note that the Visual Impact Assessment has made no assessment of the Visual Impact and View Loss likely to be experienced by adjoining properties. This is a further flaw in the current CDA.
- In the middle of page 74, the EIS claims that the proposed development *"achieves compliance against the relevant statutory requirements"*. I strongly disagree. There are numerous breaches of relevant Planning Controls. Furthermore, the Applicant's election to proceed with a CDA due to time constraints results in inadequate information for proper assessment.

- In terms of Section 7.4, I consider the environmental impacts of the proposed development are significant on a number of grounds for the reasons outlined in this submission. Furthermore, a number of environmental impacts cannot be assessed due to a lack of information in the CDA.
- In terms of Section 7.6 entitled *"Community Response"*, the EIS claims that the proposed development *"addresses the majority of concerns raised by the community"*, but this is not the case. I consider that the CDA represents an inadequate assessment of a range of likely amenity impacts.
- In the *"Conclusion"* section at page 76, the EIS recommends the subject site for increased housing. I consider that the proposed design represents a most insensitive development which generates a range of adverse amenity impacts on adjoining properties. Furthermore, the election by the Applicant to submit a CDA due to time constraints to avoid Council's Alternative Planning Controls does not allow a full and proper assessment of the SEARs document.
- Given the mandatory nature of the SEARs document, I consider that the failure to address all of the mandatory requirements under SEARs is a significant flaw.

Conclusion

I consider that the proposed development fails to properly address various requirements under SEARs. This failure to provide adequate information and to undertake a proper assessment as required under SEARs represents a breach of the EP&A Regulation 2021 and State Significant Development guidelines.

The EIS in the *“Conclusion”* section states that the proposed development will protect the *“Visual Privacy, Overshadowing, and Amenity of surrounding residential properties”*. I strongly disagree. I consider that the proposed development generates a range of adverse impacts. These adverse impacts include, but are not limited to, the following;

i. Significant increase in Overshadowing Impact on a number of the adjoining rear yards of the properties to the south. There will also be increased Overshadowing Impact on the northern windows of the dwellings to the south but the degree of impact cannot be determined due to Elevation Shadow Diagrams not being provided.
ii. Lack of proper assessment of potential adverse Visual Impact and inadequate assessment of View Loss and Overlooking Impact.
iii. No assessment of the potential adverse Acoustic Impact from proposed plant and equipment, particularly in the Basement Levels, and the use of the proposed roof top communal open space area.
iv. No assessment of Air Quality Impact arising from use of the proposed Basement Levels on adjoining properties.
v. Lack of assessment of the Cumulative Impacts of the current CDA and other high density applications in the locality, particularly in terms of Traffic and Infrastructure Services.

Issue 7 of the SEARs requires that the proposed development must demonstrate a *“high level of environmental amenity for any surrounding residential or other sensitive land uses”*. I consider that rather than achieving a *“high level of environmental amenity”* for surrounding properties, there will be a range of significant adverse amenity impacts on surrounding properties.

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

Yours faithfully,

Tony Moody

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CURRICULUM VITAE

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PROFESSIONAL QUALIFICATIONS

1977 Bachelor of Town Planning - University of N.S.W., Kensington.

1990 Bachelor of Laws (Hons.) – University of Technology, Sydney (including High Distinction in Environmental Studies).

EXPERIENCE

2014 to Date Planning Practice of Tony Moody Planning and Development Pty Ltd.

1992 to 2014 Planning Practice of Moody & Doyle Pty Ltd. Appeared as a Court Appointed Expert in the Land and Environment Court and as an Expert Planning Witness for Applicants and 9 Local Councils in the Land and Environment Court.

Involved in numerous major developments including, but not limited to, redevelopment of Hydro Majestic (Katoomba), redevelopment of Clontarf Marina and Expert Witness for Woollahra Council in its successful opposition to proposed Rose Bay Marina and Double Bay Marina redevelopments.

1983-1992 Bankstown City Council
Senior Development Control Planner.

1981-1983	Penrith City Council Area Town Planner.
1979-1981	Wyong Shire Council Assistant Town Planner.
1974-1975	Grafton City Council Student Town Planner.