COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-515
DA Number	eDA0223/24
LGA	Ku-ring-gai
Proposed Development	Demolition of existing structures, construction of a mixed-use development
Street Address	7-9 Merriwa Street, Gordon
Applicant/Owner	Applicant: Meccone Owner: Wei Dong Chen
Date of DA lodgement	28/06/2024
Total number of Submissions **Total Number of Unique Objections**	20 total submissions 18 unique objections
Recommendation	Refusal
Regional Development Criteria - Schedule 6 of the SEPP (Planning Systems) 2021	General development over $30,000,0000.00
List of all relevant s4.15(1)(a) matters	• SEPP (Planning Systems) 2021 (PS SEPP) • SEPP (Housing) 2021 (Housing SEPP) • SEPP (Biodiversity and Conservation) 2021 (BC SEPP) • SEPP (Transport and Infrastructure) 2021 • SEPP (Resilience and Hazards) 2021 • SEPP (Sustainable Buildings) 2022 • Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) • Ku-ring-gai Development Control Plan (KDCP) • Ku-ring-gai Contributions Plan 2023
Summary of submissions	• Adverse acoustic impacts to neighbouring residential dwellings. • Traffic congestion. • Overshadowing. • Excessive building height. • Excessive bulk and scale.
Attachments	1. Amended Landscape Plans (Full Set) 2024/393531 2. Amended Architectural Plans (Full Set) 2024/383160 3. Clause 4.6 (FSR) 2024/373897 4. Clause 4.6 (Active Street Frontages) 2024/373895 5. Amended Shadow Diagrams 2024/363810 6. Amended Shadow Diagrams 2024/363803 7. Acoustic Assessment 2024/336070 8. Amended Design Verification Statement 2024/336067 9. Amended Clause 4.6 (Height) 2024/336066 10. Statement of Environmental Effects 2024/206283 11. DCP Compliance Report 2024/206275
Report prepared by	Brent Pearce
Report date	13/11/2024

Summary of s4.15 matters Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	**Yes**
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?	**Yes**
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	**Yes**
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S7.24)? *Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*	**No**
Conditions Have draft conditions been provided to the applicant for comment?	**Yes**

PURPOSE OF REPORT

To determine Development Application No. eDA0223/24 for the demolition of existing structures, construction of a mixed-use development (shop-top housing) comprising 27 residential apartments, 3 commercial tenancies, basement car parking, tree removal, associated works and strata subdivision.

Pursuant to Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021, the application has an estimated development cost of more than $30,000,000.00. In this case the estimated development cost is $36,092,834.00 (inc. GST).

The consent authority is the Sydney North Planning Panel (SNPP) in accordance with Section 4.5(b) of the Environmental Planning and Assessment Act 1979 (EP&A Act) and Clause 9(b), in Schedule 2 of the EP&A Act.

INTEGRATED PLANNING AND REPORTING

Places, Spaces & Infrastructure

Community Strategic Plan Long Term Objective	Delivery Program Term Achievement	Operational Plan Task
P2.1 A robust planning framework is in place to deliver quality design outcomes and maintain the identity and character of Ku-ring-gai.	Applications are assessed in accordance with state and local plans.	Assessments are of a high quality, accurate and consider all relevant legislative requirements.

EXECUTIVE SUMMARY

Issues:

- Non compliant building height. Unsatisfactory Clause 4.6 variation request.
- Non-compliant floor space ratio. Unsatisfactory Clause 4.6 variation request.
- Insufficient information to enable assessment of overshadowing impacts.
- Excessive bulk and scale.
- Excessive site coverage.
- Insufficient deep soil area.
- Failure to provide details for bicycle parking.

Submissions:	First notification: 17 Second notification: 5 22 in total, 18 unique.
Land and Environment Court:	N/A
Recommendation:	Refusal

HISTORY

Site history

The site has a history as a commercial office building.

Previous applications history:

A Pre-DA consultation was not undertaken with Council prior to the lodgement of this Development Application. Council's records show previous applications relating to the site, including several internal fit outs, internal change of use and alterations.

Current Development Application History

Date	Action
28/06/2024	Application lodged.
08/07/2024	The application was notified to neighbouring property owners for a period of 30 days from 15/07/2024 to 14/08/2024. A total of 17 submissions were received objecting to the proposal.
6/09/2024	Council sent a preliminary assessment letter to the applicant seeking additional information as follows: • A revised Clause 4.6 (Exception to Development Standards) request to the building height standard. • Advice that the proposal had incorrectly calculated the proposed floor space ratio by omitting the above ground parking component from the GFA calculations. As a consequence, the proposed development exceeded the maximum permissible floor space ratio for the site due to the above-ground car parking not being located in a basement. • Deficiency in deep soil landscaping. • Amendments to rooftop communal open space required. • Additional solar modelling required. • Inconsistencies between landscape plans and BASIX Certificate to be resolved. • Amended stormwater plans required. • Acoustic assessment required. • Amended design verification statement required.
18/09/2024	The SNPP was briefed on the progress of the application, including details of Council's preliminary assessment letter, dated 6/09/2024.
08/10/2024	Amended plans were submitted addressing the preliminary assessment letter. The following information was provided: • amended architectural plans • amended design verification statement

	• amended Clause 4.6 variation request in respect of building height • amended BASIX Certificate • amended landscape plans • amended stormwater plans • new information: construction waste management plan • new information: acoustic report • addendum to traffic assessment report The following was not addressed: • The amended plans still incorrectly calculated the proposed floor space ratio by omitting the above ground parking component from the GFA calculations. The applicant contended that this did not constitute a breach of the maximum FSR for the site as car parking was excluded from the calculation of GFA. • Additional solar modelling was not provided.
11/10/2024	The amended application was notified to neighbouring property owners for a period of 14 days from 18/10/2024 to 01/11/2024. A total of 5 submissions were received objecting to the proposal.
29/10/2024	The SNPP was briefed on the progress of the application. Including the details of the amended plans and the absence of certain information requested in Council's preliminary assessment letter.
30/10/2024	Council sent an e-mail to the applicant raising the following issues: • The proposal incorrectly calculated the proposed floor space ratio by omitting the above ground parking component from the GFA calculations. • Further deficiency in deep soil landscaping to be addressed. • Amendments to rooftop communal open space required. • Solar modelling required. • The proposal details residential components on the ground floor of a MU1 Mixed Use Zone. This contravenes the development standard in Clause 6.7 KLEP.
04/11/2024	Amended plans were submitted by the applicant addressing Council's e-mail dated 30/10/2024. Site Plans amendments: o addition of shade cloths, and o details regarding placement of photovoltaic (PV) panels. Level 4 plan amendments: o secure gate added between proposed Business Premises 1 and 2, and o accessible (i.e. 1:14 grade) ramp, within the back-of-house access to proposed Business Premises 2 and 3. Roof Plan amendments: o shade canopies added above the soft rubber play area, o replacement of synthetic turf with timber decking within the north western corner of the roof area, and o addition of PV panel areas. Deep Soil Plan amendments: o revisions to deep soil calculations to only include areas that have minimum six metre dimensions.

	○ revised shadow plans, based on existing and interpolated ground levels. Landscape Plan amendments: ○ Shade canopies added above the soft rubber play area, and ○ The replacement of synthetic turf with timber decking within the north-western corner of the roof area The following items were not addressed: ○ above-ground car parking ○ Clause 6.7 (Active Street Frontages) of the KLEP 2015
13/11/2024	Amended supporting documents were submitted by the applicant. Including: ○ a Clause 4.6 variation request pertaining to FSR. ○ a Clause 4.6 variation request pertaining to active street frontages.

Land and Environment Court appeal history

N/A

THE SITE

Figure 1: Aerial view of subject site, as outlined in red

Figure 2: Front elevation and landscaped area within the front setback of the subject site

Site description

The site is currently developed for the purposes of a part 5 and part 6 storeys commercial building that was constructed circa 1970. The subject site comprises a single allotment that is legally identified as Lot 2 in Deposited Plan 566663, otherwise known as 7-9 Merriwa Street, Gordon. The site is within the Gordon local centre. The site comprises an irregularly shaped allotment, with an area of 2,786.6m^2. The primary (south-eastern) frontage is 35.785 metres to Merriwa Street. This is with the exception of a small part of the frontage which has a small recessed 'square' section along the frontage to Merriwa Street, which can be seen in **Figure 1** above. The rear (northern) boundary has a splayed 45.25 metres frontage to Fitzsimons Lane. The north-eastern boundary adjoins a commercial development, while the south-western (side) boundary adjoins a vacant site. Landscaped areas within the Merriwa Street setback contain numerous large trees.

Constraint:	Application:
Visual character study category	N/A
Easements/rights of way	No
Heritage Item - Local	No
Heritage Item - State	No
Heritage conservation area	No
Within 100m of a heritage item	No
Bush fire prone land	No
Natural Resources Biodiversity	No
Natural Resources Greenweb	No
Natural Resources Riparian	No
Within 25m of Urban Bushland	No
Contaminated land	No

Surrounding development

The property adjoining to the south-east is 11-15 Merriwa Street, which is currently vacant. Development on the southern side of Merriwa Street is variable and reflective of a progressive transition from higher density residential development to the east and lower density residential to the west. Properties towards the Pacific Highway comprise high-density residential development, which progressively transitions to medium density residential and then low-density residential. Development on the northern side of Merriwa Street (which includes the subject site and the surrounding area that is encompassed by Merriwa Street, Ridge Street, Ryde Road, and the Pacific Highway) consist of predominantly mixed-use development and some commercial developments. Remaining commercial properties within this area are generally transitioning to shop-top housing style mixed use developments.

THE PROPOSAL

The application as amended proposes the following:

i. A maximum building height of 25.99 metres.

ii. A maximum floor space ratio of 2.59:1.

iii. Residential apartment dwellings on the ground floor of the Merriwa Street frontage.

iv. Car parking consisting of 19 residential spaces and 7 commercial spaces.

v. 27 residential apartments, including:

- 1 x two-bedroom apartment,
- 13 x three-bedroom apartments, and
- 13 x four-bedroom apartments,

vi. Three commercial tenancies, on the northern (Fitzsimons Lane) frontage.

vii. A rooftop communal open space area.

viii. Civil works (including stormwater and services).

ix. Landscape works (including the removal of 12 trees).

x. Strata subdivision.

CONSULTATION

Community

In accordance with Appendix 1 of the Ku-ring-gai Community Participation Plan, owners of surrounding properties were given notice of the application. In response, submissions from the following were received.

1. *Dr. Jeffrey Pang, 511/888B Pacific Highway Gordon, (x2 submissions)*
2. *Hang Wang, no address provided*
3. *Vanessa Clagnan, 510B/888 Pacific Highway, Gordon*
4. *Max and Margaret Ward, 9/26-30 Merriwa Street, Gordon*
5. *Robert and Janet Ng, 502B/888 Pacific Highway, Gordon*
6. *Jill Bennett, 6/26-30 Merriwa Street, Gordon*
7. *Matthew OC Chan, 202C/888 Pacific Highway, Gordon*
8. *Wai Chooi, 201C/888 Pacific Highway, Gordon*
9. *Dr. Gilda Segal, 10/26-30 Merriwa Street, Gordon*
10. *Anthea Sozou, on behalf of SP101278 - 888 Pacific Highway, Gordon*
11. *Robert Hodgeson, no address provided*
12. *Joanne Rozos, 102/888C Pacific Highway, Gordon*
13. *Siu Wong, Gordon Grange, Fitzsimons Lane, Gordon*
14. *Chen Wang, 410B/88 Pacific Highway, Gordon*
15. *Marianne Castorina, no address provided*

The submissions raised the following issues:

The proposed development exceeds the SEPP (Housing - Transit Orientated Development) controls.

The subject site is not captured by the SEPP (Housing) 2021 Chapter 5 Transport Oriented Development and has not been lodged pursuant to that instrument.

The non-compliant building height will contravene the objectives of Clause 4.3 KLEP 2015.

Agreed.

The non-compliant building height will result in adverse solar impacts.

Agreed, this impact has not been adequately modelled.

The rooftop mechanical plant and equipment will result in adverse acoustic amenity for the surrounding neighbourhood and residential dwellings. The applicant has not provided an acoustic report.

An acoustic assessment was provided as part of the amended plan package. Subject to condition, the acoustic assessment is considered to be acceptable Council's Environmental health Officer.

The proposed development will result in adverse bulk and scale.

Agreed.

The proposed development will obstruct access to neighbouring driveways during

construction.

Were the application recommended for approval, conditions would be imposed to manage the day-to-day construction activities to minimise disruption to traffic.

The proposed development will result in poor air quality and poor acoustic amenity during construction.

Were the application recommended for approval, conditions would be imposed to manage the day-today construction activities, storage and handling of materials and dust management.

The proposed development will result in traffic congestion on Merriwa Street.

Council's Senior Development Engineer has reviewed the proposal and the accompanying Traffic Report. Subject to conditions recommended by Council's Senior Development Engineer, the proposed development could satisfy the relevant objectives in Part 22 of the KDCP.

The proposed development will result in a loss of on-street parking.

The proposed development details sufficient on-site car parking to comply with the Ku-ring-gai DCP and SEPP (Housing) 2021 guidelines.

The driveway to No. 26-30 Merriwa Street (seniors housing development) will become difficult to access due to increased traffic movements on Merriwa Street during construction and thereafter.

The use of private driveways for the parking of construction vehicles can be policed by Council's Parking Rangers.

Amended plans received 08/10/2024

The amended plans were also notified. Submissions from the following were received:

16. *Dr. Jeffrey Peng, 511/888B Pacific Highway, Gordon*
17. *Anthea Sozou, on behalf of SP101278 - 888 Pacific Highway, Gordon*
18. *Jennie You, 504/888A Pacific Highway, Gordon*

The submissions in response to the amended plans raised the following issues:

The amended proposal will contravene the objectives of Clause 4.3 of KLEP.

A Clause 4.6 has been provided to address the matter and the merits of the request are considered below.

The amended proposal will result in adverse acoustic amenity for the surrounding neighbourhood and residential dwellings. The provided acoustic report fails to adequately consider these impacts and contains errors/inaccurate data.

Council's Environmental Health Officer has reviewed the acoustic report and the submissions relating to acoustic impacts.

The amended proposal will result in excessive traffic congestion on Merriwa Street. An adequate construction traffic management study has not been provided.

Council's Senior Development Engineer has reviewed the proposal and the accompanying Traffic Report. Subject to conditions recommended by Council's Senior Development Engineer, the

proposed development could satisfy the relevant objectives in Part 22 of the KDCP.

Amended plans and information received 04/11/2024 and 13/11/2024

In accordance with the criteria in Part 3 of the Community Participation Plan, Council's Development Assessment Team Leader determined that notification of the amended plans was not required as the amendments were unlikely to detrimentally affect the enjoyment of adjoining or neighbouring land.

Internal Referrals

Landscaping

Council's Senior Landscape and Tree Assessment Officer commented on the proposal as follows:

SEPP (Building Sustainability Index: BASIX) 2004		
Part 3 Aims	***Proposed***	***Satisfies***
To encourage sustainable residential development	*Certificate 1749708M _02 dated 8 October 2024 is submitted with the application and states the following.* *Common lawn area - 106.52m2* *Common garden area – 1009.25m2* *Area of garden and lawn to Units* *Unit 210-1.4m2, 202 - 0.68m2, 301-1.4m2, 302-0.68m2, 401 -1.4m2, 402- 0.68m2, 403 – 7.42m2, 501-25.8m2, 502-12m2, 503- 25.55m2, 504-8.99m2, 505-2.37m2,601-1.04m2, 602-1.02m2, 604-6.26m2, 605-2.37m2, 701-1.04m2, 702 – 1.02m2, 704-6.26m2, 705 – 2.37m2, 801 – 18.64m2, 803 – 25.74m2.* *The proposal is consistent with the landscape outcomes within the BASIX certificate.* *(Note: Landscape plan unit numbers are incorrect.)*	***YES***

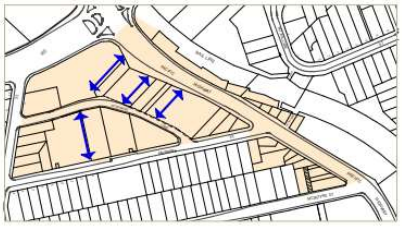
KDCP COMPLIANCE TABLE		
Control	***Proposed***	***Complies***
Part 7A.6 Deep Soil Landscaping and Part 13 Tree and Vegetation Preservation *Introduction Part 8- If a proposed mixed use development provides residential dwellings to any part of the ground floor street frontage, then it will be considered a Residential Flat Building and assessed under Part 7 of this DCP.*		
C1. Residential flat development is to have a minimum deep soil landscape area: *gai locality*	*Deep soil landscaping is defined as the soft landscaped part of the site area that is; not occupied by any structure whether above or below the surface of the ground except for minor structures such as: paths to 1.2m wide, stormwater pipes of 300mm or less, lightweight fences; has a minimum width of 2.0m; is not used for car parking; and can be used for water sensitive urban design.* *Site Area* — *Minimum Deep Soil Landscaping* *Less than 1800m^2* — *40% of the site* *1800m^2 or more* — *50% of the site* ***Note:** For the purpose of this section, the site excludes any access handle.* ***Note:** Certain sites in the B2 and B4 zones have a reduced maximum deep soil landscaping area. Refer to Section B Part 14 Urban Precinct and Sites* *Site Area – 2786m^2* *50% deep soil required = 1393m^2*	***NO***

	***Actual deep soil** with **minimum 2 metres** dimensions = approximately **1095.4m² (39.3%)** (a 298m² shortfall)* *The deep soil is calculated incorrectly on Deep Soil Plan DA501 G of 692m² (24.8%) as Part 8 definition used utilising 6 metres minimum dimension as requested in Council (Landscape) initial referral. However, reassessment of the definition within Part 8 'Introduction', states that if any dwelling provided to ground floor then the building is considered Residential Flat Building and assessed under Part 7. If commercial not located to the entire ground floor than it is not considered a mixed use.* *If the retaining walls to the north-western set of steps are deleted, allowing path/steps to be included within the calculations, the approximate deep soil area could be increased to 40.6% (1133.2m²).* *A 259.8m² shortfall would remain and would require amendments to design to increase deep soil.*	
Control 2 Deep soil zones are to retain healthy and significant trees on the site and adjoining sites.	*The proposal satisfies this part.* *The proposal includes the removal of 12 trees.* *The removal of 3, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 is acceptable due to location and/or condition.* *Tree 3 Corymbia maculata (Spotted Gum) to southern frontage. The proposed building is within SRZ at 2 metres setback and tree is within footprint of pedestrian access.* *Tree 9 Eucalyptus microcorys (Tallowood) within proximity of the entry path. Tree is of poor form with codominant stems near base.* *Tree 11 Corymbia citriodora (Lemon scented Gum) within fire booster location. Existing electrical transmission box restricts alternative locations with minimum 10 metres setback requirement.* *Tree 12 Corymbia maculata (Spotted Gum) within driveway.* *Trees 13,14,15 Corymbia maculata (Spotted Gum) to frontage within pathway and level changes. Tree 15 within 1.5 metres of proposed building.* *Tree 16, Corymbia maculata (Spotted Gum) within driveway.* *Trees 17,18 Corymbia citriodora (Lemon scented Gum), within driveway.* *Tree 19 – Privet (Exempt – Priority weed species).* *Tree 20 Jacaranda mimosifolia (Jacaranda)/ to Fitzsimmons Lane frontage between existing driveways. Major encroachment as it is within footprint of the path and proposed stormwater. Tree could be retained if path moved however would encroach on*	***YES***

	Tree 21, which is a higher value tree and therefore its removal is acceptable. *The impacts of the proposed works are acceptable to the following trees.* *Tree 1 Eucalyptus microcorys (Tallowood) and Tree 2 Corymbia maculata (Spotted Gum) to southern frontage. Existing ground levels to trees are approximately 200 millimetres above existing driveway levels, proposed raised edging provided to maintain levels. The proposed 300 millimetres stormwater pipe is a major encroachment on Tree 1. Thrust boring proposed within the TPZ to resolve impacts.* *Trees 4, Corymbia citriodora (Lemon scented Gum), 5, 6 and 10 Corymbia maculata (Spotted Gum) to southern frontage with proposed stormwater line deleted to reduce impacts on trees.* *Tree 8 Eucalyptus microcorys (Tallowood) Existing encroachment from paved entry paths and therefore can be retained. Tree is 2.3 metres to proposed path which is 150 millimetres above existing levels. Minor new encroachment only.* *Trees 21 and 22 Eucalyptus pilularis (Blackbutt). The existing encroachments from building and driveway are removed. Minor encroachment only from basement and stormwater.* *Trees 23 and 26 Callistemon sp and Trees 24, 25, 27 and 28 Eucalyptus pilularis (Blackbutt) to Fitzsimmons Lane footpath.* *Tree 24 Eucalyptus pilularis (Blackbutt) not indicated on landscape plans for retention or removal. Add tree 24 and retain.* *Tree 29 Ligustrum sp. (Privet) within neighbouring property. Encroachment from new wall replicates existing wall encroachment.*	
C3. Deep soil zones are to be configured to allow for required tree planting including tall tree planting and garden and screen planting at front, side and rear boundaries	*The landscape plan satisfies this control.* *Tall tree canopy planting and screening planting at front, side are rear boundaries has been included on the landscape plan.*	***YES***
C4. Deep soil landscaping is to be provided in the common areas as a buffer between buildings that softens the bulk and scale of the buildings	*The landscape plan satisfies this control.* *Deep soil landscape is provided in common areas as a buffer between buildings*	***YES***
C6 Driveways are not to dominate the street setback area.	*The landscape plan satisfies this control.* *Deep soil landscaping areas in the street setback are to be maximised. Existing Electricity transmission box*	***YES***

	to Merriwa Street is an existing encroachment.	
C7. Tree replenishment and planting.	*The proposal satisfies this part. Lots with the following sizes are to support a minimum number of tall trees capable of attaining a mature height of at least 18 metres on shale, transitional soils and 15 metres on sandstone derived soils.* *1200m^2 or less – 1/400m^2* *1201m^2-1800m^2 – 1/350m^2* *1801m^2 + - 1/300m^2* *Site Area – 2786m^2 = minimum 9 tall trees capable of reaching 15 metres.* *The landscape plan satisfies this control with 9 new trees provided, and additional existing trees retained.*	***YES***
C8. In addition to tall trees, a range of medium, small trees and shrubs are to be selected to ensure that vegetation softens the built form and creates a garden setting. *At least 50% of all tree plantings are to be locally occurring trees and spread around the site.*	*The landscape plan satisfies this control.*	***YES***
C9. Trees are to be planted within all setback areas. At least 30% of the required number of tall trees are to be planted within the front setback	*The landscape plan does satisfy this control.*	***YES***
Part 7C.2 Communal Open Space		
C2.At least one single parcel of Primary communal open space is to be provided with the following requirements: *i) a minimum area of 80m^2 ; and* *ii) a minimum dimension of 8 metres.*	*The landscape plan satisfies this control.*	***YES***
C3.The Primary communal open space is to be directly accessible from the internal common circulation areas. undesirable.	*The landscape plan satisfies this control.*	***YES***
C4 The Primary communal open space is to be located at or above finished ground	*The landscape plan satisfies this control.*	***YES***

level behind the building line. Roof top Primary communal open space may be provided where the ground level cannot meet performance requirements or is undesirable.		
C7. The location and design of the Primary communal open space is to optimise opportunities for active and passive social and recreation activities, solar access and orientation, summer shade, outlook, and maintain the privacy of residents on adjoining sites zoned differently for lower density residential development sites.	*The landscape plan satisfies this control.*	***YES***
C9. Communal open space is to be integrated with any significant natural feature(s) of the site and soft landscaping areas.	*The landscape plan satisfies this control.*	***YES***
C12 Shared facilities such as barbecue facilities, shade structures, play equipment and seating, are to be provided within the Primary communal open space. Note: Selected items within communal open spaces are to be appropriate to the space and demonstrate consideration of the amenity of nearby apartments.	*The landscape plan satisfies this control.*	***YES***
14D Gordon local centre ***14D.10 Precinct G4 Mixed Use***		
Public Domain and Pedestrian Access	*Pedestrian through site link not required on 7-9 Merriwa. Two access paths and steps provided either side of development for maintenance and access to units and carpark.*	***YES***

	Public Domain and Pedestrian Access  Figure 14D.10-2: Public domain and pedestrian access plan.	
Part 21 General Site Design		
21.1 Earthworks and Slope *C3. Landscape cut or fill should not be more than 600mm above or below natural ground line.*	*Landscape fill is proposed, this is acceptable on merit because: the site slopes approximately 10 metres from Fitzsimmons Lane to Merriwa Street however existing structures built to the boundaries have substantially altered the existing ground levels on the site. Proposed fill up to 3 metres is required in the side setbacks to return the natural ground levels as per the adjacent sites.*	***YES***
C4. A minimum 0.6m width is required between retaining walls.	*The landscape plan satisfies this control.*	***YES***
C5. Existing ground level is to be maintained for a distance of 2 metres from any boundary.	*Existing ground level has been maintained for 2 metres from the northern boundary.*	***YES***
C8. Retaining walls, excavated and filled areas are to be located and constructed to have no adverse impact on iii) trees and vegetation to be retained on site or on adjoining sites	*The landscape plan satisfies this control.*	***YES***
21.2 Landscape Design To ensure the landscape design and species selection is suitable to the site its context and considers the amenity of residents and neighbours.	*The landscape plan satisfies this control.*	***YES***
Part 23 General Building Design and Sustainability		
23.10 Construction, demolition and disposal	*An adequate Environmental Site Management Plan was provided.*	***YES***
Part 23.5 Roof Terraces and Podiums		
To provide high quality of private and public common open space on roof terraces and podiums	*Incorporation of sun shading devices, wind screens and facilities such as BBQ and kitchenette area with drinking water to encourage usage.* *Pergola, play area and a variety of seating areas are provided.*	***YES***
To encourage use of low maintenance planting and low water use	*The landscape plan satisfies this control, with levels indicated to top of planter walls to balconies.* *Roof top planters are 800 millimetres and 400 millimetres which are suitable for proposed planting.* *Adequate soil provision requirements* *Large trees- min 1.3 metres depth, 150m3*	***YES***

	Medium trees – min 1 metre depth, 36m3 *Small trees – min 0.8 metre, 11m3* *Shrubs- min 0.5-0.6 metre* *Groundcover – min 0.3-0.45 metre* *Turf – min 0.1-0.3 metre* *Drainage requirements are additional to min soil depths.*	

Issue: Deep Soil

The proposal fails to comply with the 50% deep soil requirement of Control 1, Part 7A.6 of the DCP. The actual deep soil area proposed with minimum 2 metres dimensions is approximately 1095.4m² (39.3%). If the retaining walls to the north-western set of steps are deleted, allowing path/steps to be included within the calculations, the approximate deep soil area could be increased to 40.6% (1133.2m2). Suspended/piered steps over existing ground levels would provide additional deep soil for tree roots. A 259.8m² shortfall would still remain and would require considerable amendments to the design to increase the total deep soil.

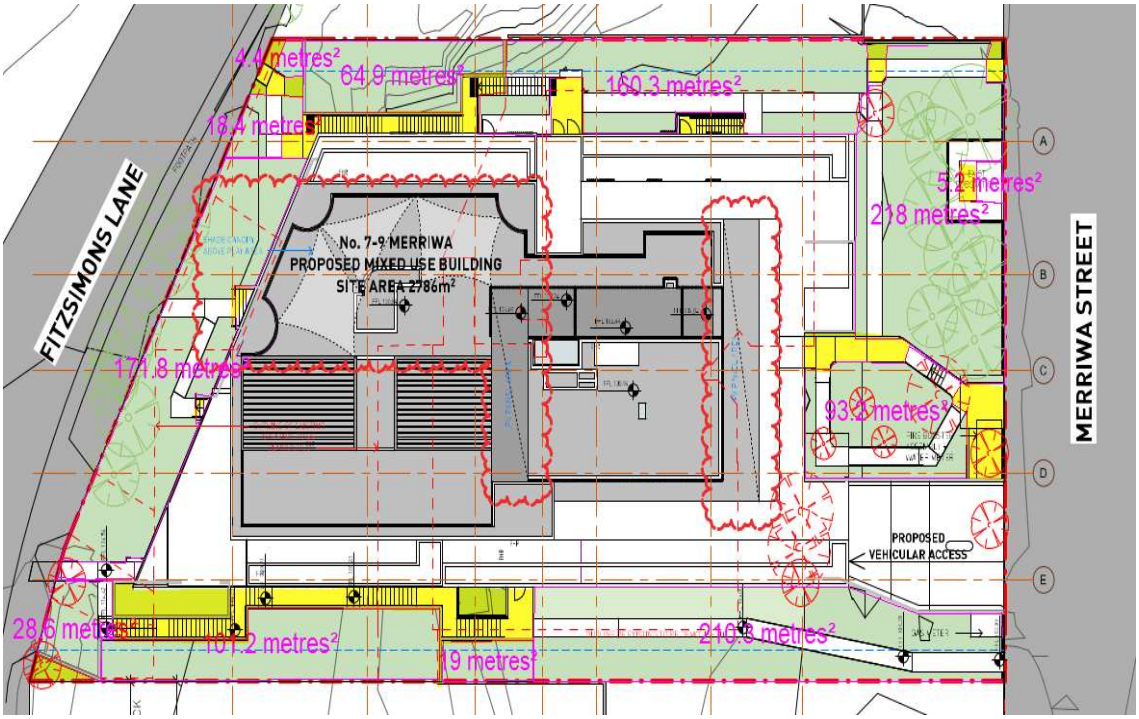


Figure 3: Deep soil areas calculated above. Areas in yellow are excluded from deep soil calculations due to retaining walls, paths wider than 1.2m or areas less than 2m in width.

Recommendation

The proposal is not acceptable in its current form.

Engineering

Council's Senior Development Engineer commented on the proposal as follows:

Water management

The site slopes with a maximum fall of approximately 10 -11 metres, from Fitzsimmons Lane down towards the Merriwa Street frontage. The topography suggests the site is not affected

during a 1% Annual Exceedance Probability flood event. A kerb inlet pit is present directly in front of the site.

The submitted stormwater management plans show all roof areas to be collected and conveyed to a combined rainwater and detention tank comprising a total volume of 6.85m^3 and 46.36m^3, respectively, located on Levels 4 and 5 within the building envelope. The overflow from the detention system is directed into Council's underground trunk drainage system in Merriwa Street via a proposed 900 x 900 millimetres sealed pit over Council's pipe infrastructure, which is acceptable.

The highlighted section of the on-site detention (OSD) 300 millimetres overflow pipe along the eastern boundary, is proposed to be lowered and thrust bored to protect tree roots. The plans also depict a notation regarding the thrust boring method and confirm the levels necessary for the overflow pipe to achieve gravity discharge to the new junction sealed pit. This is acceptable.

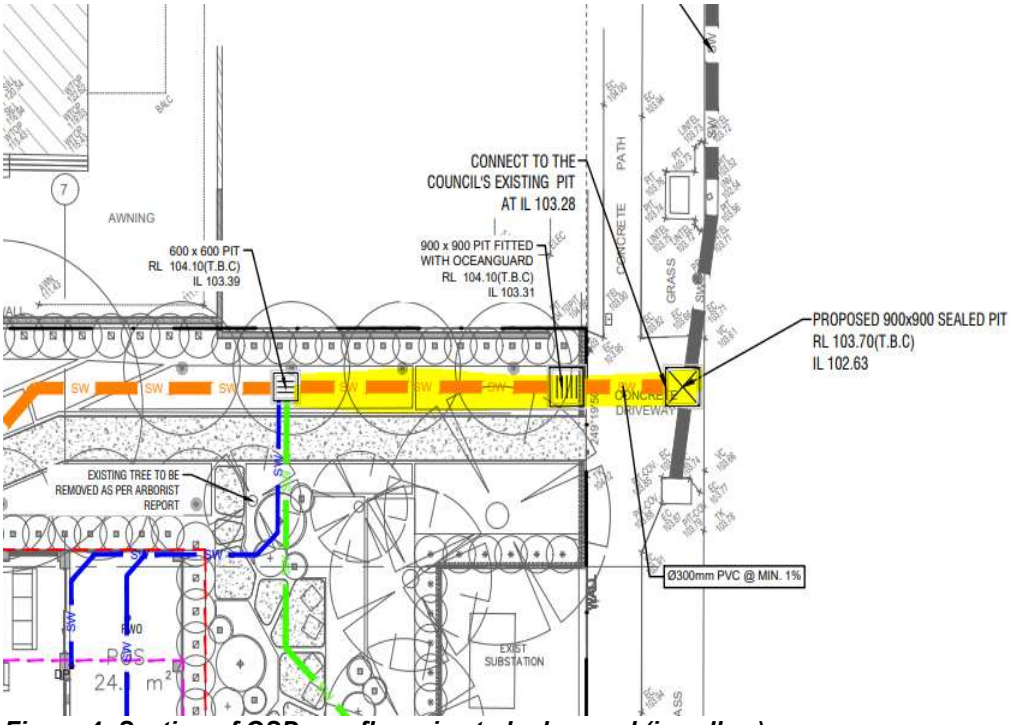


Figure 4: Section of OSD overflow pipe to be lowered (in yellow)

Supporting calculations for the sizing of the detention system complies with Part 24C.5 of the Ku-ring-gai Development Control Plan (KDCP). The stormwater works including a new junction pit over Council's trunk drainage system within the road reserve are to be undertaken as part of the s138 of the Roads Act, approval. The proposed stormwater management system is acceptable.

The combined rainwater and detention tank is tightly located between Levels 4 and 5. The location of the access pits to the retention and detention system on Level 5 and are shown to be accessible from within the building's common area, which is acceptable.

The design also incorporates suitable inlet pits to capture sub-surface water flows from hardstand areas, which is directed to the public drainage system. Council's Senior Landscape Officer has suggested to offset the stormwater line at the Fitzsimmons Lane frontage to avoid tree roots. The revised plans show the stormwater pipeline at the Fitzsimmons Lane frontage which has been offset to avoid tree roots, in accordance with the recommendations. With regards to the front setback area on the Merriwa Street frontage, the surface runoff from hard surfaces are directed to the kerb and gutter on the Merriwa Street frontage. Any uncontrolled runoff can be directed to rain-scaping.

A pump-out pit of 13m^3 within the basement has been shown to capture only the driveway area of 128.62m^2, which is acceptable. The pump-out tank is to be designed based on the 100 year 2 hour storm, as required under Part 24B.5 of the KDCP and relevant Australian Standards. The rising main is connected to the OSD prior to discharging to the public drainage system, which is acceptable.

A BASIX Certificate has been submitted with water commitments proposing a 6,850 litres rainwater tank collecting 464.93m^2 of roof area to be re-used for irrigation purposes and car washing. The water balance model submitted proposes to reduce the site runoff days by 62.3%, which satisfies Council's streamflow objectives under Part 24C.3 of the KDCP.

The captured stormwater is to be treated by using a proprietary OCEANGUARD 'Storm Filter' and filtration medium in the detention tank prior to connection into the public drainage system. The pollutant load standards set out in Part 24C.6 of the KDCP are satisfied.

Car parking and vehicular access

The site is not within 400 metres from any train Station. The site is zoned 'E1 Mixed Use' under the Ku-ring-gai LEP 2015 (KLEP). The proposed development comprises of 1 x 2 bedrooms, 13 x 3 bedrooms, 13 x 4 bedrooms and 3 commercial premises.

Part 22 of the KDCP provides the following parking requirements for apartment buildings:

- *2 bedroom unit: 1.25 space per unit (1 x 1.25 = 1.25) 2 spaces*
- *3 bedroom unit: 2 spaces per unit (13 x 2 = 26) 26 spaces*
- *4 bedroom unit: 2 spaces per unit (13 x 2 = 26) 26 spaces*
- *Visitor parking: 1 space per 4 units (27 / 4 = 6.75) 7 spaces*

Based on the KDCP, Part 22R.1, the proposal would require 54 residential parking spaces and 7 visitor parking spaces.

State Environmental Planning Policy (Housing) 2021 (SEPP Housing) specifies the minimum parking rate in the Apartment Design Guide is to apply to residential flat buildings. Applying these parking rates requires 37 residential parking spaces and 5 visitor spaces, a difference of 17 residential parking spaces and 2 visitor parking spaces between the policies.

The proposed mixed used development also includes 225.9m^2 commercial space on Level 4, off the Fitzsimons Lane frontage. The subject site is beyond 400 metres from Gordon Train Station therefore car parking is to be provided in accordance with the parking rates in Part 22R.2 of KDCP.

Based on the DCP parking requirements, the proposal would require 7 parking spaces. Part 22 of the KDCP requires accessible parking to be provided at a rate of 1-2% for retail/commercial development. This equates to a provision of 1 space. The provision of 7 parking spaces, which include one accessible parking space meets the KDCP requirements.

<u>Ku-ring-gai DCP parking requirements</u>

Part 22 of the KDCP provides the following parking requirements for apartment buildings:

- *commercial: 1 space per 33m^2 (10% as visitor, plus 1 courier space)*

The total parking spaces required for the development is:

Commercial = 225.9/33 = 6.85 (6 staff and1 visitor)
Overall, the proposal seeks a total of 67 car parking spaces, comprising 60 residential spaces (includes 7 residential visitors) and 7 commercial spaces (includes 1 commercial visitor space which is accessible). The proposed parking provision meets the minimum requirements of the SEPP Housing provisions and the KDCP.

Control 9 of Part 6B.2 of the KDCP states that car parking is to be provided in accordance with the Liveable Housing Guidelines 4th Edition. Platinum dwellings (of which five are proposed) require one of the allocated car spaces for each of the platinum dwellings measuring 3.8 metres x 6 metres. All platinum dwellings have two platinum parking spaces, which exceeds the minimum parking dimensions for platinum parking. It should be noted that even if the spaces were designed as 3.8 metres x 6 metres, there would be a reduction of 5 spaces for the platinum. The parking requirements would still be met.

The proposal seeks 1 of the residential visitor space to be shared as a car wash bay on Level 3, which is acceptable. In addition, 1 commercial accessible visitor parking space has been provided. These car spaces have been designed in accordance with AS2890.6 (2009) in terms of space width and providing a shared area. The requirements referred to by the Access Consultant have been satisfied.

A dedicated waste collection / loading area meets the minimum dimensions of 3.5 metres x 6 metres, as required in Part 7B.1(14) of the KDCP. The proposal seeks a greater length, which now meets the current Council's small ridged vehicle garbage collection truck, which is 6.7 metres in length.

Swept paths analysis using a B85 and B99 design vehicle for the car parking spaces and critical car spaces, respectively, has been submitted within the appendix of the traffic report demonstrating all cars can enter and exit in a forward direction.

Site access

The proposal provides on-site car parking within a part basement with vehicular access to the car parking via a 6.6 metres wide entry / exit driveway for two-way traffic movements, which narrows down to a dual lane of 6 metres. The driveway width satisfies the requirements of Part 22.2 of the KDCP.

A driveway longitudinal section starting from the centreline of the public road to the carpark entry has been submitted. A driveway gradient of 5% for the first 6 metres within the site boundary, having a maximum grade of 18.37% and 17.72% along both driveway edges, as per AS2890.1:2004, has been depicted on the Driveway Longitudinal Section Plan Drawing No. C05 prepared by Smart Structures Australia.

The minimum sight lines for pedestrian safety, as per Figure 3.3 of AS2890.1:2004 has been demonstrated given that there is no obstructing structures/landscaping at the front property boundary.

The driveway gradients comply with Australian Standard 2890.1 (2004) "Off-Street car parking" as do the dimensions of the parking bay, blind aisle and aisle widths.

Traffic generation

According to the traffic generation rates nominated by the Roads & Maritime Services (RMS) 'Guide to Traffic Generating Developments', the traffic generation arising from the proposed development has been assessed as a net decrease over existing conditions and equates to 49 vehicle trips per hour during the AM peak and 39 vehicle trips per hour during the PM peak periods due to the reduction in business premises GFA over the existing site.

The proposed development is estimated to generate 1 vehicle trip every minute during peak hours. According to the above guidelines, the vehicle trips are considered minimal and would not be expected to generate any noticeable impacts to the existing local and arterial road network.

Waste management

According to the Waste Management Plan, separate residential and commercial waste areas are proposed, located in a central garbage storage area within the basement, which complies

with Part 23.7(9) of the KDCP. Waste and recycling collection for residential development is to be undertaken by Council, whilst waste and recycling collection for the commercial development is to be undertaken by private contractor. The development allows a garbage truck to enter and depart the garbage/room recycling storage area in a forward direction. Swept paths have been submitted in the traffic report demonstrating that Council's Waste Collection Vehicle, which is 6.7 metres long can enter and depart the garbage/room recycling storage area in a forward direction.

A longitudinal section has been submitted demonstrating that a clear head height of 2.6 metres throughout the basement carpark along the path of travel is provided as indicated in the Drawing No. DA313H 'Section D and E Ramps' of the architectural plans. The driveway grade of <20% for the small waste collection vehicle has been shown.

Impacts on Council infrastructure

Civil works plans prepared by Smart Structures Australia have been submitted. The plans depict footpath regrading and driveway works on public land, which requires construction of a junction pit over Council's trunk drainage system. A referral to Council's Operations Department for approval under the Roads Acts would be required if the application were approved.

Construction management

No Construction Traffic Management Plan (CTMP) has been submitted. Given the development approval at 1-5 Merriwa Street, the construction vehicle routes would be similar using Pacific Highway, Vale Street and Merriwa Street.

If the application were acceptable, a condition would be recommended requiring a detailed CTMP to be submitted prior to the issue of a construction certificate. The CTMP would need to show construction vehicle routes for the southbound and northbound directions, largest vehicle to be used entering and exiting the site for the demolition, excavation and construction stages, stockpiles and all necessary tree protection fencing.

Geotechnical investigation

A geotechnical report has been submitted to assess the subsurface conditions and provide preliminary recommendations for the excavation of the basement.

Construction of the basement will require excavating to depths up to 12.4 metres below the existing ground surface. Localised deeper excavations may also be required to facilitate construction of the footings, lift overrun pits, crane pads and service trenches.

As part of the investigation procedure, machine drilling of three (3) boreholes and associated Standard Penetration Testing (SPT) conducted every 1.5 metres were put down to determine the relative density of the overlying soil and the depth to bedrock. All three boreholes were converted into groundwater monitoring wells upon completion of drilling.

The subsurface conditions generally consist of fill material up to 1.6 metres deep followed by silty clay residual soil to depth up to 1.65 metres overlying shale to depths of 11.13 metres and to weathered sandstone bedrock to borehole termination depths of up to 14.75 metres.

Permanent groundwater and seepage water was not encountered by the boreholes during drilling. No groundwater seepage and recharge were observed at the wells. It is confirmed that the standing water is from very slow seepage flows between the shale defects only. The geotechnical engineer states that permanent groundwater table is not intersected by the installed groundwater wells to RL89.9m. It is anticipated the potential to occur large amount of inflow through soils, interface of soils and rocks, and through joints within shale is very minor during basement excavation, with expected total inflow of less than 3ML/year. The conventional pump and sump method are considered manageable of such inflow water.

Whilst the findings would expect it to be less than the nominated 3Ml/year, it may be conditioned, should the application be approved, that the basement excavations are to be fully tanked unless it can be demonstrated, at the discretion of the certifier, that ongoing dewatering will be less than 3ML/year and the proposal is approved by NSW DPI Office of Water.

It is recommended that prior to demolition, bulk excavation and construction that a detailed dilapidation survey be carried out on the adjacent building and associated structures within the zone of influence. The purpose of a dilapidation report is to confirm that demolition, excavation and construction works, are not causing damage and therefore may prevent future claims of damage arising from the works.

The geotechnical recommendations regarding excavation support, vibration monitoring, dilapidation reporting of adjoining buildings and foundation design shall be carried out during construction, as specified within the report, if the application were to be supported.

Building

Council's Senior Building Surveyor commented on the proposal as follows:

A detailed assessment will be undertaken by the Principal Certifier at the Construction Certificate stage, if the application were to be approved, against the Deemed-to-Satisfy provisions and Performance Requirements of the National Construction Code Series (Volume 1) Building Code of Australia 2022, however compliance with the provisions of the BCA is readily achievable.

Urban design

Council's Urban Design Consultant commented on the proposal as follows:

The below comments follow a review of two rounds of amended documents seeking to address urban design and other identified Council issues. For continuity, the original urban design issue and comments are included. With responses to amended plans provided in red text with the date of the referral.

1	***Context and Neighbourhood Character***	***Satisfied Y/N***
	1. *Merriwa Street streetscape – The retention of many existing mature trees is supported. The visual impact of the extent to services requires further consideration to maximise available landscape across the frontage – for instance rotating the gas meters 90˚ to increase opportunities for landscape between the driveway and egress path. Relocating some or most services to Fitzsimons Lane should be considered.* ***20241028:*** *Resolved for gas meters – hydrant booster location still dominates the Merriwa Street main pedestrian entry point.* ***20241118:*** *No change to hydrant location.* 2. *Fitzsimons Lane streetscape – due to the existing buildings, control of landscape ground levels within the setback to Fitzsimons Lane is within the control of the proposed development. The street frontage is relatively level (approximately 1 metre) between the north-eastern and north-western corners of the site, which is easily managed for good pedestrian access and visibility of the proposed business tenancies. Minimising the height of retaining walls in the vicinity of Business Tenancy 1 through a graded landscape will avoid that tenancy appearing subterranean from the street. This will need to be coordinated with Council's landscape requirements to ensure street*	***NO***

	trees remain protected and viable over the long term. See also comments at 6 – Amenity for the Fitzsimons Lane residential entry. ***20241028:*** *No changes to levels or top of wall retaining wall heights. However, it is noted the top of wall level at the north-eastern corner is relatively low and amendments have been made to the egress paths, stair geometries and planting at that tight part of the site that will improve the streetscape. Not further pressed for urban design.* ***20241118:*** *No change – acceptable from an Urban Design Perspective.*	***YES***
3.	*<u>Urban landscape character</u> – the deep soil deficiency will need to demonstrate how Ku-ring-gai's required canopy landscape is to be achieved. The proposed 39.3% deep soil represents a variation to the minimum expected of all similar development within the Ku-ring-gai Local Government Area. Likewise, the proposed site coverage is 41.48% significantly departing from Ku-ring-gai's maximum site coverage of 30%. Impacts of services concentrated along the residential Merriwa Street frontage could be reconsidered. Opportunities to split/share services (relocating gas meters and/or hydrant boosters) between streets noting the Fitzsimons Lane frontage presents the more urban business public/private interface character.* ***20241028:*** *No change – acceptable from an Urban Design Perspective.* ***20241118:*** *No change – acceptable from an Urban Design Perspective.*	***YES***
4.	*<u>Signage</u> – clarification should be provided regarding signage for the Fitzsimons Lane frontage if future tenancies are known. However, it is noted this may be subject to future applications and tenancies.* ***20241028:*** *Resolved. Confirmed that signage will be to future applications – no known tenancies at this stage.* ***20241118:*** *No change – resolved.*	***YES***
5.	*<u>Through-site link</u> – clarification is sought regarding the Site Plan and through-site link. The design does not propose a publicly accessible connection were indicated on the plan. (There will be private connection between street frontages for residents.) It is unclear whether the external stair along the eastern side of the building is intended to provide private or public access between the streets.* ***20241028:*** *Resolved. Through-site access not proposed for public access.* ***20241118:*** *No change – resolved.*	***YES***
6.	*<u>Business tenancy access</u> – Clarify the separation of basement access from the car park level(s) to the business tenancies. There appears a security conflict for residential access for Units 401, 402 and 403. See also 7 – Safety.* ***20241028:*** *Resolved. Amendments have reoriented the lift doors and separated the residential foyer within the building. All commercial tenancies address Fitzsimons Lane and the primary residential address is Merriwa Street. Therefore, Fitzsimons Lane functions as a secondary access point with all resident access from the lift now separated by a secured foyer that is accessed from a shared northern lift foyer.* ***20241118:*** *No change – resolved.* *See 7 – Safety for clarification of the location of the secured entry from Fitzsimons Lane.*	***YES***

2	***Built Form and Scale***	***Satisfied***

	Y/N
1. <u>Building height</u> – *Attention is drawn to requirements of the Design and Building Practitioners Act (DBP Act) and building height implications for floor-to-floor heights.* *Confirmation is required to demonstrate proposed floor-to-floor height for Level 5 is sufficient to accommodate proposed terraces/balconies/ wet areas above the habitable rooms of units at Level 4 below and provide flush thresholds for accessibility amenity.* *Industry is now reflecting the implications of the DBP Act with common practice now adopting minimum 3.2 metres floor-to-floor heights to allow for adequate structural depth to accommodate required set-downs, insulation, allowances for effective waterproofing for internal layouts with vertical alignments of all wet areas. However, where accessible paths of travel may be required between internal and external spaces and/or within dwellings (flush transitions to bathrooms) and/or where extensive terrace areas/wet areas are above habitable rooms below additional clearances are commonly required – the condition that occurs between Levels 4 and 5.* *Designs proposals at DA stage need to promote and enable practitioners to comply with this new legislation and better manage the increased risk they are now expected to carry from DA approval through to construction all of which supports good building practice.* *Consistent with these requirements, the development proposes general floor-to-floor heights of 3.2 metres representing an overall building height in the vicinity of 0.8 metres to 1.2 metres higher compared to previous industry practice of 3.1 metres (often reduced to 3.05 metres) before the DBP Act and KLEP provisions yet to be reviewed to accommodate the associated legislative changes. The proposed height exceedance due to the requirements of the DBP Act is supported.* *In terms of the merit of additional building height, the rooftop level accommodates a large communal open space and area for rooftop plant. The amenity offered is a shared communal amenity to be enjoyed by all residents as a high-quality outdoor space with excellent solar access and facilities that encourage use by larger and smaller groups and smaller children. There is no GFA proposed for private dwellings/use on the rooftop level (which would not be supported). The proposed height exceedance therefore has merit on the basis of the communal shared benefit. The qualification is that full support is subject to further clarification of over-shadowing impacts of the components exceeding the permitted height compared to a compliant development as further detailed at 6 - Amenity.* ***20241028:** Not Resolved for 3D shadow analysis. See comments at 6 – Amenity for solar modelling and over-shadowing.* ***20241118: Not resolved.*** *Additional information provided is acknowledged, however, it is not in a form that adequately communicates solar performance noting sought height and FSR variations. Views-from-the-sun or sun-eye modelling is required to accurately demonstrate overshadowing impacts to 11-15 Merriwa Street and from 1-3 Merriwa Street assuming a complying development building envelope is on both sites. The topography is challenging which may give rise to a variation on merit where other design solutions demonstrate and deliver required amenity across the development as a whole. See 6 – Amenity.*	***NO***

	2. <u>Building form and scale</u> – *the proposed building form is not inconsistent with envisaged building form under SEPP Housing Chapter 4 and the Ku-ring-gai LEP and DCP. See further comments regarding deep soil landscape at 1 - Context and Neighbourhood Character; and 5 – Landscape which is noted as significantly less than Ku-ring-gai's minimum requirements.* ***20241028:*** *Resolved. Amendments have adequately addressed the deep soil and landscape issues from an urban design perspective. However, clarification of solar access impacts is still to be confirmed, see comments above and at 4 – Sustainability and 6 – Amenity.* ***20241118:*** *Amendments have adequately addressed the deep soil and landscape issues from an urban design perspective. However, solar access impacts are not supported due to inadequate information.* *See comments above and at 4 – Sustainability and 6 – Amenity.*	***NO***
3	***Density***	***Satisfactory Y/N***
	1. <u>Proposed density</u> – *is consistent with KLEP provisions. Note general comments to address 4 – Sustainability, 5 – Landscape, and 6 – Amenity.* 2. <u>Basement/above ground car parking</u> – *Council's exclusions and inclusions regarding above ground car parking may result in GFA exceedances. This may affect 3 levels.* *As regards urban design, the proposed design is considered to be a rational response to the topography balanced with the need to accommodate functional basements/car parking. The result generally provides a satisfactory interface along both side boundaries by maximising the residential use for the southern half of the site from Level 1 and above. This addresses Merriwa Street and provides a visual focus when viewed from the street when viewed on approach from the east or west.* ***20241118:*** *No further comments.*	***YES***
4	***Sustainability***	***Satisfactory Y/N***
	1. <u>Synthetic turf and rubber</u> – *not supported. It is well-documented and demonstrated they increase the effects of urban heat (UWS and UNSW plus NSW Chief Scientist for NSW Planning). As a synthetic plastic material, synthetic turf is not supported as environmentally sustainable due to product breakdown over time, longevity of plastics with micro-plastics gaining access to water ways and wider environment.* *Natural turf or areas of green roofs with shade and small canopy trees in planters are to be considered. Note indicative structural depths to consider wet weights of soil for landscape on structure.* *Council's Landscape officer to confirm alternative ground cover options such as a trafficable green roof suitable for the purposes proposed.* ***20241028:*** *Not Resolved. Synthetic turf to be deleted and replaced by alternative – timber decking or paving shaded by the pergola.* *Shade protection of the rubberised soft-play area such as shade cloth or extending the pergola is required. The rubber and synthetic materials exacerbate urban heat when unprotected from sun and their excessive heat renders them unusable in hot months particularly for children directly touching them. Details subject to confirmation of Council's Landscape requirements.*	

***20241118: Resolved from an urban design perspective**. Amendments have replaced synthetic turf with kecking and increased the pergola area to provide adequate shade protection during hotter months. Shade cloths over the children's play area will mitigate excessive heat gain from otherwise unprotected solar exposure on the rubber/synthetic soft-play ground cover.*	***YES***
2. *Planting on structure – ensure all floor-to-floor heights accommodate adequate structural depth for wet-soil weights and soil depths that can support established landscape planting over the life of the development. All planting on structure is to be accessed from common areas for maintenance.* ***20241028:** Applicant's response is noted. No further urban design comments.* ***20241118:** No further comments.*	***YES***
3. *Rooftop PV and electrification – future-proofing the development needs to be maximising rooftop PV and commitments around full electrification – no gas connections.* • *Ensure fast charging facilities for 100% of vehicles being EVs is accommodated.* • *Confirm proposed substation has the required capacity.* • *Accommodate plant area for battery storage.* *Proposed rooftop plan appears to have no area for rooftop solar.* ***20241028:** Resolved for allowing for EV charging provisions. **Not resolved for PV and futureproofing.** Roof Plans are to annotate locate of rooftop PV required by BASIX.* ***20241118: Not resolved.** PVs to be located on the Roof Plans. The applicant is encouraged to pursue an outcome that accommodates foreseeable decarbonised urban development.*	***NO***
4. *Resource use - The need for so many bathrooms in each dwelling is questioned. They are surplus to general needs, waste space that would otherwise be available to accommodate additional dwellings (smaller unit types) and result in the use of resources that could otherwise be used delivering more dwellings.* ***20241028:** Applicant's response is noted. No further urban design comments.* ***20241118:** No further comments.*	***YES***

5 Landscape	***Satisfied Y/N***
1. *Deep soil – Note deep soil deficiency and site coverage exceedances. In regards to urban design, it is of high importance that Ku-ring-gai retains and repairs existing and/or lost urban canopy. Long-term viability of replacement trees consistent with both NSW Urban Greening expectations in mitigating urban heat gain and achieving Ku-ring-gai's Future Character objectives must be demonstrated the proposed deficiencies can, and will, be satisfied.* ***20241028:** Resolved from an urban design perspective.* ***20241118:** No further comments.*	*4O Landscape design* *4P Planting on structures* ***YES***
2. *Street trees – Street trees proposed for retention is supported.* *However, proposed loss of A-Value Trees 3, 8, 9, 11, 12, 16, 17, 18, 21, 22 is to be addressed by Council's Senior Landscape Assessment Officer. It is also identified that impacts to a further 9 x A-Value Trees 4,*	

	5, 6, 7, 10, 24, 25, 27 and 28 is anticipated. This should be considered in context of the departures from deep soil landscaping and maximum permitted site coverage. ***20241028:*** *Resolved from an urban design perspective.* ***20241118:*** *No further comments.*	
	3. *Planting on structure - Maintenance access to planters - All balcony/terrace planters need to be accessible from common areas for ongoing maintenance that will achieve a consistent and viable long-term landscape character for the development. Planters on private balconies with no provision for common access should be deleted.* *Visual appearance that relies on balcony planters being maintained by individual owners/residents over the life-cycle of the development is not supported due to Ku-ring-gai's experience of inconsistent and/or no maintenance being carried out depending on the interest of each resident.* *Note: Deletion of planters where access cannot be provided from common areas will place a greater focus on the architectural quality of all elevations and materials selections (composition of building elements including balustrade treatments). To achieve a development of the quality intended under Ku-ring-gai's policies must be of a standard that demonstrates the constructed building will make a positive contribution to the wider urban character viewed public domain and neighbouring properties as a precinct in transition.* ***20241028:*** *No change proposed for access to balcony planters. Access for maintaining edge planters to be confirmed by Council's Landscape requirements.* ***20241118:*** *It remains preferrable for all edge planters to be accessed via common areas for life-cycle maintenance. Planters in private ownership cannot be relied upon for long-term continuity and viability of landscape quality nor delivering intended building edge character. Edge planters in private ownership are dependent on individual resident interest and/or maintenance access being timely and freely available through units including through bedrooms. From an urban design perspective, the building design and architectural character need to be sufficiently robust to deliver high quality urban character that does not rely on appliques of edge planters. Council landscape requirements to be confirmed.*	***YES*** ***NO***

6	***Amenity***	***Satisfied Y/N***
	1. *Solar modelling – overshadowing – Additional information is required to demonstrate the overshadowing impacts resulting from the height exceedance. Two separate studies are to be provided showing the existing height plane (resulting from the current ground levels created by the existing development) and the Applicant's 'extrapolated' height plane (averaging the gradient from Fitzsimons Lane to Merriwa Street) for a comparison to overshadowing resulting from a compliant height.* ***20241028:*** *Not Resolved for 3D shadow analysis for future development at 11-15 Merriwa Street.* *The 3D shadow diagrams as views-from-the-sun (sun-eye) need to include the full extent of indicative building envelope on 11-15 Merriwa Street consistent with ADG modelling considerations rather than just*	*3D Communal Open Space* *3J Bicycle and car parking* *4A Solar and Daylight Access*

partially shown. This is needed to understand the full context of impacts from the proposed development in context of the whole potential future development. A comparison of a compliant building envelope compared to the proposed is also required. *Resolved for properties to the south:* *Resolved for properties to the south in Merriwa Street. Proposed General Shadows 1 and 2 (plans) do demonstrate a compliant height development and proposed variation. The impacts for neighbouring properties to the south are acceptable as being limited to after 2pm.* ***20241118: Not Resolved.** Additional solar modelling has included the two topographical scenarios. However, these need to be view-from-the-sun, not the fixed position as presented. As a result, there is insufficient information demonstrating both the overshadowing impacts of compliant future development from 1-3 Merriwa Street and overshadowing impacts to future development on 11-15 Merriwa Street. Drawings DA400 and DA401 should be updated to include compliant building envelopes for both neighbouring properties so that solar performance is clearly communicated as views-from-the-sun.* *It is noted that the site's topography presents challenges in higher density urban environments. However, this needs to be well articulated so that any design outcomes that seek to mitigate impacts and/or enhance daylight and solar amenity can be considered holistically.*	***NO***
2. *Synthetic turf and rubber ground finishes – Rooftop communal open space relies on large areas of rubber and synthetic turf. These surfaces are documented as becoming excessively hot in direct sun offering poor amenity generally and can be a hazard for many users in certain circumstances. See 4 – Sustainability for alternative ground covers.* ***20241028**: See comments at 4 – Sustainability* ***20241118:** Resolved. No further comments.*	***YES***
3. *Ceiling heights – see comments earlier regarding floor-to-floor height for Level 4 to ensure adequate provision for habitable rooms where wet areas are proposed above at Level 5.*	
4. *Bicycle parking – Note Ku-ring-gai's requirements for bicycle parking. The proposed development – approximately 30 bicycles storage spaces are to be accommodated (1 space/unit plus visitor and commercial requirements). The plans appear to accommodate space for 4 bicycles only.* ***20241028**: To be clarified. Updated architectural documents have accommodated 10 x bicycle storage spaces on Level 1 when 30 are required. It is unclear from the plans where the remaining bicycle storage is proposed.* ***20241118: Not Resolved.** Amended plans are required to demonstrate where all bicycle parking is accommodated.*	***NO***

7 Safety	***Satisfied Y/N***
1. *Sightlines* • *The Fitzsimons Lane residential building entry location would benefit by aligning with the lift to avoid the dog-legged corridor. This would require localised amendments to the internal layout that would result in a slight increase in floor area for Business Tenancy 1 and commensurate decrease to Business Tenancy 2.*	*3G Pedestrian access and entries* *4F Common circulation spaces* *4S Mixed Use*

	• *Sightlines otherwise are generally direct within the basements with clear paths of travel and wayfinding to/from common facilities and the lifts.* • *There is a clear visual cue from the Merriwa Street building entry to the lobby and to the lift.* 2. *<u>Security conflicts</u> – To be clarified/resolved:* • *Security arrangements for separating the residential car parking and Commercial spaces.* • *Access from the basement Commercial car spaces to the Level 4 Business Tenancies proposes a path of travel through the residential foyer of Units 401, 402, 403.* ***20241028:** Partially resolved - see comments at 1 - Context and Neighbourhood Character (6).* *Clarification needed to confirm that a gate or secured glazed door will be located between Tenancy 1 and 2 to prevent public access deep into the foyer where the main foyer entry door is located. As proposed a furtive space is created in front of the service hallway of Tenancies 2 and 3.* *whether a 1:14 ramp is required to provide an accessible path of travel for the back-of-house access to Business premises 2 and 3 rather than needing to leave the building and re-enter from entries addressing Fitzsimons Lane.* ***20241118:** Resolved. Amended documents have provided a secure control point and provided an accessible ramp for service access.* 3. *<u>Basement Platinum Level car spaces</u> – bollards should be installed to ensure unobstructed pedestrian access to basement egress stairs. As proposed it is possible for a car in adjacent spaces to park close to the fire stair doors. Noting also that some of these are proposed for Platinum level spaces that otherwise rely on the loss of a car-space despite the additional width available between the space and the stair walls.* ***20241028:** Resolved. Amendments have included a bollard.* ***20241118:** No further comments.*	***YES*** ***YES***
8	***Housing Diversity and Social Interaction***	***Satisfactory Y/N***
	1. *<u>Livable Housing provisions</u> – KDCP requires 15% of the development provide Platinum Level dwellings. These have been accommodated as Units 502, 602, 702, 802 and 803. Required Silver Level units are accommodated.* 2. *<u>Platinum car parking</u> – it is noted the Platinum Level car spaces anticipate losing one car space if required. See comments to install bollards at 7 – Safety.* 3. *<u>Apartment mix</u> – the proposal includes larger dwellings of 3 and 4 bedrooms. This is considered an appropriate response post-covid where working from home and more family-friendly housing options are needed.*	***YES***
9	***Aesthetics***	***Satisfactory Y/N***

1. *Materials and finishes – proposed colours and materials palette is supported in principle. Materials are generally robust and encourage higher quality visual outcomes for building performance over the long-term.* 2. *Composition of elevations – there is a clear architectural character expressed for all elevations with a consistent arrangement and treatments of building elements.* 3. *Edge character – generally there is a satisfactory balance of the balcony expression incorporating solid elements with more transparent elements. Avoiding the use of glazed balustrades is supported. The solid balustrades with open vertical metal bar balustrades enhances the play of light, shade and texture to the facades. Note consideration of deleting edge planters unless access from common areas is possible. The components of solid balustrades otherwise supporting planters should be retained.* 4. *External screens - shading devices and visual privacy screens – their inclusion is important in achieving a façade expression that has an appropriate engagement with the public/private interface and achieves needed visual interest as a positive contribution to the public domain over the long term.* ***20241028:** Access for maintaining edge planters to be confirmed by Council's Landscape requirements.* ***20241118: Not resolved**. See comments at 5 – Landscape (3) regarding edge planters.*	***NO***

The ADG provides guidelines on the correct framework for preparing a Design Verification Statement. The Design Verification Statement should be amended as follows:

- The use of the word 'restrictions' when referring to Council's controls is inappropriate. The amended DVS should be amended to replace the word restrictions with controls.

- To ADG Part 3 and Part 4 Compliance Table must be contained with the SEPP Housing Design Statement as a single document to satisfy the jurisdictional requirements of the *Environmental Planning & Assessment Regulation, s*ection 29. (This follows the findings of NSWLEC).

- The statutory requirement is that the nominated registered architect must sign off the Design Statement with the compliance table. As such, the compliance table cannot be separately located in the Statement of Environmental Effects (effectively signed off by the planner) or lodged as an unauthored separate document.

External Referrals

None required.

STATUTORY PROVISIONS

State Environmental Planning Policy (Planning Systems) 2021

Pursuant to Clause 2.19(1) of the SEPP, development that is specified in Schedule 6 (Regionally significant development) is declared to be regionally significant development.

The SEPP identifies the proposed development as being regionally significant development, as the $32,811,667 estimated development cost (EDC) of the proposed development exceeds the $30 million threshold specified by Clause 2 within Schedule 6 of the SEPP. Reference is made to the Estimated Development Cost report that forms part of this DA package. Accordingly, the SNPP is the

consent authority for this application.

State Environmental Planning Policy (Resilience and Hazards) 2021 - Chapter 4 Remediation of land

The provisions of Chapter 4 require Council to consider the potential for a site to be contaminated. The subject site has been used as a commercial office building, it is not listed within Council's contaminated land policy or its mapping. There are no known previous uses that may give rise to contamination, consequently the site is unlikely to contain any contamination. Further investigation is not warranted in this case.

State Environmental Planning Policy (Sustainable Buildings) 2022 – Chapter 2 Standards for residential development – BASIX

In accordance with Chapter 2 and both Schedules 1 and 2 of the SEPP, a valid BASIX certificate has been submitted and the proposal is consistent with commitments identified in the certificate. As per the requirements of Clause 2.1(5) the consent authority can be satisfied that the application includes information in which the embodied emissions attributable to the development have been quantified.

State Environmental Planning Policy (Housing) 2021

Pursuant to Section 144(3) of the Housing SEPP, the proposal is one to which the provisions of Chapter 4 of the Housing SEPP apply. Section 29(1A) of the Environmental Planning and Assessment Regulation 2021 requires the submission of a Statement from a qualified designer at lodgement of the development application.

A Design Verification Statement has been prepared by Victor Schneider of Giles Tribe Architects (Registered Architect: 11157) in accordance with Schedule 9 of the SEPP. The SEPP also requires consideration of the matters contained in the Apartment Design Guide. As such, the following consideration has been given to the requirements of the SEPP and Apartment Design Guide.

ADG COMPLIANCE TABLE	
Guideline	**Compliance**
Objective 3A-1 Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context	**YES** Each element of the Site Analysis checklist has been addressed.
Objective 3B-1 Building types and layouts respond to the streetscape and site while optimising solar access within the development	**YES** the proposed dwellings will receive good natural sunlight.
Objective 3B-2 Overshadowing of neighbouring properties is minimised during mid-winter	**NO** Insufficient information has been provided to enable a full assessment of the overshadowing impact to neighbouring properties.
Objective 3C-1 Transition between private and public domain is achieved without compromising safety and security	**YES** The proposal provides solid walls, gardens, and setbacks to delineate between public and private domains.
Objective 3C-2 Amenity of the public domain is retained and enhanced	**NO** A better visual amenity outcome would be achieved if the site coverage were reduced.

ADG COMPLIANCE TABLE	
Guideline	**Compliance**
Objective 3D-1 An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping	**YES**
Design criteria	
1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3) 2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)	**YES** **YES**
Objective 3D-2 Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting	**YES** A high quality roof top COS is provided
Objective 3D-3 Communal open space is designed to maximise safety	**YES** A high quality roof top COS is provided
Objective 3D-4 Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood	Not required in this instance.
Objective 3E-1 Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality	**NO** Whilst many existing trees are retained, the proposed deep soil is inconsistent with Council's DCP Control.
Design criteria	
Deep soil zones are to meet the following minimum requirements: **Site area** / **Minimum dimensions** / **Deep soil zone (7% site area)** greater than 1,500m^2 with significant existing tree cover / 6m / 195.0m^2	**YES** Proposed = 692m^2 (24.8%)
Objective 3F-1 Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy	**YES**

ADG COMPLIANCE TABLE	
Guideline	**Compliance**
Design criteria	
Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows: **Building height** / **Habitable rooms and balconies** / **Non-habitable rooms** / **Proposal** up to 25m (5-8 storeys) / 9m / 4.5m **Note:** Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2) Gallery access circulation should be treated as habitable spac when measuring privacy separation distances between neighbouring properties	**YES** All setbacks >9m
Objective 3F-2 Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space	**YES**
Objective 3G-1 Building entries and pedestrian access connects to and addresses the public domain	**YES**
Objective 3G-2 Access, entries and pathways are accessible and easy to identify	**YES**
Objective 3G-3 Large sites provide pedestrian links for access to streets and connection to destinations	**YES**
Objective 3H-1 Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	**YES**
Design guidance	
Car park access should be integrated with the building's overall facade. Design solutions may include: • the materials and colour palette to minimise visibility from the street • security doors or gates at entries that minimise voids in the facade • where doors are not provided, the visible interior reflects the facade design and the building services, pipes and ducts are concealed	**YES**
Objective 3J-1 1. Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas	**YES**

ADG COMPLIANCE TABLE	
Guideline	**Compliance**
Design criteria	
1. For development on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street	**YES** The development proposes a total of 68 car parking spaces, comprising 54 residential spaces, 7 visitor spaces and 7 commercial spaces.
Objective 3J-2 Parking and facilities are provided for other modes of transport	**NO** There is insufficient detail pertaining to bicycle parking.
Objective 3J-3 Car park design and access is safe and secure	**YES**
Objective 3J-4 Visual and environmental impacts of underground car parking are minimised	**YES**
Objective 3J-5 Visual and environmental impacts of on-grade car parking are minimised	**YES**
Objective 3J-6 Visual and environmental impacts of above ground enclosed car parking are minimised	**NO** The above ground carparking creates non-compliant GFA and could be designed to comply with the FSR development standard and thereby reduce environmental impacts.
Objective 4A-1 To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space	**YES**
Design criteria	
1 Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas	**YES** Total units = 27 Min. direct solar access = 19 units (70%) Proposed min. direct solar access = 19 units
2 In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter	**YES** Based on existing vacant site to the west.
3 A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	**YES** Min. no direct solar access = 0 units
Objective 4A-2 Daylight access is maximised where sunlight is limited	**YES**
Objective 4A-3 Design incorporates shading and glare control, particularly for warmer months	**YES**

ADG COMPLIANCE TABLE	
Guideline	**Compliance**
Objective 4B-1 All habitable rooms are naturally ventilated	**YES**
Objective 4B-2 The layout and design of single aspect apartments maximises natural ventilation	**YES**
Objective 4B-3 The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents	**YES**
Design criteria	
1 At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed 2 Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	Total units = 27 **YES** Min. ventilated units = 16.2 (60%) **YES** Proposed min. ventilated units = 26 (96%)
Objective 4C-1 Ceiling height achieves sufficient natural ventilation and daylight access	**YES**
Design criteria	
Measured from finished floor level to finished ceiling level, minimum ceiling heights are: **Minimum ceiling height for apartment and mixed use buildings** — **Proposal** Habitable rooms — 2.7m — Yes Non-habitable — 2.4m — Yes For 2 storey apartments — 2.7m for main living area floor; 2.4m for second floor, where its area does not exceed 50% of the apartment area — N/A Attic spaces — 1.8m at edge of room with a 30 degree minimum ceiling slope — N/A If located in mixed used areas — 3.3m for ground and first floor to promote future flexibility of use — Yes	**YES** **YES** **N/A** **N/A** **YES**
Objective 4C-2 Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms	**YES**
Objective 4C-3 Ceiling heights contribute to the flexibility of building use over the life of the building	**YES**
Objective 4D-1 The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity	**YES**

ADG COMPLIANCE TABLE	
Guideline	**Compliance**
Design criteria	
Apartments are required to have the following minimum internal areas: **Apartment type** / **Minimum internal area** / **Proposal** Studio / 35m² / N/A 1 bedroom / 50m² / N/A 2 bedroom / 70m² / 1@ 135.3m² 3 bedroom / 90m² / 13@ min.129.8m² 4 bedroom / 102m² / 13 @ min. 163.5m² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	**YES** **YES** **YES**
Objective 4D-2 Environmental performance of the apartment is maximised	**YES**
Design criteria	
1 Habitable room depths are limited to a maximum of 2.5 x the ceiling height 2 In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	**YES** **YES**
Objective 4D-3 Apartment layouts are designed to accommodate a variety of household activities and needs	**YES**
Design criteria	
1 Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space) 2 Bedrooms have a minimum dimension of 3m (excluding wardrobe space) 3 Living rooms or combined living/dining rooms have a minimum width of: • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments • 4 The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	**YES** **YES** **YES** **N/A**
Objective 4E-1 Apartments provide appropriately sized private open space and balconies to enhance residential amenity	**YES**

ADG COMPLIANCE TABLE	
Guideline	**Compliance**
Design criteria	
All apartments are required to have primary balconies as follows: **Dwelling type** / **Minimum area** / **Minimum depth** Studio apartments / 4m² / - 1 bedroom apartments / 8m² / 2m 2 bedroom apartments / 10m² / 2m 3+ bedroom apartments / 12m² / 2.4m The minimum Balcony depth to be counted as contributing to the balcony area is 1m / / Balcony width 2m For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m	Studio: **N/A** 1 Bed: **N/A** 2 Bed: **YES** 3+ Bed: **YES** Min. depth = 2m: **YES** **YES** Ground Floor apartments on Merriwa Street = min. 15.3m² and are 4m in depth
Objective 4E-2 Primary private open space and balconies are appropriately located to enhance liveability for residents	**YES**
Objective 4E-3 Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.	**YES**
Objective 4E-4 Private open space and balcony design maximises safety.	**YES**
Objective 4F-1 Common circulation spaces achieve good amenity and properly service the number of apartments	**YES**
Design criteria	
1. The maximum number of apartments off a circulation core on a single level is eight	**YES**
Objective 4F-2 Common circulation spaces promote safety and provide for social interaction between residents	**YES**
Objective 4G-1 Adequate, well designed storage is provided in each apartment	**YES**
Design criteria	
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: **Dwelling type** / **Storage size volume** / **Proposal** Studio apartments / 4m³ / N/A 1 bedroom apartments / 6m³ / N/A 2 bedroom apartments / 8m³ / Yes 3+ bedroom apartments / 10m³ / Yes At least 50% of the required storage is to be located within the apartment	**YES** The minimum internal storage volumes are exceeded in all apartments. In addition to external storage in the basement.

ADG COMPLIANCE TABLE	
Guideline	**Compliance**
Objective 4G-2 Additional storage is conveniently located, accessible and nominated for individual apartments	**YES**
Objective 4H-1 Noise transfer is minimised through the siting of buildings and building layout	**YES**
Objective 4H-2 Noise impacts are mitigated within apartments through layout and acoustic treatments	**YES**
Objective 4J-2 Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission	**YES**
Objective 4K-1 A range of apartment types and sizes is provided to cater for different household types now and into the future	**YES**
Objective 4K-2 The apartment mix is distributed to suitable locations within the building	**YES**
Objective 4L-1 Street frontage activity is maximised where ground floor apartments are located	**YES**
Objective 4L-2 Design of ground floor apartments delivers amenity and safety for residents	**YES**
Objective 4M-1 Building facades provide visual interest along the street while respecting the character of the local area	**YES**
Objective 4M-2 Building functions are expressed by the façade	**YES**
Objective 4N-1 Roof treatments are integrated into the building design and positively respond to the street	**YES**
Objective 4N-2 Opportunities to use roof space for residential accommodation and open space are maximised	**YES**
Objective 4N-3 Roof design incorporates sustainability features	**YES**
Objective 4O-1 Landscape design is viable and sustainable	**NO** Planter boxes not accessible from common areas.

ADG COMPLIANCE TABLE	
Guideline	**Compliance**
Objective 4O-2 Landscape design contributes to the streetscape and amenity	**NO** Deep soil non-compliance is proposed.
Objective 4P-1 Appropriate soil profiles are provided	**YES**
Objective 4P-2 Plant growth is optimised with appropriate selection and maintenance	**YES**
Objective 4P-3 Planting on structures contributes to the quality and amenity of communal and public open spaces	**YES**
Objective 4Q-1 Universal design features are included in apartment design to promote flexible housing for all community members	**YES**
Objective 4Q-2 A variety of apartments with adaptable designs are provided	**YES**
Objective 4Q-3 Apartment layouts are flexible and accommodate a range of lifestyle needs	**YES**
Objective 4S-1 Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement	**YES**
Objective 4S-2 Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents	**YES**
Objective 4T-1 Awnings are well located and complement and integrate with the building design	**YES**
Objective 4U-3 Development incorporates passive environmental design	**YES**
Objective 4U-2 Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer. Adequate natural ventilation minimises the need for mechanical ventilation.	**YES**
Objective 4W-1 Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents	**YES**
Objective 4W-2 Domestic waste is minimised by providing safe and convenient source separation and recycling	**YES**
Objective 4X-1 Building design detail provides protection from weathering	**YES**

ADG COMPLIANCE TABLE	
Guideline	**Compliance**
Objective 4X-2 Systems and access enable ease of maintenance	**YES**
Objective 4X-3 Material selection reduces ongoing maintenance costs	**YES**

Objective 3B-2 Overshadowing

The solar analysis it is not in a form that adequately communicates solar performance, noting the extent of variation sought in the height and FSR variation requests. Views-from-the-sun or sun-eye modelling is required to accurately demonstrate the overshadowing impacts to 11-15 Merriwa Street and from 1-3 Merriwa Street.

Objective 3J-2 Bicycle Parking

Details pertaining to bicycle parking have not been provided. This objective cannot be satisfied in the absence of this information.

Objective 3J-6 Car Parking

The visual and environmental impacts of above ground enclosed car parking are not minimised. Levels 1-3 are entirely above existing ground level and contribute to additional gross floor area. The environmental planning grounds put forward in the GFA variation do not adequately demonstrate that this design results in a better visual outcome when compared to a compliant car parking arrangement.

Objective 4O1-2 Landscaping

The proposed site coverage and deep soil landscaping variations are not acceptable. The cumulative impact of both variations results in a development that fails to result in high quality landscape outcomes for the residential flat building. Similarly, the development fails to respond to the streetscape character on Merriwa Street.

Local Content

Ku-ring-gai Local Environmental Plan 2015

Clause 1.2 Aims of the plan

The proposal has been assessed against the relevant aims of the plan. The proposal is inconsistent with a number of the relevant aims for the reasons given within this assessment report.

Zoning and permissibility

The site is zoned MU1 Mixed Use. The proposed development is defined as a mixed use building, comprising 3 commercial tenancies and 27 residential apartments (two residential units at ground floor level). The proposed uses are permissible within the zone.

Zone objectives

The objectives of this zone are:

- *To encourage a diversity of business, retail, office, and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse, and functional streets and public spaces.*

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community, and other non-residential land uses on the ground floor of buildings.*
- *To support the integrity and viability of adjoining local centres by providing for a range of "out of centre" retail uses such as specialised retail premises and compatible business activities.*

The development proposes:

- Three commercial tenancies on the Fitzsimmons Lane frontage that will encourage activation of this laneway, thereby satisfying points 1 and 2.
- Height and gross floor area variations that fail to satisfy point 3, due to the excessive bulk and scale presented to the lower density zones on the southern side of Merriwa Street.

Development standards

Ku-ring-gai Local Environmental Plan 2015

Development standard	Proposed	Complies
Cl 4.3 - Height of buildings: Maximum Building Height - 23.5 metres	25.99 metres (5.44 metre / 27.2% exceedance)	**NO**
Cl 4.4 - Floor space ratio (FSR): **Maximum Floor Space Ratio - 2.0:1**	2.59:1 (0.59:1 / 29.5% exceedance)	**NO**
CL 6.7 - Active street frontages in certain business zones:	Residential development on ground floor.	**NO**
Cl 6.8 - Minimum street frontages for lots in employment and mixed-use zone.	Merriwa Street frontage length: 35.785 metres Fitzsimons Lane frontage length: 45.25 metres	**YES** **YES**

Clause 4.6 Exceptions to development standards

The proposed development breaches Clause 4.3 'Maximum Building Height' and Clause 4.4 'Floor Space Ratio' development standards. The proposal also fails to comply with Clause 6.7 'Active Street Frontages in Certain Business Zones' development standard.

The applicant has made three submissions pursuant to Clause 4.6 seeking to vary the development standards in Clause 4.3(2), Clause 4.4(2), and Clause 6.7. Each submission is assessed individually below.

Clause 4.6 provides flexibility in applying certain development standards and an assessment of the request to vary the development standards is provided below:

1) The objectives of this clause are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention by demonstrating:*

   (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

   (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

4) *Development consent must not be granted for development that contravenes a development standard unless:*

   (a) the consent authority is satisfied that:

      i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

      ii. the proposed development will be in the public interest because it is consistent 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, and

   (b) the concurrence of the Director-General has been obtained.

Clause 4.6 Exceptions to development standards Clause 4.3(2) – Maximum height of buildings

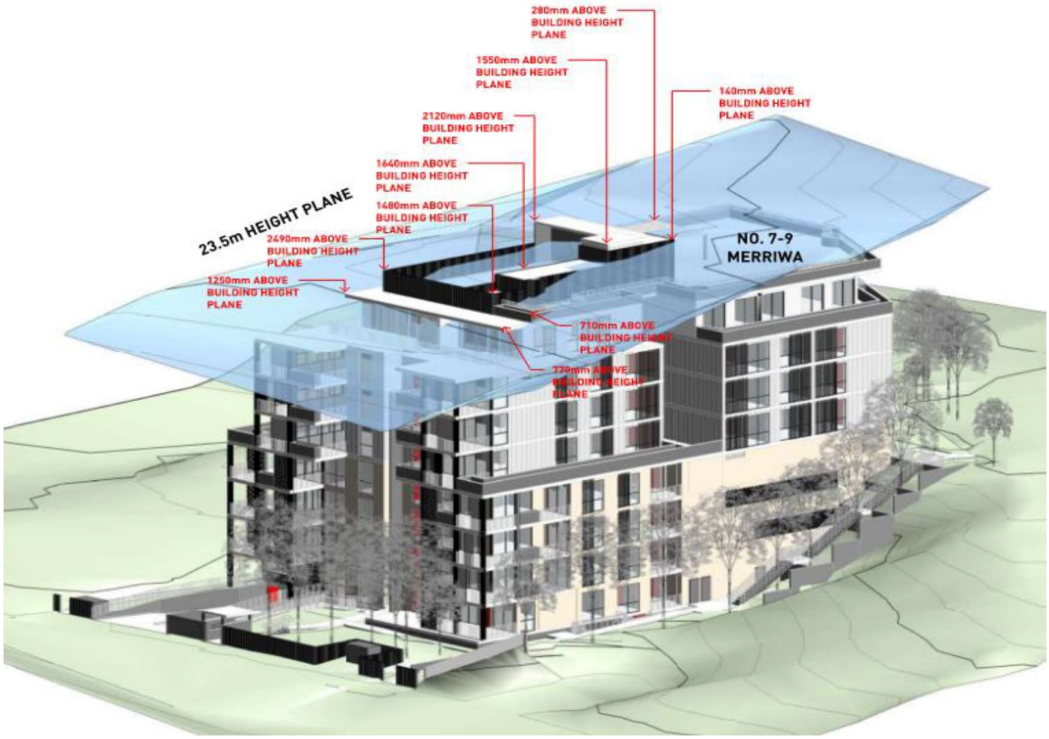


Figure 5: Extract from applicant's Clause 4.6 variation request illustrating height blanket

Whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The applicant states that compliance with the development standard is unreasonable or unnecessary for the following reasons:

> *Mecone:*
>
> In Wehbe V Pittwater Council (2007) 156 LGERA 446 (Wehbe), Preston CJ set out the following 5 *different ways in which an objection (variation) may be well founded and under which a proponent could demonstrate that compliance with a development standard is unreasonable or unnecessary as per clause 4.6(3)(a)).*
>
> *For reference, the five ways in which a variation may be well founded are listed as follows:*
>
> 1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
> 2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
> 3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
> 4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
> 5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*
>
> *It is generally understood that Clause 4.6(3) can be satisfied if it is established that a development satisfies one or more of the above scenarios. In this instance, the first point has been investigated and is considered to be well founded for the proposed development.*
>
> *The objectives of the building height development standard pursuant to clause 4.3(1) of the KLEP 2015 are provided below, with a response as to how that objective is achieved notwithstanding noncompliance with the standard:*

(a) to ensure that the height of buildings is appropriate for the scale of the different centres within the hierarchy of Ku-ring-gai centres,

> *Mecone:*
>
> *The KDCP identifies the Gordon Local Centre as comprising of five precincts, with the subject site forming part of precinct G4 (Mixed Use). As shown by figure 3, the KLEP 2015 anticipates that the tallest development will be located within the E1 zone (located southeast of the site), with surrounding areas to provide variable building heights that will provide progressive transitions in scale to low density residential areas surrounding the centre. Except for relatively small proportions of the overall development, the proposal is otherwise consistent with development height and scale envisioned for mixed use precincts surrounding the local centre. The proposal is therefore consistent with this objective.*

The above justification is a summary of the KLEP/KDCP standards and controls, and an explanation of which parts of the proposed development do not comply with the height of buildings standard. No environmental planning grounds are put forward in this paragraph. The proposed development fails to respond to the existing ground levels appropriately by failing to step down the site. This results in a continuous wall plate from the high side on Fitzsimmons Lane to the lower side on Merriwa Street, where the building presents as 8 storeys. The proposed breach will be highly perceptible from the properties located on the southern side of Merriwa Street, which are Zoned R2, R3 and R4. The proposal fails to adequately consider the relationship between the subject and lower density

neighbouring properties and does not achieve a high standard of amenity for existing residents as a result. The applicant has failed to demonstrate that the additional building height results in a built form which transitions in scale between the higher density zoning and the interface with the lower density residential zone. Consequently, it is not agreed that the proposal satisfies the objective in Clause 4.3(1)(a).

(b) to establish a transition in scale between the centres and the adjoining lower density residential and open space zones to protect local amenity,

Mecone:

While the subject site is located within the Gordon local centre, it is located within a part of Gordon that provides a varying building height transition away from:

• The Gordon local centre to the southeast, and
• The Pymble Business Park local centre to the north/northwest.

Development and associated building heights within the MU1 Mixed Use zone to the south of the Pacific Highway and Ryde Road/Mona Vale Road interchange is highly diversified. Newer development located on sites with dual frontages to the Pacific Highway/Ryde Road and Fitzsimons Lane have greater heights of approximately (i.e. approximately eight to 10 storeys), while development on the southern side of Fitzsimons Lane are of varying heights (i.e. approximately four to seven storeys). Moving away from the aforementioned centres, development on sites to the west and southwest within R2 Low Density Residential zones predominately comprise of one and two storey buildings. Sites on the southern side of Merriwa Street contain zoning and heights that progressively transition downhill towards R2-zoned sites to the southwest of the subject site.

With regard to the above, the KLEP 2015 therefore anticipates that there will be a transition involving progressive decreases in development height and scale within higher density zones as follows:

• Transitional decreases in development height within the MU1 zone will occur in a north-to-south/southwest direction from sites adjoining the Pacific Highway and Ryde Road, and
• Transitional decreases in development height within the E1, R4 and R3 zones on the southern side of Merriwa Street will occur in an east-to-west direction from sites adjoining the Pacific Highway.

Noting the above, development on the MU1-zoned block that includes the subject site is highly variable, and moving from east to west comprises of:

•A part four and five storey building at 1 Merriwa Street,
• The existing part six storey development on the subject site,
• A vacant site at 11-15 Merriwa Street, and
• Part five, six and seven storey buildings at 17-23 and 27 Merriwa Street and 71 Ridge Street.

The existing heights of development within this block are therefore highly varied, there is subsequently no transitional character established on the southern end of the subject MU1 zone. In addition to the proposed redevelopment of the subject site, it is also anticipated that both 1 and 11-15 Merriwa Street (i.e. the sites adjoining the subject site) will be redeveloped (however the timeframes of such redevelopment are not currently known), noting that:

• The commercial development at 1 Merriwa Street was constructed in the late 2000s, and contains a built form and scale that is considerably less than what is currently permitted by relevant development standards and controls, and
• The proposal approved by Development Consent no. DA0447/14 at 11-15 Merriwa Street does not appear to have proceeded, given that there is no information suggesting that consented works on that site have substantially commenced since its approval in October 2015.

The proposed development will be situated towards the eastern end of this block, and heights associated with its proposed eight storey form and associated height will provide a transition between eight-to-10 storey development to the east/northeast of the site and five/six/seven storey development further to the west.

While the site has been subject to excavation which has altered its natural topography, the adjoining allotments being 1 Merriwa Street and 11-15 Merriwa Street have been 'levelled' and have existing ground levels of RL 112.563 and RL 107 respectively. These existing ground levels are higher than the subject site which has a ground level around RL 105 at the site boundaries.

Given the FSR and heights permitted on adjoining sites (and that future development on those sites is likely to be situated at higher levels than the subject site as a result of their higher existing ground levels), the future redevelopment of those adjoining sites is expected to the similar that being proposed by this application if undertaken in accordance with the applicable principal development standards (i.e. building height and floor space ratio development standards) and will likely feature perceived building heights from the adjoining street frontages that are similar to that proposed by the subject development application.
It is therefore submitted that once sites within the subject MU1 zone are fully redeveloped, the height and scale of the subject proposal will be consistent with the height transition sought for sites at the edges of the Gordon and Pymble Business Park local centres. The proposal is therefore consistent with this objective.

It is agreed that the levels on the subject site have been substantially excavated for the purposes of the existing commercial office building that currently occupies the site. The justification put forward by the applicant is that the proposed development will achieve a transitional building height with future development on adjoining sites, given such development will not be constrained by excavated ground levels. It is not agreed that the proposed development will achieve a transition in scale between the MU1 Zone and neighbouring lower density zones on the southern side of Merriwa Street, given the proposed development presents 8 storeys to Merriwa Street.

(c) to enable development with a built form that is compatible with the size of the land to be developed

Mecone:

The built form and associated height and scale of the development is compatible with the size of the subject site, with regard to the following:

• Except for requirements relating to building height, the development is otherwise generally consistent with applicable development standards and controls (such as floor space ratio, setbacks, building separation and parking),
• The scale of the development will be consistent with the existing and likely future built character of the local area, in that it will not have an incongruent appearance and will facilitate an orderly transition of building height and scale between high and low density areas,
• The development will provide large landscaped and deep soil space that will enable retention and growth of significant trees and vegetation, which is consistent with outcomes sought by Council,
• The development will not give rise to significant, adverse and unreasonable impacts on surrounding sites, and
• The development will provide a variety of high-quality housing in a high amenity setting.

Given that the development will not present inconsistently with the surrounding area and that its scale will not give rise to adverse and unreasonable impacts, it is submitted that the development's form and scale is compatible with the size of the subject site. The proposal is therefore consistent with this objective.

Council does not agree with the first dot point. In addition to the height variation, the proposed development also fails to comply with the number of storeys control. The maximum building height

permitted by KLEP is 23.5 metres. The maximum number of storeys permitted by KDCP is 7. There is a clear nexus between the non-compliant building height and the non-compliant number of storeys. This relationship results in cumulative adverse bulk and scale impacts and demonstrates the proposal's failure to achieve a transitional relationship to the lower density residential areas on the southern side of Merriwa Street.

The proposed development includes a gross floor area of 633.3m^2 at Level 8. Whereas KDCP Part 7C.8 Control 1 requires the GFA of the top storey of a residential flat building to not exceed 60% of the GFA of the storey immediately below it. In this instance, the top floor (Level 8) proposes a GFA of 633.3m^2 which equates to 68.7% of the GFA at Level 7. The variation is significant and is directly attributable to the non-compliant building height, on the basis that level 8 is not permitted and therefore the entire GFA of this level is inconsistent with the objectives of Clause 4.3 and specifically Objective 1 in KDCP Part 7C.8.

Council does not agree with dot-point two, as the topography of the site is not the sole reason for the non-compliant building height. The areas of non-compliant height include the southern end of Level 8 where the building platform is currently relatively flat, and the elevations have an 8 storey expression contrary to the 7 storey control specified in the KDCP.

Council does not agree with dot point three, given the proposed development fails to comply with the site coverage and deep soil controls. It is not agreed that the landscaped outcomes, whether compliant or non-compliant, are sufficient alternate solutions to a compliant building height and envelope (number of storeys) to justify the non-compliance.

Council does not agree with dot-point 3 and 4, as the cumulative impact of the non-compliances outlined above fail to result in a building that is compatible the desired future character of the neighbourhood. It is not agreed that the development will avoid unreasonable impacts to surrounding sites. As the proposed development fails to adequality demonstrate an absence of overshadowing impacts to neighbouring properties.

As the height of the proposed development does not result in a satisfactory urban design outcome, the submitted Clause 4.6 variation request is not considered to be well founded. The proposal therefore does not satisfy the requirements of Clause 4.6(3)(a), as the consent authority may not be satisfied that compliance with the development standard is unreasonable and unnecessary.

Whether there are sufficient environmental planning grounds to justify contravening the development standard

The applicant states that the following environmental planning grounds justify contravening the development standard:

> *Mecone:*
>
> *Visual privacy and amenity improvements for communal open space areas*
>
> *As detailed within both Section 4.4 of this document and the assessment of environmental planning grounds above, elements of the building that breach the building height standard include vertical circulation cores that provide access to the rooftop communal open space area.*
>
> *In terms of suitable communal open space placement, the site is constrained in that:*
>
> - *Dual road frontages prevent the placement of suitably sized and dimensioned communal open space areas within the road setback parts of the site, given that:*
>
> - *The Fitzsimons Lane frontage is required to provide an active frontage with commercial tenancies, and*
> - *The Merriwa Street frontage is to provide a supporting active frontage with road access and boundary fencing of a limited height, adherence with planning*

requirements to provide the above thereby prevents opportunities to establish suitably sized communal open space areas within these parts of the site, and

- *The site's sloped topography and existing/likely future development at higher levels on adjoining sites would significantly overshadow side setback areas. Any communal open space areas located at ground level would therefore be subject to poor solar amenity, in addition to likely overlooking from adjoining sites (in particular from the existing commercial development at 1 Merriwa Avenue).*

The proposed rooftop placement of the communal open space areas will subsequently provide level and well-sized areas that will be:

- *Subject to high levels of solar amenity,*
- *Highly accessible to persons with physical disabilities, and*
- *Placed and designed in such a way that will afford visual privacy to both users of the communal open space area and surrounding sites.*

To provide for the above does however necessitate rooftop lift and stairway access to provide adequate access from internal common circulation area. While the proposed location of such elements towards the southern end of the building will increase the maximum height of the building and therefore the size of the proposed height variation (when measured from both existing and extrapolated ground levels), to push the circulation cores further to the northern end of the building will both:

- *Encroach on proposed unencumbered spaces within rooftop communal areas, and*
- *Create additional shading within communal open space areas.*

To summarise, while they will result in larger height noncompliance, the proposed rooftop placement of the communal open space area and the associated circulation core will provide for vastly superior design outcomes (in terms of functionality, accessibly, amenity and visual privacy) when compared to a more compliant design that would locate communal open space at ground level. Permitting the proposed variation will therefore result in better planning outcomes in this specific instance.

It is agreed that the ground levels upon the subject site have been substantially excavated for the purposes of the existing commercial office building that currently occupies the site. However, this fact it not an environmental planning ground in and of itself. The location of communal open space (COS) and considerations pertaining to its location, serviceability etc, are not environmental planning grounds. The applicant has failed to demonstrate why a compliant 7 storey development and/or providing car parking at a basement level would not achieve a high quality rooftop COS. Therefore, there is no relationship between the non-compliant building height and the rooftop COS being at Level 8 instead of Level 7.

Mecone:

<u>Consideration of site conditions and amenity</u>

The provision of a single building on the site is responsive to the unusual site conditions, which includes:

- *A site that is generally oriented in a north-south direction,*
- *Dual road frontages,*
- *A significant north-to-south downhill slope, which creates varying maximum elevation changes of up to 11.1 metres, and*
- *Significant modifications to site levels by commercial development undertaken in the mid-1970s which cut straight into the slope from lower areas across the entire width of the site.*
- *The proposed building's eight storey form and levels are therefore an outcome of both:*
  - *Placing the building upon a large and relatively flat platform within what was previously a sloped area, and*

        - *Providing residential and commercial levels that match those of both road frontages.*
    - *Based upon extrapolated ground levels and as shown by figure 4, the eighth level of the building and some rooftop elements would subsequently breach the building height standard towards its southern end, with the northern end of the building complying with the standard. Noting both this and that the KLEP 2015 affords a 2:1 FSR for the site, an alternative design was considered that:*
        - *Would reduce the height of the building at its southern end, and*
        - *Offset subsequent floor space losses at the southern end by increasing the number of storeys at the building's northern end, given that higher ground levels in that part of the site would provide for additional building height that would still comply with the building height standard.*

    - *Such a design that would have created 'stepped' upper levels that may comply with the building height standard, however such a design was disregarded for the following reasons:*
        - *Given the higher extrapolated levels at the northern end of the site, to provide an additional storey(s) at site's northern end would have increased adverse overshadowing impacts on adjoining sites in mid-winter,*
        - *There would have been insufficient space on the building's northern end to provide a single rooftop communal open space areas that would meet relevant numerical requirements (refer to the previous environmental planning ground regarding the design rationale for proposing a rooftop communal open space area). To provide a compliant amount of rooftop communal open space with split upper levels would have necessitated splitting the communal open space into two areas (i.e. one at the higher northern end and another at the lower southern end); such a design would however result in the southern/lower area being overshadowed by the northern/higher area in mid-winter. Such overshadowing would have a deleterious effect on amenity, resulting in large portions of the communal space going unused for substantial periods of the year, and*
        - *A layout with stepped upper levels would have necessitated split/separated internal circulation areas (i.e. separate lift and stair cores to service both lower and higher sections of the building), to enable lift access to all parts of the building. Given the necessary location of parking under the northern end of the building (and a parking layout that responds to the conditions of the site), it was not possible to provide a northern lift core that could access all parking levels and all habitable levels of the building. A building layout providing two separate vertical circulation cores would subsequently result in convoluted internal access arrangement that would adversely affect building functionality and wayfinding, since it would require people within the southern part of the building to travel to a middle level, before transferring to the northern lift core and taking the northern elevator to the roof.*

In summary, the subject site somewhat unusual, in that it is affected by a unique combination of constraints. While an alternative design proposing a higher level of compliance with the building height development standard was considered, it would have likely resulted in:

- *Additional overshadowing of adjoining sites,*
- *Reduced amenity of communal areas within the subject site, and*
- *Worsened internal functionality and wayfinding.*

While it does not comply with the building height development standard, the proposed design provides superior building design, amenity and functionality outcomes with fewer adverse impacts on adjoining sites than an alternative design with stepped upper levels and compliant building height. The proposed variation to the building height standard will subsequently provide better planning outcomes in this instance than a more compliant scheme.

The description of which parts of the building that breach the building height development standard are not an environmental planning ground. Whilst site constraints are environmental planning

grounds, it has not been demonstrated that this constraint causes the breach of the building height development standard. It has not been demonstrated through analysis that a scheme compliant with the building height development standard is incapable of being achieved on the site. Furthermore, the supporting solar access analysis fails to adequately demonstrate that there will be no adverse overshadowing impacts that result from the non-compliant building height. The applicant does not address the additional 8th storey and whether compliance with the building height standard could be achieved with a 7 storey development. The justification put forward by the applicant above, fails to take this outcome into consideration.

Mecone:

No significant or unreasonable impacts on the public domain

As indicated within the previous environmental planning ground above, the proposed design was selected over one with a more compliant building height as it responds better to the constraints of the site.

While the height of the building's southern end does not comply with the building height standard, its design is responsive to site's conditions and presentation to the public domain, being the Merriwa Street road reserve.
While reference is also made to responses to the objectives of clause 4.3 of the KLEP 2015, any potential visual impacts created by the proposed height variations will also be mitigated by the following:

- *The progressive stepping back of level 8 and rooftop features (such as the circulation core) away from the southern and side building lines, so that higher/noncompliant building elements are obscured by elements on lower levels. In this regard, reference is made to figure 6 for a photomontage of the proposed development as viewed from the southwest of the site, noting that:*
    - *Such stepping of the upper building lines results in Level 8 being mostly obscured from the streetscape, despite the photomontage's perspective being taken from a slightly elevated position on the southern side of Merriwa Street (i.e. the perspective shows a greater visual impact than what would actually be seen from the street). The actual appearance of Level 8 will therefore be even less perceptible from within Merriwa Street (particularly to the south and southeast) than that shown in the photomontage, and*
    - *The retention of six trees within the Merriwa Street setback (all of which feature existing heights and canopy spreads of at least 20 metres and 10 metres respectively), which in addition to new tree planting, will heavily screen and filter upper parts of the building from the road reserve.*

Further, noting that future development at 1 Merriwa Road and 11-15 Merriwa Road is likely to be consistent with higher density development within the surrounding MU1 zone, such development will further screen the proposed development to the east, southeast and southwest, noting that:

- *The proposed Merriwa Street building line setback is substantially greater than required, therefore future development on the future site may encroach further towards the Merriwa Street frontage (and thereby providing additional screening of the development), and*
- *Existing ground levels (both natural and extrapolated levels) on these two adjoining sites are higher than the subject site due to both varying topography and prior development that has not excavated those sites to the same degree as the subject site.*
- *Future development on those adjoining sites is therefore likely to be situated at higher ground levels than on the subject site. Even if such future development proposes slightly lower/more compliant building heights, it is likely that the perceived maximum height and scale of those developments will be similar to those proposed by this*

application and will obscure the height and scale of the proposed development to the east and west of the subject site.

As demonstrated through this written request and the SEE to which it is appended, the proposed development will not significantly nor adversely affect the public domain. The design of the building has been designed with regard to the site's sloped topography, and as such presents to the public domain as follows:

- *From Merriwa Street, it will present as a part seven and eight-storey building (albeit obscured by a large tree canopy), the perceived levels of which will be similar to nearby mixed use and residential development, and*
- *From Fitzsimons Lane, it will present as a five-storey building.*

The design of the building and its presentation to the public domain will also be further enhanced by large, landscaped areas within the front setback that will include eight trees, including six large canopy trees; such landscaping will also be complemented by new plant and tree selections that will further filter the development from the public domain and further reduce any apparent variations to the height standard.

It is not agreed that the proposed height variation results in an absence of adverse visual impacts to the public domain. It is not agreed that Level 8 has been stepped back sufficiently to avoid being perceptible from the properties on the southern side of Merriwa Street and it is not agreed that the retention on tress at ground level will off-set the non-compliant height of the building. Moreover, it is not agreed that the Merriwa Street frontage is 'substantially greater' than required. These design outcomes (setbacks, top floor articulation and retention of trees) are required by other controls in the DCP. Were the proposed development to consists of 7 storeys, the additional top-floor setback requirements would apply to Level 7. A compliant development would therefore present substantially less bulk and scale compared to the proposed scheme and the applicant has failed to identify an absence of environmental impacts, compared to a compliance building envelope.

No significant or unreasonable impacts on surrounding residential sites

In addition to matters already discussed above and as demonstrated through this written request, the SEE to which it is appended, the assessment of the Ku-ring-gai Development Control Plan (KDCP) (attached to the SEE as Appendix 2) and the submitted architectural plans, despite the proposed height non-compliances the proposed development will not significantly nor unreasonably affect surrounding sites, noting that:

- *Additional overshadowing created proposed height breaches will be mostly internalised with the subject site's boundaries and the Merriwa Street road reserve to the south of the site. Compliance with applicable requirements relating to overshadowing will therefore be attained, noting that:*
    - *Despite the adjoining site to the west being vacant, modelling by the architect has assumed a building location and envelope on that site (based on applicable planning requirements) in demonstrating a relative lack of impact and that compliant levels of direct solar access will still be provided to that site on June 21, and*
    - *Additional overshadowing created by noncompliant elements will affect only positions of the front setbacks of sites opposite the subject site (i.e. on the southern side of Merriwa Street), with no immediate impact on dwellings on those sites until approximately 3:00pm on June 21.*

- *The proposed height variations will not create adverse visual privacy outcomes. The building's side setbacks and subsequent separation from future residential development on adjoining allotments is in accordance with Part 3F (Visual Privacy) of the Apartment Design Guide (ADG). Other appropriate design measures (such as screening windows as required) are also in accordance with the ADG and measures prescribed by the KDCP.*

- *The height variations will not affect the site's ability to provide for large trees with expansive canopies.*

For the reasons outlined above, it is evident that there are sufficient substantive environmental planning grounds which justify contravening the building height development standard.

Whilst site constraints are environmental planning grounds, it has not been demonstrated that this constraint causes the breach of the building height development standard. It has not been demonstrated through analysis that a scheme compliant with the building height development standard is incapable of being achieved on the site. This is not an acceptable environmental planning ground.

The proposal fails to adequately consider the lower density interface zone in which a heightened degree of sensitivity is required. The proposed bulk and scale of the built form when viewed from the southern end of the site is excessive and exceeds the development potential on this site.

The built form is only stepped in section at one point and the building is not stepped within the site at its interface with the ground, the floor plate at ground level on Fitzsimmons Lane is extended out to the Merriwa Street elevation. The building does not adequately step down the site and when viewed from the rear and side of the site, it presents as a eight storeys building when viewed form Merriwa Street.

The lack of amenity or streetscape impacts to adjoining properties is not a sufficient environmental planning ground to justify a significant breach to the building height development standard. The built form is not adequately sited or articulated and results in a built form, which is excessive with visual and amenity impacts to adjoining properties.

This description of the future development potential of neighbouring sites is not a sufficient environmental planning ground to breach the building height development standard. Adjoining developments have been sited with greater setbacks to side and rear boundaries, allowing for greater separation and opportunities for layered landscaping within deep soil zones. The proposal has failed to undertake a comprehensive site analysis which adequately considers the lower density sites to the to the south. The proposed bulk of the building when viewed from Merriwa Street is excessive. The built form is not characteristic of a site of this size.

It is not agreed that the significant breach to the building height development standard results in no unreasonable amenity impacts. Compliant building height would result in reduced visual and overshadowing impacts.

Landscaping outcomes that are 8 storeys below the building height breach are not an environmental planning ground relevant to the non-compliance with the building height development standard.

The environmental planning grounds put forward by the applicant are not sufficient as they fail to demonstrate that there is a nexus between the building height non-compliance and a specific circumstance on the site that results in an unavoidable contravention of the building height standard. The Clause 4.6 variation request fails to provide sufficient environmental planning grounds to justify varying the building height development standard. The requirements of Clause 4.6(4)(ii) have therefore not been met.

Authority to determine variation

Any variation to a numerical standard that exceeds 10% or relates to a non-numerical standard must be considered by either the Ku-ring-gai Local Planning Panel or the Sydney North Planning Panel. As the variation to the numerical standard is greater than 10% the application is required to be referred to the Sydney North Planning Panel for determination.

Pursuant to Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021, the application has an estimated development cost of more than $30,000,000.00. In this case the estimated development cost is $36,092,834.00 (inc. GST). Therefore, the consent authority for this

development is the Sydney District Planning Panel (SDPP), being the Sydney North Planning Panel (SNPP) for Ku-ring-gai.

Development standards that cannot be varied

The variation to the development standard is not contrary to the requirements in subclauses (6) or (8) of Clause 4.6.

Clause 4.6 Exceptions to development standards Clause 4.4 Floor Space Ratio

The development proposes a maximum floor space ratio (FSR) of 2.59:1 which exceeds the maximum FSR development standard of2:1 by 0.59:1 or 29.5%. The applicant has submitted a Clause 4.6 request seeking to vary the FSR standard which is considered below.

Part 7 of KDCP, section 7B.1 provides (emphasis added): ***Objectives:***

> *1* ***To locate and design car parking which is integrated with the site and building design and which does not increase the bulk and scale of the building.***

Part 7 Controls

Car parking design

1. *All residential flat developments are to provide on-site car parking within basements.*
2. *Basement car park areas are to be consolidated under building footprints.*
4. *The basement car park is not to project more than 1.0m above existing ground level. Note: Basements greater than 1m above the natural existing ground level are counted as a storey for the purposes of this DCP and will be included in the floor space ratio calculation as well as any control based on the number of storeys.*

The proposed development features three levels of above-ground car parking, that is Levels 1, 2 and 3, that are not at basement level, noting Level 1 projects more than 1 metre above ground level.

This design is contrary to KDCP Part 7B.1 Control 1, as the car parking is not located within a basement and Council's position is that this means this component of the parking is not parking provided "to meet any requirements of the consent authority" under KLEP, given that it is inconsistent with those requirements, and so is not excluded from the gross floor area under the definition in KLEP.

There are explicit requirements in the controls that all residential flat developments are to provide on-site car parking within basements and because the proposed development does not, then the parking spaces contribute to the gross floor area calculation and adds to the overall FSR, which results in a non-compliance with this development standard.

Applicant's response to Council's position:

> *This written variation request has been prepared in response to a request from Council to justify the potential contravention of clause 4.4(2) of the KLEP 2015, with regard to the specific circumstances of this proposal, if the Panel consider there to be a non-compliance. As demonstrated by this written request, it is submitted that permitting the proposed variation to clause 4.4(2) will allow for better development and planning outcomes in this instance.*
>
> *As car parking on proposed building levels 1, 2 and 3 are not within a 'basement' (primarily as a result of previous excavation for the existing development that substantially altered the existing ground levels of the site), it is Council's position that the proposed car parking facilities may not be considered by the consent authority as fully compliant with all requirements relating to car parking (i.e. the aforementioned DCP controls requiring that all car parking be situated both within a basement and below the building footprint).*

The proposed car parking facilities on Levels 1, 2, and 3 will only be included as GFA, and therefore FSR calculations, if the consent authority considers that 'any requirements' includes the DCP control for basement parking. This clause 4.6 variation request has been submitted if the consent authority forms this view. If the consent authority does not require compliance with the DCP control, then this clause 4.6 variation request is not required.

Whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The applicant states that compliance with the development standard is unreasonable or unnecessary for the following reasons:

Mecone:

In Wehbe V Pittwater Council (2007) 156 LGERA 446 (Wehbe), Preston CJ set out the following 5 different ways in which an objection (variation) may be well founded and under which a proponent could demonstrate that compliance with a development standard is unreasonable or unnecessary as per clause 4.6(3)(a)).

For reference, the five ways in which a variation may be well founded are listed as follows:
1. The objectives of the standard are achieved notwithstanding non-compliance with the standard
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

It is generally understood that Clause 4.6(3) can be satisfied if it is established that a development satisfies one or more of the above scenarios. In this instance, the first point has been investigated and is considered to be well founded for the proposed development.

a) to enable development with a built form and density that is compatible with the size of the land to be developed, its environmental constraints and its contextual relationship.

The built form, scale and density of the proposed development is compatible with the size of the subject site and the form of surrounding development, with regard to the following:

- *the development is otherwise mostly consistent with applicable development standards and controls (such as floor space ratio, setbacks and building separation)*
- *the development is highly responsive to the environmental constraints of the site (in particular its slope and earlier site modifications that substantially altered existing levels), in that it seeks to:*
    - *maximise residential amenity (noting constraints that would otherwise affect residential development at/close to ground level on Levels 1, 2 and 3)*
    - *avoiding additional site excavation where avoidable, thereby minimising associated environmental impacts*
- *once excavated ground levels around the periphery of the site are restored to approximate former levels, the development will present as a structure that:*
    - *is integrated with onsite topography*
    - *has sought to both maximise setbacks from the Merriwa Street frontage while limiting massing and scale along the active Fitzsimons Lane frontage*

    - *has incorporated large deep soil areas that will enable retention and growth of significant trees and vegetation, which is consistent with outcomes sought by Council*
- *the perceived scale of the development will be consistent with the existing and likely future built character of the local area and once constructed, will not present a built form that would present incongruent bulk and/or scale when compared to existing development on surrounding sites, in particular more contemporary mixed-use site redevelopments to the east, north and west of the subject site*
- *the development will not give rise to significant, adverse and unreasonable impacts on surrounding sites*
- *the development will provide a variety of land use activities that includes active street uses on the Fitzsimons Lane frontage and high-quality and high-amenity housing and associated facilities, as envisioned by centre-specific development controls.*

Given that the development will not present inconsistently with the surrounding area and that its form, scale and density will not give rise to adverse and unreasonable impacts, it is submitted that the development's form and scale is compatible with the size of the subject site. The proposal is therefore consistent with this objective.

It is not agreed that the proposed development is "otherwise mostly consistent with applicable development standards and controls (such as floor space ratio, setbacks…)". As the proposed development includes numerous variations in this regard. It is not agreed that the proposal "integrates deep soil areas to enable retention and growth of trees".

The proposed development is not compatible with the size of the land to be developed, as to achieve a site responsive outcome that responds to the lower density properties to the south, the proposed development should comply with the height standard and number of storeys controls, both outcomes could be achieved by locating car parking at the basement level.

b) to provide for floor space ratios compatible with a range of uses.

Mecone:

The proposed development is to provide for a range of uses that includes:

- *three commercial tenancies of varying sizes that will be capable of accommodating a range of smaller-scale commercial land use activities on the Fitzsimons Lane frontage, and*
- *27 residential apartments of varying sizes.*

The proposed FSR of the development is sufficient for the undertaking of various land uses and associated facilities (such as car parking, loading facilities, waste storage areas, etc.), as envisioned by the MU1 zone on the site and the applicable development standards and controls governing the placement and operation of certain elements (such as the commercial tenancies). Further, the total amount of floor space to be provided within the development would be the same as that provided within a compliant scheme. The FSR is a consequence of where certain car parking areas are to be located and how they are subsequently calculated as GFA (i.e. if the same amount of floor space were provided, albeit with all car parking located within basement levels, the proposal would otherwise comply with the FSR development standard).

For such reasons, we believe that the proposed floor space ratio is compatible with the range of uses envisioned for the site, and as such this objective will be satisfied.

The applicant has failed to address the cumulative impacts of the non-compliant GFA, namely:

- The proposal has a site coverage of 1,155.5m^2 (41.48%), whereas KDCP Part 7A.5 Control 1 permits a maximum site coverage of 835.8m^2 (30%). The non-compliant site coverage is directly attributable to the non-compliant gross floor area (GFA).

- The proposed actual deep soil with minimum 2 metres dimension (as calculated by Council) equals approximately 1095.4m^2 (39.3%) (a 298m^2 shortfall), whereas KDCP Part 7A.6 Control requires a minimum area of at least 50% of the site.
- The nexus between above-ground car parking and bulk has not been justified. The applicant's environmental planning grounds respond to the 'technical definition' of GFA, rather than the relationship between above-ground car parking and bulk/scale.
- The KLEP dictionary definition and Council's interpretation of GFA is not an environmental planning ground. Nevertheless, Council has consistently applied the same approach in the assessment of FSR.
- The applicant has failed to demonstrate why alternate solutions have not been explored, such as reducing the number of storeys 8 to 7.

c) *to ensure that development density is appropriate for the scale of the different centres within Ku-ring-gai.*

Mecone:

The KLEP 2015 provides that development within the Gordon Local Centre will comprise of higher density development within areas:

- *along the Pacific Highway to the west of Gordon railway station*
- *within MU1 zoned areas at the north/northeast end of this centre, noting that clause 4.4(2) of the KLEP 2015 prescribes:*
    - *a 2:1 FSR for sites in this area that do not address the Pacific Highway*
    - *a 2.3:1 FSR for sites in this area with frontages to the Pacific Highway.*

The proposed development's 2.59:1 FSR exceeds the prescribed 2:1 FSR development standard that applies to the site. We note however that this standard has been broadly applied to sites within the locality and does not appear to consider highly variable (and in some cases, highly modified) topography and how it constrains some sites within this part of the Gordon Local Centre. The subject site is one such example, with earlier excavation into a significant slope resulting in existing levels that created a significant environmental constraint.

While we acknowledge that the proposed FSR of the development may technically breach the standard, it is a consequence of responding to highly localised and site-specific environmental constraints. Despite such a noncompliance, the skilful design of the proposed development provides for an appearance that is reflective of development scale and density (which despite the technical FSR non-compliance) is consistent with surrounding sites, particularly those within the MU1 zone on the northern side of Merriwa Street. Such consistency with envisioned density is also supported by the development's demonstrated lack of significant and unreasonable impacts on surrounding sites.

The proposal is therefore consistent with this objective.

It is not agreed that the scale and density presented by the proposed development "is reflective of development scale and density…that is consistent with surrounding sites". Part 7C.6 seeks to ensure that buildings are well designed to a high architectural quality, limit unarticulated length of the building and to create a garden setting for the building in keeping with the Ku-ring-gai landscape character. The proposed development is non-compliant with the deep soil site coverage, deep landscaping requirements and proposes above-ground car parking up to Level 3. None of these design factors are attributable to 'local or site specific' constraints however, instead these controls apply to all sites where residential apartment buildings are permitted. The proposal does not achieve the objectives of the FSR development, as the built form and density is not compatible with the size of the land to be developed, its environmental constraints and its contextual relationship.

d) *to ensure that development density provides a balanced mix of uses in buildings in the employment and mixed use zones.*

Mecone:

The proposed development will provide for a balanced mix of uses within the MU1 Mixed Use zone. Such uses will comprise of:

- *three commercial tenancies of varying sizes (in addition to supporting building services and utilities) to support an active primary frontage addressing Fitzsimons Lane in accordance with locality-specific development controls*
- *27 residential apartments of varying sizes.*

The MU1 zone on the site and the applicable 2:1 FSR development standard generally envisions such development densities. But for any requirements to consider Levels 1, 2 and 3 as GFA, the proposed development would otherwise comply with the FSR development standard while still providing for a balanced mix of uses within the MU1 zone. As such, the proposal is consistent with this zone objective.

The mixed-use nature of the development is not the reason that three levels of car parking are situated above ground. Council's controls envisage car parking to be provided at basement level so that car parking "does not increase the bulk and scale of the building" and "does not detract from the landscape character". The proposed development is capable of satisfying objective d, even with car parking located in the basement.

Whether there are sufficient environmental planning grounds to justify contravening the development standard

The applicant states that the following environmental planning grounds justify contravening the development standard:

Mecone:

In Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 the Court found at [23]-[25] that:

23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

25. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

In this regard, we submit that there are numerous and substantive environmental planning grounds to justify the proposed contravention of the FSR development standard, which are detailed below.
Unique site conditions

As detailed within Section 4.4 of this document, the proposed technical variation to the FSR development standard is a consequence of variations to two particular controls within the KDCP, which to summarise require that:

- *all parking be provided within a basement*
- *all parking be provided below the proposed building footprint.*

Both the application of the FSR standard to this area and controls for residential flat building/mixed-use development within the Ku-ring-gai LGA (in particular those relating to parking):

- *are broadly applied to zones, localities and specific forms of development*
- *generally do not apply such controls to particular properties afflicted with site-specific constraints.*

With regard to the above, we submit that for development on a more regular (i.e. flatter) and less developed site:

- *compliance with those aforementioned DCP controls would ordinarily be more readily attainable*
- *as a consequence (and assuming that parking rates are in accordance with relevant requirements), proposed parking would therefore be unlikely to be included as GFA. An FSR noncompliance (based on inclusion of parking as GFA) would therefore be unlikely to occur.*

The subject site is not however considered to be a 'regular' site, with unique constraints created as a result of both its steeply sloped topography and prior development that has significantly lowered existing ground levels across a large portion of the site. We therefore submit that non-compliances with controls relating to basement parking (which subsequently necessitates the inclusion of non-basement parking as GFA and creates the proposed variation to the FSR development standard) are warranted in order to facilitate a building design that:

- *is more responsive to existing site conditions*
- *provides for improved planning outcomes*
- *enables a feasible redevelopment of the subject site.*

To require compliance with the aforementioned DCP parking controls to avoid the inclusion of parking as GFA would result in suboptimal residential amenity and environmental outcomes (refer to other environmental planning grounds below). Conversely, to locate parking above ground level and comply with the FSR development standard would require removing significant portions of habitable floorspace, which would affect the feasibility of redeveloping the site and the provision of high-density housing within a suitable location.

In summary, if all car parking facilities were located within the basement, then the proposed development would likely comply with the FSR development standard, even with similar total floorspace areas being proposed. Given the constraints of the site however, such a design was not adopted, as we believe that:<insert relevant text from the clause 4.6 request>

- *a full in-basement carpark design would result in adverse environmental impacts and suboptimal residential amenity outcomes*
- *better planning outcomes are achievable with a design that incorporates parking above ground level.*

While it is not compliant with the DCP, the proposed design provides better planning outcomes in the specific circumstances of this particular proposal. As such, we submit that it is unreasonable and unnecessary to require compliance with the DCP control and FSR development standard with regard to the specific circumstances of this proposal.

While high density development is permitted on the site, the proposal fails to adequately consider the constraints of the site including its size, shape, topography, and the lower density interface zone to

the south of the subject site. The proposed bulk and scale of the built form when viewed from the south of the site is excessive and exceeds the development potential on this site.

The importance of a transition zone at the interface with a lower density zone, was recognised in *Seaside Properties v Wyong Council (2004) 136 LGERA 111 at [25] (Seaside Planning Principle)*. In this principle it was established, that where sites are located adjoining an interface zone, the actual potential of the site may be less than what is permitted under the development standard. This proposal seeks to significantly exceed the floor space ratio development standard and is unacceptable. This is in addition to the non-compliant height of the building, which compounds the impacts of bulk and scale.

The proposal is of an excessive and unacceptable bulk and scale which is incompatible with the size of the land to be development, its environmental constraints and its contextual relationship inconsistent with Clause 4.4, Objective 1(a) of KLEP.

The applicant's arguments in relation to compliance with the FSR standard being unreasonable and unnecessary are not accepted. The Clause 4.6 variation request fails to satisfy any of the methods set out in Wehbe v Pittwater Council [2007] NSWLEC 827. Consequently, the Clause 4.6 variation request does not demonstrate that compliance with the development standard is unreasonable or unnecessary in this instance. Therefore, requirements of Clause 4.6(4)(i) have not been met.

> *Mecone:*
>
> *<u>Responsiveness to site conditions and minimisation of additional earthworks</u>*
>
> *As detailed elsewhere within this written request and the Statement of Environmental Effects (SEE) that was submitted to Council for this application, the subject site:*
>
> - *is within an area that features steeply sloped topography with a large north-to-south downhill slope*
> - *has been highly modified by earlier development that significantly excavated into that slope to provide relatively level footprints for the existing commercial building and multi-level carpark.*
>
> *Such modifications to site topography resulted in significant lowering of 'existing ground levels' within the northern half of the site. Significantly greater excavation of the site will result from a requirement to provide all car parking facilities within basement levels and below the proposed building footprint, noting that:*
>
> - *the number of car parking spaces that are to be provided on the site*
> - *that basements are defined by the KLEP 2015 as being both:*
> - *predominantly below ground level (existing)*
> - *where the floor level of the storey immediately above is less than one metre above existing ground level.*
>
> *The placement of car parking on Levels 1, 2 and 3 will, in this specific instance, deliver better design and environmental outcomes, despite the proposed DCP parking variations resulting in additional GFA inclusions and the subsequent FSR variation. The reasons for this are as follows:*
> - *due to poor residential amenity at/near ground level around the northern sides of the proposed building, providing parking at the northern end of Levels 1, 2 and 3 will both:*
> - *enable better utilisation of that part of the site that is already used for parking, without the need for significant and additional excavation*
> - *enable placement of habitable areas towards the northern of the building at higher elevations, which as discussed below, will provide for enhanced residential amenity*

- *compared to a development scheme with full in-basement parking, a building layout like that proposed will significantly reduce excavation depths and associated spoil generation, with improved environmental outcomes, through:*
    - *reductions of construction traffic volumes that would otherwise be required to remove excavated spoil from the site*
    - *reduced potential for adverse impacts on surrounding sites*
    - *reduced likelihood of groundwater interception, which if encountered as a result of deeper excavation, would necessitate construction and/or ongoing dewatering.*

Improved residential amenity and building utilisation

The subject site contains a substantial north-to-south downhill slope, resulting in significant elevational differences between the northern and southern boundaries of approximately 10.1-11.1 metres. This is detailed elsewhere within this written request and the Statement of Environmental Effects (SEE) that was submitted to Council for this application.

Lower levels of the building (particularly at its northern end) will be significantly overshadowed in mid-winter. This is a result of:

- *higher ground levels at the site's northern end*
- *existing/approved large-scale development on adjoining and surrounding sites to the east, west and north of the site*
- *proposed landscaping.*

Such considerations would be further compounded by the orientation of the site, which would limit any residential accommodation on lower levels to single-aspect apartments oriented to the east and west of the site.

As a result of the above, any apartments located at the northern end of Levels 1, 2 and 3 would be subject to limited natural light access and therefore very poor amenity.

The placement of car parking on Levels 1, 2 and 3 will enable better residential amenity outcomes, as a result of the following:

- *the proposed above-ground parking enables the creation of a building podium that will facilitate the placement of residences and commercial tenancies at both higher elevations and/or towards the southern parts of the site (i.e. away from slopes contributing to internal overshadowing), thereby improving natural light access and residential amenity*
- *noting that the part of the site proposed to be used as above-ground parking is already being used for parking, the proposed design of such facilities will:*
    - *provide for a minimum six-metre setbacks (compared to the zero-setbacks of the existing carpark)*
    - *provide for substantial landscaped areas within those side setback, in addition to high-quality design incorporating and external materials.*

It is therefore submitted that the proposed design, whilst not compliant with the DCP (and subsequently the FSR development standard) will enable improved amenity outcomes. For such reasons, compliance with the FSR development standard is therefore considered to be unreasonable and unnecessary in the circumstances of this proposal.

Lack of significant or unreasonable impacts on surrounding sites and the public domain

The submitted architectural plans and modelling (both as submitted and subsequently amended) and the SEE submitted as part of this application, demonstrate that the proposed variation to the FSR development standard will not significantly, nor adversely affect, surrounding sites and the public domain. The justification is that the proposal will:

- *not give rise to adverse visual privacy impacts (particularly from the Fitzsimons Lane frontage)*

- *not excessively or unreasonably overshadow adjoining sites*
- *provide sufficient space around the periphery of the site for suitably sized deep soil areas that includes the retention of numerous large canopy trees.*

Compliance with the FSR development standard (which would substantially reduce the size of the development without providing significantly improved amenity outcomes) is therefore unreasonable and unnecessary in the specific circumstances of this particular proposal.

Lack of visual impact from surrounding sites and the public domain

As indicated within the previous environmental planning ground above, the proposed design was selected over one with a more compliant building height as it responds better to the constraints of the site.

Despite the variation to the FSR development standard, the proposed development's design is responsive to the site's conditions, and will support built form outcomes including bulk and scale that are likely to be perceived from the public domain (i.e. the Merriwa Street and Fitzsimons Lane road reserves) as being consistent with surrounding high-density development.

While reference is also made to the assessment of the objectives pursuant clause 4.4(1) of the KLEP 2015 (refer to Section 5.1 of this written request), potential visual impacts created by the placement of parking on Levels 1, 2 and 3 (and the subsequent FSR variation) will be mitigated by the following:

- *the high levels of building articulation on the buildings southern end (which will include progressively increased setbacks within higher parts of the building)*
- *reducing the perceived height of the northern end of the building, by utilising the higher ground levels in/adjacent to the Fitzsimons Lane road reserve*
- *to provide a building form that will present as a five-storey building when viewed from Fitzsimons Lane:*
- *substantially increasing existing side setbacks, combined with the restoration of ground levels outside of the proposed building envelope:*
    - *once works are complete, the built form of the development will appear to be excavated into an existing slope, which will reduce the apparent bulk and scale of the northern end of the development, particularly as viewed from the Fitzsimons Lane road reserve.*

As such, the perceived height, bulk and scale of the proposed development will appear to be consistent with that of surrounding mixed use and high-density residential sites that address Fitzsimons Lane and the northern side of Merriwa Street.

Compliance with the FSR development standard in this particular instance is therefore unreasonable and unnecessary, given that the proposed FSR variation will not give rise to adverse visual impacts.

Provision of suitably sized and designed housing

The proposed development seeks to provide for a larger proportion of family sized apartments, in particular three- and four-bedroom homes, with the intent of providing housing that:

- *comprises of larger, accessible, high-quality and high-amenity apartments in relatively close proximity to public transport, retail premises and services within the Gordon Local Centre*
- *is located within a high amenity setting*
- *can cater for changing local demographics.*

Council's Local Strategic Planning Statement (LSPS) recognises such changing demographics, noting that:

- *55% of households are family households with children*
- *the Ku-ring-gai LGA is home to an increasingly large proportion of Culturally and Linguistically Diverse (CALD) households*
- *the Ku-ring-gai LGA's population of persons aged 65 and above is projected to increase by 49% by 2036.*

Further, the LSPS has also found that families from CALD backgrounds have differing family structures that often comprise of numerous generations living within the same household. Both the proposed number of apartments and their diversity (in terms of number of bedrooms, floor areas, layouts and variable configurations) have been designed in response to such demographic changes (in particular multi-generational living). It is therefore submitted that the proposed gross floor space is both required and suitable for the area, to reduce gross floor space to comply with the development standard will subsequently reduce:

- *the number of proposed apartments*
- *the size and diversity of such apartments, noting that their variable sizes and designs seek to cater for anticipated demographic changes within the Ku-ring-gai LGA.*

Noting the technical nature of the proposed variation to the FSR development standard and its relative lack of impact, to require compliance with that development standard would require:

- *significant reductions to the amount of floor space (thereby substantially reducing the number of apartments that have been designed to cater for an identified residential demand within the local area)*
- *design changes that would significantly reduce the amenity of the proposed apartments.*

We submit that either of these outcomes would reduce the social benefits presented by this proposal, and to reduce the amount of floor space to comply with the development standard (particularly given the lack of adverse impacts associated with the variation) is therefore considered to be unnecessary and unreasonable in the circumstances of this particular proposal.

To summarise, the design of the proposed development responds well to the unique constraints of the site and, despite the proposed variation to the FSR standard, will not give rise to significant, adverse and/or unreasonable impacts. To require compliance with the building FSR would require either:

- *relocating all car parking to basement areas, and/or*
- *a very substantial reduction in habitable floor area.*

As demonstrated above, to undertake one or both of these changes would likely result in:

- *worsened environmental impacts*
- *worsened residential amenity, and/or*
- *a substantial reduction in the number of proposed dwellings, which would reduce the social benefits to be delivered by this proposal.*

For the reasons outlined above, it is evident that there are sufficient and substantive environmental planning grounds to justify contravention of the FSR development standard, and why compliance with that standard would be unreasonable and unnecessary in the specific circumstances of this particular proposal.

While it is acknowledged that the site is constrained by way of size and topography, this is not a sufficient environmental planning ground to justify a significant beach of the FSR development standard. The excessive FSR results in unacceptable bulk and scale, particularly when viewed from the lower density residential dwelling downslope of the site. The non-compliant number of storeys and deep soil landscaping results in a development which is inconsistent with the character of the area with amenity impacts to future residents of the site and adjoining properties.

The grounds put forward that relate to a lack of unreasonable impact are not a sufficient environmental planning ground to justify a significant breach to the floor space ratio development standard. Notwithstanding, the building does not step down the site and is highly visible from surrounding properties. It is unclear how the applicant has determined that the additional floor space is indiscernible from the streetscape or surrounding properties and that a basement car park would otherwise, not result in a better planning outcome for the site. The environmental planning grounds given by the applicant are not sufficient as they fail to demonstrate that a nexus exists between the non-compliant FSR and a specific circumstance on the site that results in an unavoidable contravention of the FSR standard.

The Clause 4.6 variation request fails to provide sufficient environmental planning grounds to justify varying the FSR development standard. The requirements of Clause 4.6(4)(ii) have therefore not been met.

Authority to determine variation

Any variation to a numerical standard that exceeds 10% or relates to a non-numerical standard must be considered by either the Ku-ring-gai Local Planning Panel or the Sydney North Planning Panel. As the variation to the numerical standard is greater than 10% the application is required to be referred to the Sydney North Planning Panel for determination.

Pursuant to Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021, the application has an estimated development cost of more than $30,000,000.00. In this case the estimated development cost is $36,092,834.00 (inc. GST). Therefore, the consent authority for this development is the Sydney District Planning Panel (SDPP), being the Sydney North Planning Panel (SNPP) for Ku-ring-gai.

Development standards that cannot be varied

The variation to the development standard is not contrary to the requirements in subclauses (6) or (8) of clause 4.6.

Clause 4.6 Exceptions to development standards Clause 6.7 Active Street Frontages in Certain Business Zones

The development proposes residential apartment dwellings on the ground floor of the Merriwa Street frontage, which fails to comply with the 'Active Street frontages in the MU1 Zone' development standard.

Whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The applicant states that compliance with the development standard is unreasonable or unnecessary for the following reasons:

> *The objectives of the standard are achieved notwithstanding non-compliance with the standard*
>
> *The objective of the active street frontage development standard pursuant to clause 6.7(1) of the KLEP 2015 is provided below, with a response as to how that objective is achieved notwithstanding noncompliance with the standard:*
>
> *(a) The objective of this clause is to promote uses that attract pedestrian traffic along ground floor street frontages in Zone E1 Local Centre or Zone MU1 Mixed Use.*
> *The subject site is located within Precinct G4 of the Gordon Local Centre as prescribed by Section 14D.1 of the KDCP.*
>
> *Section 14D.10 (Precinct G4), control 7 of the DCP requires that buildings be designed in accordance with KDCP figure 14D.10-5. For the subject site, this provides that development on the subject site is to provide the following:*

- *a principal active street frontage to Fitzsimons Lane wherever possible*
- *a supporting active frontage on the Merriwa Street frontage.*

Further, control 10 within Section 14D.10 of the DCP requires that sites with dual frontages to Merriwa Street and Fitzsimons Lane are to provide vehicular access and servicing from Merriwa Street.

Such requirements are in support of the planned future character of the locality as prescribed by Section 14D.10 of the DCP, specifically that "…Fitzsimons Lane has potential to become a smaller scale street with active uses, including small retail facilities, cafes or corner stores where they meet the needs of employees and residents in the precinct."

The proposed development has subsequently been designed in accordance with such requirements, with a built form that orients the proposed commercial tenancies so that they address the Fitzsimons Lane frontage (as with other development on other sites with frontages to both Merriwa Street and Fitzsimons Lane), with supporting facilities (such as vehicular access) located on the Merriwa Street frontage.

Despite the proposed noncompliance (i.e. placement of residences and car parking on the ground level), the development will provide for uses that will attract pedestrian traffic within the Fitzsimons Lane frontage. Further, despite being located on Level 4, due to substantial height differences between the two road frontages, the commercial tenancies are likely to be perceived by observers within Fitzsimons Lane as being located at ground level.

Further, while the development will provide for residences at ground level, the Merriwa Street frontage of the proposed development will still provide features that include:

- *highly visible pedestrian entryways and access pathways from the public domain*
- *common areas within the Merriwa Road frontage*
- *balconies forward of the building façade on the Merriwa Street frontage.*

In addition to providing active and passive surveillance of the public domain, such features would still attract residential pedestrian activity along the Merriwa Street frontage. Anticipated pedestrian movements to/from the site via the Merriwa Street frontage (and any associated streetscape activation) is also anticipated to occur in a manner that is consistent with the surrounding area, which provides for residential uses that address the Merriwa Street frontage. This includes existing and approved mixed use and residential developments to the west of the site at 11-15 and 17-23 Merriwa Street.

It is agreed that the ground floor residential tenancies on the Merriwa Street frontage will satisfy objective (a) by attracting pedestrian traffic along ground floor street frontage to Merriwa Street. This will be achieved by the pedestrian links from Fitzsimmons Lane that retain significant trees within the side setbacks that create a high quality pedestrian link through the site. Such connections will increase casual surveillance and encourage the passive use of public spaces within the site.

The applicant states:

<u>The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;</u>

While the objective of the standard "…is to promote uses that attract pedestrian traffic along ground floor street frontages…" within the MU1 zone, we note that the objective does not state that it is intended to apply to all street frontages within the MU1 zone. We also note that:

- *the planned future character for Precinct G4 (which envisions Fitzsimons Lane having "…potential to become a smaller scale street with active uses, including small retail facilities, cafes or corner stores where they meet the needs of employees and residents in the precinct.")*
- *development controls seek (amongst other requirements) for development on sites between Merriwa Street and Fitzsimons Lane to provide:*
    - *primary active uses within the Fitzsimons Street*

- *both larger (i.e. 12 metre) building setbacks to Merriwa Street and smaller (i.e. three-metre) setbacks to Fitzsimons Lane.*

Further, we note that mixed use developments approved at 11-153 and 17-23 Merriwa Street did not include any ground floor commercial uses that address the Merriwa Street frontage.

Noting the above and that the Merriwa Street frontage addresses residential areas (including an R3 medium density residential zone on the southern side of Merriwa Street), we submit that there is an underlying objective and/or intention for development on sites fronting both Merriwa Street and Fitzsimons Lane to provide:

- *Higher levels of streetscape activation within Fitzsimons Lane, and*
- *Greater setbacks and access driveways within Merriwa Street, both of which (in combination with other requirements such as deep soil and landscape space) are generally not conducive to the creation of highly active frontages, since any such uses to be incorporated of the building would be set well back from the road frontage behind landscaped areas, thereby reducing their visibility and ability to activate the streetscape.*

We therefore submit that to require compliance with clause 6.7(3) of the KLEP 2015 would not facilitate suitable streetscape activation both on this particular site and within MU1 zoned areas between Merriwa Street and Fitzsimons Lane. Compliance with the clause:

- *would subsequently defeat or thwart the underlying objective of the clause, which is to facilitate primary active uses within Fitzsimons Lane*
- *is therefore unreasonable in the circumstances of this particular proposal.*

It is acknowledged that Merriwa Street faces other residential properties to the south and that the prevailing character of Merriwa Street is residential. Council's controls in Part 14 stipulate deeper setback on Merriwa Street which are conducive to the development of ground floor residential tenancies.

It is considered that the proposed development details residential tenancies that are capable of attaining high level of amenity and that this use is consistent with the streetscape and will contribute to the desired future character of the Local Centre. In this regard, the submitted Clause 4.6 variation request is considered to be acceptable. The justification provided by the applicant is concurred with and strict compliance is therefore unreasonable and unnecessary in the circumstances and the Objective in Clause 6.7 in KLEP is achieved.

Whether there are sufficient environmental planning grounds to justify contravening the development standard

The applicant states that the following environmental planning grounds justify contravening the development standard:

Responsiveness to site conditions and inability of the site and locality to provide an active street frontage within Merriwa Street

As detailed within Section 5.1 of this written request (see above), the design of the building and the subsequent placement of:

- *residential and carpark uses on the ground floor*
- *active commercial uses on the fourth floor*

are responses to both locality/site specific development controls applying to the site and the somewhat unique topographical conditions that affect the site.

DCP controls applying to Precinct G4 and more specifically sites with frontages to both Merriwa Street and Fitzsimons Lane require that primary active uses like those proposed be located so that they front Fitzsimons Lane. As the levels of the Fitzsimons Lane frontage are significantly (i.e. approximately 10-11 metres) higher than the Merriwa Street frontage, it is not

possible however to locate such primary uses on the ground floor of the proposed development, thus their siting on the building's fourth floor.

While locality-specific development controls do not prohibit primary use (i.e. commercial) activities on the Merriwa Street frontage, they do establish much larger (i.e. 12 metre) setback requirements than the minimum three-metre setback requirements applying to Fitzsimons Lane. Any non-residential uses fronting Merriwa Street would therefore be required to be set back significantly from that road frontage and would be at least partially obscured by landscaping; such outcomes are not conducive to activating that streetscape. Further, due to the:

- *proposed length of the building (a result of the site's dimensions and topography)*
- *sloped and heavily modified topography of the site*

the placement of land uses (other than residential areas and car parking) further to the north on the ground floor would result in such uses being:

- *recessed behind the Merriwa Street frontage*
- *subject to perpetual mid-winter overshadowing and very poor amenity.*

In addition to the ground floor being unable to provide attractive operating environments for other land uses, surrounding development (both existing and as approved) that addresses Merriwa Street is of a predominately residential nature. Such an environment (which is unlikely to change in the foreseeable future) is unlikely to promote significant amounts of passing pedestrian traffic to support active commercial activities addressing that frontage.

With regard to the above, it is submitted that the current design (which situates primary active uses on the fourth floor (rather than the ground floor), provides for better street activation outcomes than a design undertaken in accordance with clause 6.7 of the KLEP 2015.

Consistency with intended centre character

As detailed above, intended character outcomes for Precinct G4 within the Gordon Local Centre include the intention for Fitzsimons Lane to become a smaller scale street with active uses, including small retail facilities, cafes or corner stores where they meet the needs of employees and residents in the precinct. Development of sites with multiple road frontages (including those between Merriwa Street and Fitzsimons Lane) have facilitated such outcomes, noting that approvals at 11-15 Merriwa Street and 17-23 Merriwa Street have provided for:

- *commercial land-use activities at/close to street level along the Fitzsimons Lane frontage*
- *residential accommodation fronting the Merriwa Street frontage.*

The proposed development will provide for streetscape activation activities that are both consistent with the intended character outcomes of the precinct and earlier approvals on those aforementioned sites. As such, approval of the variation that is the subject of this written request will not establish a development precedent within the area.

No significant or unreasonable impacts on the public domain or surrounding sites

The proposed variation relates primarily to the use of the ground floor of the proposed development. Given that the proposed variation would not fundamentally alter the appearance or form of the proposed development, it will not:

- *give rise to incongruent or adverse streetscape impacts*
- *affect compliance with principal development standards (i.e. building height, Floor Space Ratio (FSR), etc.), and as such will not adversely affect surrounding areas, in terms of overshadowing, visual privacy and the like.*

Further, it is submitted that if the proposed variation were supported, the development's Merriwa Street frontage will (except for common access areas) comprise entirely of residential apartments. Such a land use will be consistent with existing and approved development frontages on surrounding sites, which except for 1 Merriwa Street, comprises almost entirely of residences. Support for the proposed variation will therefore not give rise to adverse environmental impacts (such as noise) following the occupation of the building.

For the reasons outlined above, it is evident that there are sufficient substantive environmental planning grounds which justify contravening the active building frontage development standard.

The applicant adequately outlines several sufficient environmental planning grounds, particularly pedestrian connectivity to Fitzsimmons Lane and the prevailing residential character of Merriwa Street, as suitable reasons for varying the development standard in this instance. It is agreed that the development of ground floor residential apartment on the Merriwa Street frontage will result in a good planning outcome for the site and the applicant has advanced sufficient environmental planning grounds to justify the contravention of the active street frontage development standard in Clause 6.7 of the KLEP.

Authority to determine variation

Any variation to a numerical standard that exceeds 10% or relates to a non-numerical standard must be considered by either the Ku-ring-gai Local Planning Panel or the Sydney North Planning Panel. As the variation to the numerical standard is greater than 10% the application is required to be referred to the Sydney North Planning Panel for determination.

Pursuant to Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021, the application has an estimated development cost of more than $30,000,000.00. In this case the estimated development cost is $36,092,834.00 (inc. GST). Therefore, the consent authority for this development is the Sydney District Planning Panel (SDPP), being the Sydney North Planning Panel (SNPP) for Ku-ring-gai.

Development standards that cannot be varied

The variation to the development standard is not contrary to the requirements in subclauses (6) or (8) of clause 4.6.

Part 6 Additional local provisions

Clause 6.1 - Acid sulphate soils

The site is classified as containing Class 5 Acid Sulphate Soils; however, it is not located within 500 metres of adjacent Class 1, 2, 3 of 4 land. The proposed development will therefore not lower the water table on adjacent Class 1, 2, 3 or 4 land. An acid sulphate soil management plan is therefore not required in this instance.

Clause 6.2 - Earthworks

Council's Development Engineer has reviewed the supporting Geotechnical Report and provided concurrence with the recommendations in that report. Were the application to be approved, the Assessing Officer is satisfied the proposed excavation is reasonable, subject to conditions recommended by the Development Engineer.

Clause 6.5 - Stormwater and water sensitive urban design

Council's Development Engineer has reviewed the proposed stormwater design and provided concurrence that its design adequately manages water quality and controls discharge volumes and frequency. Were the application to be approved, the Assessing Officer is satisfied the stormwater design is acceptable, subject to conditions recommended by the Development Engineer.

Clause 6.7 – Active street frontages in Zones E1 and MU1

Refer to Clause 4.6 exceptions to a development standard in this report for the assessment.

Policy Provisions (DCPs, Council policies, strategies, and management plans)

Ku-ring-gai Development Control Plan

Part 1A.5 General aims of the DCP

The proposed development has been assessed against the general aims of this DCP and is not found to be acceptable in all relevant respects for the reasons given throughout this report.

Part 2: Site analysis

A site analysis that identifies the existing characteristics of the subject site and the surrounding area has been provided which satisfies this part of the DCP.

Part 3 Land consolidation and subdivision

The subject site comprises a single Torrents title and the proposed development envisages the strata subdivision of the residential units and three commercial tenancies. The proposal is accompanied by a draft plan of strata subdivision that is closely aligned with the proposed development that generally satisfies the objectives in this part.

Part 7: Residential Flat Buildings

Whilst the site is zoned MU1 'Mixed Use' and the proposed development comprises three commercial tenancies on the Fitzsimons Lane frontage, Part 7, rather than Part 8 is most applicable given the proposed development includes residential tenancies on the ground floor of the Merriwa Street frontage. Therefore, the application of Part 7 is consistent with the advice in the introduction of Part 7 as follows:

"The development of residential flat buildings in the MU1 Mixed Use zone is covered by this Part of the DCP"…….. "Where residential uses are provided to any part of the ground floor street frontage within a MU1 Mixed Use zone, then the development is to be treated as a Residential Flat Building and meet the standards of this Part."

COMPLIANCE TABLE		
Development Control	**Proposed**	**Complies**
Part 7 Residential Flat Buildings		
7A.1 – Local character and streetscape		
All Residential Flat Buildings are to be designed by an architect registered with the NSW Architects Registration Board.	Compliance is demonstrated.	**YES**
All residential flat buildings are to demonstrate how they provide a garden setting with buildings surrounded by landscaped gardens, including tall trees, on all sides.	Compliance is demonstrated by retaining large existing trees; however, the excessive site coverage does not permit sufficient landscaped garden areas.	**NO**

Design components of new development are to be based on the existing predominant and high quality characteristics of the local neighbourhood.	Compliance is not demonstrated due to the exceedance of the height and FSR development standards and various other non-compliances, which in part seek to achieve this objective, as discussed, resulting in a development which results in a development that does not meet this objective.	**NO**
The appearance of the development is to maintain the local visual character by considering the following elements: i) visibility of on-site development when viewed from the street, public reserves and adjacent properties; and ii) relationship to the scale, layout and character of the tree dominated streetscape of Ku-ring-gai.	Compliance is not demonstrated as the proposed development will dominate the tree lined streetscape and present adverse vertical massing due to the exceedance of the height of buildings development standard.	**NO**
The predominant and high quality characteristics of the local neighbourhood are to be identified and considered as part of the site analysis.	Compliance is demonstrated.	**YES**
Development is to integrate with surrounding sites by: i. being of an appropriate scale retaining consistency with the surrounds when viewed from the street, public domain or adjoining development; ii. minimising overshadowing; and iii. integrating built form and soft landscaping (gardens and trees) within the tree canopy that links the public and private domain throughout Ku-ring-gai.	The development is not an appropriate scale due to the exceedance of the height of buildings development standard Insufficient information provided to enable assessment of overshadowing impacts. Excessive site coverage fails to respond to the high quality landscape characteristics of the neighbourhood.	**NO** **NO** **NO**

7A.2 – Site layout		
The site layout is to demonstrate a clear and appropriate design strategy and arrangement of building mass in response to the Site Analysis in Part 2 Site Analysis of this DCP. Demonstration of design strategies to address opportunities and constraints based on Site Analysis are to include:		
i. building location and orientation on the site optimising northern aspect; relationship with neighbouring developments; building setbacks; geographical aspect; views; access etc;	The proposed building layout compromises the visual amenity of the public domain by proposing three storeys of above-ground car parking. This results in large vertical massing on the side elevations where long continuous wall planes are broken-up only by breeze blocks. This results in excessive and unacceptable building massing.	**NO**
ii. response of building development in maintaining site characteristics within the subject site, such as topography, vegetation, significant trees, any special features, etc.	The proposed development features large retaining walls in the side setbacks that have a poor and unacceptable visual outcome on the lower (western) elevation in particular, where the site adjoins a vacant lot.	**NO**
iii. building separation and internal layouts of buildings that respond to (i) above and be consistent with the requirements of the DCP.	Internal layout fails to respond to the sloping topography by detailing three levels of above-ground car parking.	**NO**
iv. limited apartments with no direct sunlight.	All apartments receive adequate sunlight (per ADG)	**YES**
A drawing and supporting written information is to demonstrate how the building and its layout has applied and responded to the site analysis required by Part 2 of the DCP.	Compliance is demonstrated.	**YES**
Any building with a frontage to the street is to address that street.	The proposed development addressed both frontages, however not in accordance with Part 14 'principal and supporting active frontages' due to ground floor residential component on Merriwa Street.	**NO**
Where a site has two or more frontages, the buildings are to address and provide building entry points from all street frontages	Compliance is demonstrated.	**YES**

Soft landscaping, including tall trees, is to be provided between onsite buildings, fences and courtyard walls.	There is insufficient deep soil in side setbacks to support high quality landscape outcomes.	**NO**
Hard landscaping is to be minimised and to maximise opportunities for landscape planting	Excessive site coverage.	**NO**
Long straight driveways are not permitted, except where necessary for battle-axe sites. Driveways are to be designed to be of minimal visual impact.	Compliance is demonstrated.	**YES**
Provide a single pedestrian entry point into the development from the street. Other entries may be permitted where several buildings address the street along an extended street or where there are dual frontage sites.	Compliance is demonstrated.	**YES**
Three hours of direct sunlight between 9am and 3pm on 21st June is to be maintained to the living rooms, primary private open spaces and any communal open spaces within i. existing residential flat buildings and multi-dwelling housing on adjoining lots, and ii. residential development in adjoining lower density zones.	The solar access diagrams are not modelled to enable an assessment of this impact.	**NO**
Overshadowing should not compromise the development potential of the adjoining yet to be redeveloped sites.	The solar access diagrams are not modelled to enable an assessment of this impact.	**NO**
Developments are to allow the retention of a minimum of 4 hours direct sunlight between 9am to 3pm on 21st June to all existing solar collectors and solar hot water services on neighbouring buildings.	The supporting solar access diagrams are not modelled to enable an assessment of this impact.	**NO**
7A.3 – Building setbacks		
Residential flat buildings on the sites identified in Part 14 Urban Precincts and Sites of the DCP are to meet the following street setback requirements: i.street setbacks as specified in the Building Setback maps in Part 14 Urban Precincts and Sites of this DCP;	Merriwa Street: 16 metres to building line (12.5 metres to balconies) Fitzsimmons Lane: 6 metres to building line	**YES** **YES**
Residential flat buildings are to provide a 2 metres articulation zone behind the street setback, and no more than 40% of this zone (in plan) is to be occupied by the building.	All building elements are located behind the articulation zone.	**YES**
The building line to any street is to be parallel to the prevailing building line in the streetscape. For angled sites, a stepped façade may be appropriate.	The Merriwa Street frontage is parallel to the building line. The building line addressing the Fitzsimons Lane frontage is stepped owing to that frontage being angled.	**YES**

Residential flat buildings are to meet the following side and rear setback requirements to ensure deep soil, landscaping and tall trees are accommodated to all sides of the building: i) a minimum of 6m from the side boundary for all levels up to the fourth storey. ii) a minimum of 9m to the fifth storey and above.	The side elevations are set back in accordance with Part 3F of the ADG. Regardless, minimum six metre setbacks are provided to both side elevations to provide sufficient space for the establishment and growth of large trees.	**YES**
Side setback areas behind the building line are not to be used for driveways or for vehicular access into the building.	Not proposed, noting that design will remove the two long/straight driveways extending from Merriwa Street.	**YES**
Driveways are to be set back a minimum of 6 metres from the side boundary within the street setback to allow for deep soil planting.	The Merriwa Street driveway splays into the 6 metres western setback zone. Any inward realignment would impact trees that are to be retained.	**NO**
Setbacks are to respond to the attributes identified in the site analysis, conducted as required by Section A Part 2 Site Analysis of the DCP, including consideration of the location of adjoining buildings and views of the site.	The proposed setbacks comply with the controls in Part 14 which take precedence in this instance.	**YES**
Encroachments i. Basements do not encroach into any setback areas ii. Ground floor terrace/courtyard walls min 8m to street boundary / 4m to rear & side boundaries / 7m adjacent to lower density residential zone iii. A maximum of 15% of the street setback area occupied by private terraces/courtyards	 Compliance is demonstrated. Compliance is demonstrated on Merriwa Street. Variation on Fitzsimmons Lane is acceptable and overridden by Part 14D which stimulates 3m setbacks along the lane. Compliance is demonstrated.	 **YES** **YES** **YES**
Eaves, open pergolas, blades, fins and columns may encroach into the setback areas where they do not increase the apparent bulk of the building or create visual clutter:	Compliance is demonstrated.	**YES**
7A.4 – Building Separation		
Buildings are to be located so that apartments benefit from views into and through onsite landscaped gardens.	Compliance is demonstrated.	**YES**
7A.5 – Site coverage		
The site coverage may be up to a maximum of 30% of the site area, provided that the deep soil landscaping requirements in Section A Part 7A.6 Deep Soil Landscaping are met.	Site = 2786m^2 x (30%) = 835.8m^2 Proposed = 1,155.5m^2 (41.48%)	 **NO**

7A.6 – Deep soil landscaping		
A minimum deep soil landscaping area 50% for a site area of 1800m^2 or more.	Site = 2,786m^2 x (50%) = 1,393m^2 Proposed = 1,095.4m^2	**NO**
Deep soil zones are to be configured to retain healthy and significant trees on the site and adjoining sites, where possible.	Compliance is demonstrated.	**YES**
Deep soil zones are to be configured to allow for required tree planting including tall tree planting and garden and screen planting at front, side and rear boundaries.	Compliance is demonstrated.	**YES**
Deep soil landscaping is to be provided in the common areas as a buffer between buildings that softens the bulk and scale of the buildings.	Compliance is demonstrated.	**YES**
Driveways are not to dominate the street setback area. Deep soil landscaping areas in the street setback are to be maximised.	Compliance is demonstrated.	**YES**
Lots with the following sizes are to support a minimum number of tall trees capable of attaining a mature height of at least 18m on shale, transitional soils and 15m on sandstone derived soils. i. 1801m^2 + - 1 tall tree per 300m^2 or part thereof	Compliance is demonstrated.	**YES**
In addition to the tall trees, a range of medium trees, small trees and shrubs are to be selected to ensure that vegetation softens the building form and creates a garden setting. At least 50% of all tree plantings are to be locally occurring trees and spread around the site.	Compliance is demonstrated.	**YES**
Trees are to be planted within all setback areas. At least 30% of the required number of tall trees are to be planted within the front setback.	Compliance is demonstrated.	**YES**
7B – Access and parking		
7B.1 – Car parking provision		
All residential flat developments are to provide on-site car parking within basements**.**	The proposed car parking is not located in the basement.	**NO**
Basement car park areas are to be consolidated under building footprints.	The proposed car parking is not located in the basement.	**NO**
The use of single lane tunnels and single lane spiral ramps is not permitted. Double lane spiral ramps may be allowed where there are no other options, but can only link a maximum of 2 floor levels.	A single lane tunnel is proposed.	**NO**
The basement car park is not to project more than 1 metre above existing ground level. Note: Basements greater than 1m above the natural existing ground level are counted as a storey for the purposes of the DCP and will be included in the floor space ratio calculation as well as any control based on the number of storeys.	Level 1 basement projects more than 1 metre above-ground.	**NO**

<table>
<tr><td>Single lane aisles, straight ramps and tunnels max 12.0m in length.</td><td>A single lane tunnel is proposed that exceeds 12m in length.</td><td>NO</td></tr>
<tr><td>Direct and continuous internal pedestrian access from basement car park is provided to each level of the building</td><td>Compliance is demonstrated.</td><td>YES</td></tr>
<tr><td>Car park entry is to be integrated within the building and located behind the building line.</td><td>Compliance is demonstrated.</td><td>YES</td></tr>
<tr><td>Car parking design is to be in accordance with requirements for Silver and Platinum Level dwellings as required in this DCP and by the Livable Housing Guidelines. Circulation areas, roadways and ramps are to comply with AS2890.1. Where a conflict occurs, the Livable Housing Guidelines 2012 is to take precedence.</td><td>All Platinum Level units will provide an accessible car space designed to Australian Standard 2890.6.</td><td>YES</td></tr>
<tr><td>FOR DEVELOPMENT THAT IS SUBJECT TO SEPP 65 - 800m walking distance of a train station entry:
Car parking rates for residential flat developments on sites within 800m walking distance of a railway station entry:

<table><tr><td>Type</td><td>Minimum</td><td>Maximum</td></tr><tr><td>Studio</td><td>0 spaces</td><td>0.5 spaces</td></tr><tr><td>One bedroom</td><td>0.6 spaces</td><td>1 space</td></tr><tr><td>Two bedrooms</td><td>0.9 space</td><td>1.25 spaces</td></tr><tr><td>Three or more bedrooms</td><td>1.4 space</td><td>2 spaces</td></tr></table>Visitors: 1 per 6 units (at least one is accessible

Min 1 visitor parking space complies with the requirements of AS2890.6

Note: A Traffic Impact Assessment is to accompany Development Applications that seek to vary the parking rates. This includes commercial or strata funded car share schemes in lieu of parking spaces.</td><td>Required car parking spaces:
• Two bedrooms: 1-1.25
• Three bedrooms: 18.2-26
• Four bedrooms: 18.2-26
• Total:
o Minimum: 38 (rounded up from 37.4)
o Maximum: 54 (rounded up from 53.25)
Proposed parking spaces:
• 54 residential spaces

Provided</td><td>YES

YES</td></tr>
<tr><td>At least one visitor car space is to be accessible and be provided within the site for every 6 apartments or part thereof and is to comply with the dimensional and locational requirements of AS2890.6.</td><td>Proposed number of apartments: 27

Required number of parking spaces: 5 (rounded up from 4.5)

Proposed number of parking spaces: 7 (incl. shared carwash bay)</td><td>YES</td></tr>
<tr><td>A clearly signposted parking bay for temporary parking of service and removalist vehicles is to be provided. The space is to have the following standards:

i) a minimum dimension of 3.5 metres x 6 metres;</td><td>One visitor bay is to double as a carwash bay and will be fitted accordingly.</td><td>YES</td></tr>
</table>

ii) a minimum manoeuvring area 7 metres wide. Note: Where a separate space cannot be provided, one of the visitor spaces may be used as the service/removalist parking spaces provided it meets the dimensions stated in 13(i) and 13(ii) above.		
One visitor parking bay is to be provided with a tap, to make provision for on-site car washing.	Compliance is demonstrated	**YES**
At least one car share space is to be provided in the basement per 90 dwellings, or part thereof. **Note:** any proposed reduction in car parking on the basis of providing car share space/s is to be justified by the proponent through supporting studies.	Compliance is demonstrated	**YES**
Parking areas are to be designed and constructed so that electric vehicle charging points can be installed.	Compliance is demonstrated	**YES**
7B.2 – Bicycle parking and support facilities provision		
Provide on-site, secure bicycle parking spaces and storage at the following rates: i) 1 bicycle parking space per 5 units or part thereof for residents within the residential car park area; and ii) 1 bicycle parking space (in the form of a bicycle rail) per 10 units for visitors in the visitor car park area.	Although sufficient space exists to accommodate bicycle parking, this has not been detailed .	**NO**
All on-site bicycle parking spaces and storage are to be designed to AS2890.3.	Bicycle parking not clearly shown, although space exists on site to accommodate.	**NO**
7C – Building design and sustainability		
Part 7C.1 - SEPP 65 and Apartment Design Guide requirements		
All residential flat buildings are to comply with the objectives, Design Criteria and Design Guidance of the following *Apartment Design Guide* sections: 3F Visual Privacy 4A Solar and Daylight Access 4B Natural Ventilation 4C Ceiling Heights 4D Apartment Size and Layout 4E Private Open Space and Balconies 4F Common Circulation and Spaces 4G Storage	Refer to the ADG compliance table.	**YES**
7C.2 – Communal open space		
At least 10% of the site area must be provided as communal open space. Each parcel of communal open space is to have a minimum dimension of 5m.	Site area: 2,786m^2 Required minimum communal open space area: 278.6m^2	

	Proposed communal open space: 444.2m2 (15.45%)	**YES**
At least one single parcel of Primary communal open space with a minimum area of 80m^2 and a minimum dimension of 8m is to be provided.	An area inclusive of minimum 8 metres dimensions is proposed.	**YES**
The Primary communal open space is to be directly accessible from the internal common circulation areas.	Compliance is demonstrated.	**YES**
The Primary communal open space is to be located at or above finished ground level behind the building line. Roof top Primary communal open space may be provided where the ground level cannot meet performance requirements or is undesirable.	A rooftop Primary COS is proposed due to topographical constraints and dual street frontages.	**YES**
Secondary communal open spaces are to have a minimum dimension of 5 metres and may be provided on roof tops.	Compliance is demonstrated.	**YES**
Access to and within the Primary communal open space is to be provided for people with a disability Part 2 Section 7 of AS1428.	Compliance is demonstrated.	**YES**
The location and design of the Primary communal open space is to optimise opportunities for active and passive social and recreation activities, solar access and orientation, summer shade, outlook, and maintain the privacy of residents on adjoining sites zoned differently for lower density residential development sites.	Compliance is demonstrated.	**YES**
At least 50% of the area of the Primary communal open space and any Secondary communal open space are to receive direct sunlight for at least two hours between 9am and 3pm on 21st June.	More than 50% of the communal open space area will receive direct solar access in mid-winter.	**YES**
Communal open space is to be integrated with any significant natural feature(s) of the site and soft landscaping areas.	The rooftop COS is acceptable under the circumstances.	**YES**
The communal open space is to have surveillance from at least two onsite apartments for safety reasons.	Compliance is demonstrated.	**YES**
Communal open space design is to avoid creation of concealment or entrapment areas. Note: Communal open space is to be well lit with an energy efficient lighting system to be used in conjunction with timers or daylight controls. All light spill is prohibited.	Compliance is demonstrated.	**YES**
Shared facilities such as barbecue facilities, shade structures, play equipment and seating, are to be provided within the Primary communal open space. Note: Selected items within communal open spaces are to be appropriate to the space and demonstrate consideration of the amenity of nearby apartments.	Compliance is demonstrated.	**YES**

Garden maintenance storage areas, drainage and connections to water taps are to be provided with the Primary communal open space. Secondary communal open spaces are to have adequate connections to water for maintenance purposes. Note: Proposals are to demonstrate entry and access to communal open spaces and common areas for maintenance purposes. Note: Refer to Section A Part 1B Dictionary for definitions of Communal Open Space and Common Area.	Connections will be provided within the communal area and in varying communal areas at ground level. Suitable onsite storage is provided for necessary maintenance equipment storage.	**YES**
7C.3 – Ground floor apartments		
Ground floor apartments are to be separated from noise sources such as common areas, communal open space and the public domain.	Ground floor bedrooms are physically separated from noise sources.	**YES**
Ground and podium level apartments are to have private outdoor areas differentiated from communal areas by at least one of the following: i) a change in level; ii) walls to deflect noise; iii) planting, such as hedges and low shrubs; iv) a fence/wall to a maximum height of 1.8m. Any solid wall component is to be a maximum height of 1.2m with at least 30% transparent component above.	All ground floor apartments and associated private open space (POS) areas will be physically delineated from communal areas by internal fencing and landscape treatments.	**YES**
A gate is to be provided from each ground floor apartment private open space into common areas where practical.	Not practical due to ground level changes.	**YES**
No subterranean rooms to any part of any apartment	Not proposed.	**YES**
No ground floor apartments created as a result of excessive excavation.	Existing ground level is to be maintained for habitable apartments.	**YES**
No part of any wall used to accommodate any residential apartment uses, including storage areas outside the apartment, is to be in direct contact with soil or rely on any form of tanking including spaces that act as tanking. Note: Tanking is only acceptable to basement parking levels.	Compliance is demonstrated.	**YES**
Tanking may only be provided to basement parking levels. Where basement storage is located adjacent to external walls, they are to be separated from the tanked wall by an accessible maintenance passage. Note: See Figure 7C.3-2 of the DCP	Compliance is demonstrated.	**YES**
The internal finished floor level of any part of a ground floor apartment and/or private open space is not to be more than 0.9 metres below existing ground level at the building line.	Compliance is demonstrated.	**YES**
Where the internal finished floor level of a ground floor apartment and/or private open space is not more than 0.9m below the existing ground level at the building line, the ground level adjacent to the building is to be levelled to the finished floor level for a distance of	Compliance is demonstrated.	**YES**

3 metres from the building line. Note: See Figure 7C.3-2 of the DCP		
All obstructions, such as retaining walls or fences, are to be located below a 45˚ control plane, drawn from the finished ground level at the building line. Landscaping plants may project beyond the 45˚control plane. Note: See Figure 7C.3-2 of the DCP	Compliance is demonstrated.	**YES**
7C.4 – Apartment mix and accessibility		
Range of apartment sizes (one, two, three bedroom) included within the development	Proposed number of apartments: • Two bedrooms: 1 • Three bedrooms: 13 • Four bedrooms: 13	**YES**
Mix of 1, 2 & 3 bedroom apartments located on the ground level.	1x3 and 1x4 bedroom units located at ground floor level.	**NO**
All units in the mixed-use development are to be of Silver Level, and 15% of those are to be of Platinum Level as indicated in the Liveable Housing Design Guideline.'	Five (i.e. 18.5%) of all proposed apartments will be of Platinum Level design; all remaining apartments will be of Silver Level design.	**YES**
All developments are required to meet the KDCP Liveable Housing Design Guideline provisions and National Construction Code accessibility requirements regardless of steepness of site.	The development will be in accordance with the BCA/NCC and all associated disability legislation.	**YES**
All development is to provide an accessible path of travel: i) from the street entry to the front door of each dwelling; and ii) from the basement carparking to the dwelling entry; and iii) from the dwelling to the primary communal open space and each type of room or space for use in common by the residents.	Compliance is demonstrated.	**YES**
Where the internal finished floor level of a ground floor dwelling and/or private open space is not more than 0.9 metres below the existing ground level at the building line, the ground level adjacent to the building is to be levelled to the finished floor level for a distance of 3 metres from the building line	Compliance is demonstrated.	**YES**
For Platinum level units with more than one level, an internal lift is to be provided to allow access to all levels	Two lifts are proposed; one will access all basement/habitable levels and the other will access all levels, including the communal open space area.	**YES**
7C.5 – Building entries		
Access to and within both commercial and residential developments are to be in accordance with the Disability Discrimination Act 1992.	Access to all parts of the building will be in accordance with disability legislation.	**YES**

Buildings are to address the street by providing visible entry points with the following: i) main building entrances that are level and directly accessible from the street; or, ii) where site configuration is conducive to having a side entry, the path to the building entrance is readily visible from the street, and the building entrance is signalled with appropriate architectural elements.	Compliance is demonstrated.	**YES**
Entry foyers are to be no more than 1 metre above ground level. Any ramped access required is to be integrated into the design of the building or landscape. Mechanical chairlifts and the like will not be accepted.	Compliance is demonstrated.	**YES**
Buildings are to have a clearly visible building entry for each vertical circulation core with clear way-finding signs integrated into the external circulation pathway system.	Building entries will be integrated with building access cores, with clear wayfinding to be provided.	**YES**
The building entry is to be legible and integrated with horizontal and vertical building facade architectural elements. At street level, the entry is to be articulated with awnings, porticos, recesses or projecting bays for clear identification.	Both building entrances will be integrated with building facades and architectural features.	**YES**
All entry areas are to be well lit and designed to avoid any concealment or entrapment areas and avoid dog leg entry foyers. All light spill is prohibited.	Compliance is demonstrated.	**YES**
Lifts are to be directly visible from the building entry doorway.	Compliance is demonstrated.	**YES**
Lockable mail boxes are to be: provided close to the street; and be at 90 degrees to the street and to Australia Post standards; and integrated with front fences or building entries.	Compliance is demonstrated.	**YES**
All entries are to be integrated into the external circulation pattern of the development.	Compliance is demonstrated.	**YES**
Buildings on corner sites are to address both street frontages and provide entry points and direct level access from both street frontages.	Compliance is demonstrated.	**YES**
Building entry paths are to be minimum 1.2 metres wide and located within the common area with a minimum dimension of 1.2 metres on either side for landscape planting. Paths are to provide extra width at building entries to allow easy passing between pedestrians and to allow effective turning.	Compliance is demonstrated.	**YES**
All common circulation corridors are to be at least 1.5 metres wide, and the area outside lifts is to be at least 1.8 metres wide.	Compliance is demonstrated.	**YES**
7C.6 – Building Form and Facades		
All building facades at ground level are to be designed to avoid the creation of entrapment areas.	Compliance is demonstrated.	**YES**
No single wall plane is to exceed 81m^2 in area.	The north-western side of the proposed carpark area, has an area of	**NO**

	approximately 140m^2.	
The following are to be avoided on all building elevations: i) large flat walls; ii) undifferentiated window openings; iii) applied treatments; iv) one single predominant finish or material.	Long walls on the side elevations result from the above ground car parking.	**NO**
All facades are to place entries, habitable room windows, and balconies so that they maximise outlook and passive surveillance of the street and to common areas surrounding the building.	Compliance is demonstrated.	**YES**
All building elements including shading devices, signage, drainage pipes awnings/colonnades and communication devices are to be coordinated and integrated into the overall facade design.	Compliance is demonstrated.	**YES**
Telecommunication structures are to be located within roof structures or basements and not be visible from any road or public domain area.	Compliance is demonstrated.	**YES**
Screening between adjacent apartments is to be integrated into the overall building design.	Screening is integrated.	**YES**
Facade elements that result in poor architectural design outcomes for internal spaces, such as snorkel windows, are not permitted.	Compliance is demonstrated.	**YES**
All facades are to be designed to minimise on-going maintenance and weathering through measures such as: i) selecting appropriate robust materials/finishes; and ii) including appropriate building edge, balcony edge, sill, head and parapet detailing that demonstrates protection from prevailing weather and harsh solar aspects.	Materials are generally robust and encourage higher quality visual outcomes for building performance over the long-term.	**YES**
Facade Articulation		
All building facades are to be articulated with wall planes varying in depth by not less than 6 metres, and supplemented with architectural elements.	There is insufficient articulation on side elevations where the above ground car parking is proposed.	**YES**
Facade articulation is to be well composed with attractive proportions and coherent rhythms and integrated into the building's form and structure. Methods of achieving articulated facades include: i) defining a base, middle and top relating to the overall proportion of the building; ii) expressing the internal building layout or structure, such as vertical bays or party walls; iii) using a variety of window types to create rhythm or express the building uses; iv) using recessed balconies and deep windows to add visual depth; v) use of eaves, louvres and sun shading devices to openings. vi) using elements that cast shadow and accentuate the appearance of depth;	Façade articulation comprises window variation (size and shape), covered balconies with planter boxes. However, bulk and scale is not sufficiently reduced in the centre of the building, where the car parking projects above-ground.	**NO**

vii) using changes of material, texture and colour integrated with the building articulation to break down large or repetitive facades and reduce the bulk and scale of the building.		
Blade walls are not to be the sole element used to provide articulation.	Compliance is demonstrated.	**YES**
All developments are to utilise shading/glare control devices to articulate the facade and contribute to the streetscape. Design solutions can include: i) providing external horizontal shading to north-facing windows, such as eaves, overhangs, pergolas, awnings, colonnades, upper floor balconies, and/or deciduous vegetation; ii) providing vertical shading to east and west windows, such as sliding screens, adjustable louvres, blinds and/or shutters; iii) providing shading to glazed and transparent roofs; iv) integration of shading devices with solar energy collection technology.	Compliance is demonstrated.	**YES**
Building Length		
The continuous length of a single building on any elevation is not to exceed 36 metres.	Maximum building length: 28.9 metres (32.5 metres including balconies)	**YES**
The length of a single building elevation facing the side or rear boundary may exceed 36 metres provided that: i) the façade is recessed in depth and width to appear as distinctive and separate building bays or wings; and ii) the recess is retained as common area with landscaping which includes at least one medium tree (at least 8m canopy diameter at maturity).	Compliance is demonstrated.	**YES**
Balconies		
Balcony or terrace design may incorporate building elements such as pergolas, sun screens, shutters, operable walls and the like to respond to the street context, building orientation and residential amenity. The use of such building elements are not to enable the balcony or terrace to be used as a habitable room.	Compliance is demonstrated.	**YES**
Balconies that run the full length of the building facade are not permitted.	The Level 8 balcony on northern elevation is continuous.	**NO**
Continuous transparent or translucent balustrades are not permitted to balconies or terraces.	Compliance is demonstrated.	**YES**
Balconies are not to project more than 1.5m from the outermost wall of the building facade.	South facing balconies project 3.5 metres.	**NO**
7C.7 – Building storeys		
Sites with the following maximum building heights under the KLEP are to have a maximum number of storeys above the basement as in the table below:	Proposed number of storeys = 8	**NO**

<table><tr><th>Maximum building height</th><th>Maximum number of storeys</th></tr><tr><td>23.5m</td><td>7</td></tr></table> Note: The 1st storey is measured from a maximum 1m above the existing ground level. Also see figure 7C.7-1 in the DCP.		
On steep sites, the size of the floor plate is to reflect the topographic constraints. Note: Smaller stepping floor plates can assist to negotiate the topography. Note: Accommodating building storey levels through excavation and creation of subterranean rooms to ground floor apartments will not be accepted	The size of the floor plate complies with the required setbacks. Although, insufficient stepping has been incorporated into the design to comply with the control above.	**NO**
7C.8 – Top storey design and roof forms		
The top storey of a building is to be designed so that: i) the GFA of the top storey of a residential flat building does not exceed 60% of the GFA of the storey immediately below it; and ii) for the purposes of this section, the top storey applies to the building as a whole and does not apply to the top level of each part of a stepped building. Note: See figures 7C.8-1 and 7C.8-2 in the DCP.	Required GFA of proposed top floor: 553.26m^2 Proposed GFA of proposed top floor: 633.3m^2 (68.7% of the GFA of the level beneath)	**NO**
The top storey of a building is to be set back a minimum of 2.4 metres from the outer face of the floors below on all sides (roof projection is allowed beyond the outer face of the top storey). Note: Lift cores are to be located internally within the building to facilitate the top storey setback	Compliance is demonstrated.	**YES**
The upper storeys of residential buildings are to be articulated with differentiated roof forms, maisonettes or mezzanine penthouses and the like.	The upper storeys are not sufficiently articulated to include stepping, avoid podium floor plates and to comply with Control 1 (GFA).	**NO**
Service elements are to be integrated into the overall design of the roof and not be visible from the public domain or any surrounding development. These elements include lift overruns, plant equipment, air conditioning units, chimneys, vent stacks, water storage, communication devices and signage.	Compliance is demonstrated.	**YES**
Roof design is to respond to solar access and prevailing weather with the use of eaves, skillion roofs, awnings and the like with a minimum overhang of 0.6 metres	Compliance is demonstrated.	**YES**
Where solar panels are provided, they are to be integrated into the roof line or elevation.	Roof Plans fails to annotate location of rooftop PV required by BASIX.	**NO**
Lightweight pergolas, sunscreens, privacy screens and planters are permitted on the roof or podium, provided they are integrated with the building and facade design and do not increase	Compliance is demonstrated.	**YES**

the bulk of the building, create visual clutter or impact on significant views from adjoining properties.		
Roof top gardens for private or communal use are encouraged.	Compliance is demonstrated.	**YES**
7C.9 – Laundry and air clothes drying facilities		
Each apartment is required to have access to an external air clothes drying area, such as a screened balcony, a terrace or clothes lines within the common area. Noe: see Figure 7C.9-1 in the DCP.	Compliance is demonstrated.	**YES**
All external air clothes drying areas are to be screened and not be visible from any public domain area.	Compliance is demonstrated.	**YES**
Storage volume calculation within laundries is to exclude the space required to accommodate a washing tub, washing machine and dryer.	Compliance is demonstrated.	**YES**
Where clothes drying is provided within private open space within a communal open space, its area is to be additional to that required for the private open space or communal open space.	Compliance is demonstrated.	**YES**
7C.10 – Fencing		
Front boundary fences and walls (to a public street) and side boundary fences within the street setback are not to be higher than: i) 0.9 metres if of closed construction (such as masonry, lapped and capped timber or brushwood fences); or ii) 1.2 metres if of open construction (such as open paling and picket fences). Note: Open fencing includes: panels set into a timber frame or between brick piers, where any solid base is not taller than 0.9m, and panels are spaced pickets, palings, or lattice.	A 1.6 metres high fence proposed to Merriwa Street is inconsistent with the streetscape.	**NO**
Fences and walls are to step down and follow the natural contours of the site.	Compliance is demonstrated.	**YES**
Hedges and shrub planting are preferred to the street frontage, but no higher than 1.2 metres along the entire front boundary, or 1.8 metres on a site fronting a busy road.	Compliance is demonstrated.	**YES**
All fencing is to be designed to highlight entrances and be compatible with buildings and letterbox areas.	Compliance is demonstrated.	**YES**
External finishes for fencing are to be robust and graffiti resistant.	Compliance is demonstrated.	**YES**
Ground floor private open space, courtyard and terrace wall and fence heights are not to exceed i) 1.2 metres to any street frontage ii) 1.8 metres to any side or rear boundary with a maximum 1.2 metres high solid component and a minimum 30% transparent component above.	A 1.6 metres high fence proposed to Merriwa Street is inconsistent with the streetscape.	**NO**
7C.11 – Acoustic Privacy		
Noise levels associated with air conditioning, kitchen, bathroom, laundry ventilation, other	Council's Environmental Health Officer has	**YES**

mechanical ventilation systems and other plant are to comply with the requirements in Part 23.8 of the DCP.	recommended conditions to ensure compliance.	

An assessment of the variations to the design controls identified in the compliance table is provided below.

Built form character

Control 6 of Part 7A.1 requires that development is to integrate with surrounding sites by being of an appropriate scale, retaining consistency with the surrounds when viewed from the street, public domain or adjoining development; minimising overshadowing; and integrating built form and soft landscaping (gardens and trees) within the tree canopy that links the public and private domain throughout Ku-ring-gai.

The objectives of the controls are to improve the design quality of residential flat buildings and to ensure that the building scale and setbacks are sensitive to the built environment and contribute to the landscape character.

The building proposes excessive bulk and scale due to the non-compliant building height and non-compliant number of storeys and the three levels of above-ground parking. As a result, the proposal does not minimise visual bulk, particularly when viewed from the downslope interface with lower density dwellings on the southern side of Merriwa Street.

7A.5 – Site coverage

The proposal has a site coverage of 1,155.5m^2 (41.48%), whereas KDCP Part 7A.5 Control 1 permits a maximum site coverage of 835.8m^2 (30%).

The objectives of the control relate to ensuring that the development is consistent with the landscape and built character of the area, provision of viable deep soil landscaping and minimising stormwater run-off. The objectives of the control seek to ensure development is consistent with the desired future landscape and built character of the area, protect and improve the tree canopy within Ku-ring-gai, provide viable deep soil landscaping within developments and between residential developments on neighbouring sites, minimise impervious surfaces that generate stormwater runoff, provide adequate spaces between buildings for common areas that support quality gardens around the building to ensure a balance between built form and landscaped area.

The proposal does not comply with the objectives of the site coverage control and results in other cumulative non-compliances with the KDCP, which overall contributes to the unacceptable impacts of the development and its inappropriate bulk and scale that is not balance with soft landscaping reflective of the desired future character.

7A.6 – Deep soil landscaping

The proposal fails to comply with the 50% deep soil requirement of Control 1, Part 7A.6 of the DCP. The actual deep soil area proposed with minimum 2m dimensions is approximately 1095.4m^2 (39.3%).

The objectives of Part 7A.6 seeks to ensure landscaping contributes to the character of Ku-ring-gai, consolidated deep soil zones of adequate area through quality planning and building design, to provide landscaping that is appropriate to the scale and context of the development, retain habitat for native indigenous plants and animals, create high quality landscape areas through tall and medium sized trees, ensure deep soil is within common areas, ensure spaces between buildings sustain large trees that contribute to Ku-ring-gai's garden setting and enable infiltration and reduces stormwater runoff.

If the retaining walls to the north-western set of steps are deleted, allowing path/steps to be included within the calculations, the approximate deep soil area could be increased to 40.6% (1133.2m2). Suspended/piered steps over existing ground levels would provide additional deep soil for tree roots.

A 259.8m^2 shortfall would remain and require considerable amendments to the design to increase the total deep soil. The proposal does not include sufficient deep soil areas within the building setbacks and separation controls, which is partially attributable to the site coverage non-compliance.

For the following reasons, the objectives of the control are not achieved:

- The proposal provides insufficient deep soil and landscape plantings to ensure the landscape character is maintained, softening the built form and to minimise tree impacts, contrary to Objectives 1, 2, 3, 4, 5, and 7 and Controls1, 2, 3 and 8.
- The proposal does not provide landscaping that is appropriate to the scale and context of the development.

7B.1 – Car parking provision

Control 1 requires that all residential flat developments are to provide on-site car parking within basements**.** The proposed development details three levels of aboveground car parking that contributes to unnecessary bulk and scale, resulting in a non-compliant gross floor area and reduced opportunities to provide articulation to the side elevations.

The objectives of the control cannot be met unless the car parking is provided in accordance with Council requirements, i.e. at basement level.

7B.2 - Bicycle parking

The applicant has failed to indicate on the plans where bicycle parking is provided. Although space exists within the proposed development to provide this infrastructure, the spaces must be designed to AS2890.3 standards and this cannot be determined until a specific location is detailed on the plans. *Objective 3J-2 ADG* also requires this outcome to be demonstrated on the plans.

7C.4 Apartment mix and accessibility

Two ground floor apartments are proposed on the Merriwa Street frontage, 1 x 3 bedrooms and 1 x 4 bedrooms. This does not comply with Part 7C.4 Control 1 that specifies a range of 1, 2 and 3 bedroom apartments on the ground floor must be provided. As the proposed development proposes only two ground floor units, having a total of 7 bedrooms between them, the unit mix could be reconfigured to provide more housing choice and diversity. For example, 1 x 3 bedroom and 2 x 2 bedroom apartments.

7C.6 – Building Form and Facades

The objectives of Part 7C.6 seek well designed buildings of high architectural quality, a built form which is clearly articulated and detailed to reduce the bulk and scale, to limit unarticulated length of buildings, to create a garden setting for the building, environmentally responsive facades, integrate building elements into the overall building form, to ensure services are concealed, contribute to the safety of the public domain, façade openings directly relate to the street frontage and to the common open landscaped gardens, provision of integrated private open spaces, ensure openings and articulation on the elevations do not compromise the liveability of the internal areas.

For the following reasons the objectives of the control are not achieved:

- The proposal is of a significant bulk and scale which will dominate the adjoining properties. The building lacks articulation, which is directly related to not providing parking within a basement, as noted earlier, which creates a wall plane in excess of 81m^2, contrary to the DCP.
- The built form dominates the site and is not in keeping with the envisaged landscape character given the bulk and scale non-compliances and shortfall of deep soil landscaping.
- The level 8 balcony is continuous along the entire northern elevation and relies on planter

boxes for softening.
- South facing balconies project 3.5 metres from the building façade.

7C.7 – Building storeys

Part 7C.7 seeks to ensure that buildings are responsive to the site, provide for quality dwelling interior spaces and private open space areas, ensure roof articulation, lift overruns and services are incorporated into the allowable building height and to ensure additional height is available at the ground level to resolve the relationship of the building to the topography.

Control 1 of Part 7C.7 specifies buildings to have a maximum seven storeys. Control 2 specifies that on steep sites, the size of the floor plate is to reflect the topographic constrains. Stepping floor plates can assist to negotiate site topography but accommodating building storey levels through excavation and creation of subterranean rooms to ground floor apartments will not be acceptable.

The objective of the control is to ensure that buildings are responsive to the site, ensure roof articulation, lift overruns and services are integrated within the allowable building height, and to ensure additional height is available at ground level to solve the relationship of the building to the topography.

The proposed building is 8 storeys, which does not step down the site. For the following reasons the relevant objectives of the control are not achieved:

- The proposed built form along with FSR, building height, setback and deep soil non-compliances demonstrate that the proposal is an overdevelopment of a highly constrained site.
- The proposal results in a built form which is not responsive to the site topography.
- Rather than reducing the scale of the built form to adapt to the attributes of the site, the proposal has maximised the development on the site, which results in built form and amenity impacts to the detriment of both future residents of the development and those of adjoining properties.

7C.8 - Top storey design and roof forms

The proposed development will have a gross floor area of 633.3m^2 at Level 8. Whereas KDCP Part 7C.8 Control 1 requires the GFA of the top storey of a residential flat building to not exceed 60% of the GFA of the storey immediately below it. In this instance, the top floor (Level 8) proposes a GFA which equates to 68.7% of the GFA at Level 7.

To ensure the top storey minimises overshadowing and complies with objective 2 in this part, additional solar modelling is required to demonstrate the impacts of the non-compliant building height at level 8. Similarly, where lift overruns and service elements breach the allowable building height, there is insufficient evidence to demonstrate that no adverse overshadowing will occur as a result of this design.

Ku-ring-gai Development Control Plan

Section B

Part 14 – Urban precincts and sites (Part 14D – Gordon Local Centre)

The site is within the Gordon Centre Urban Precinct. The relevant provisions of Section D are addressed below and within the Part 7 and Part 8 development compliance tables above as many aspects the development controls overlap:

Urban precincts and sites

The proposed development supports desired future character of the mixed-use precinct by activating the Fitzsimmons Lane Frontage and integrating residential and commercial tenancies.

Local centre building setbacks

The proposed development complies with the primary setback controls per Figure 14D.4-1, as follows:

- Merriwa Street: 16 metres to building line (12.5 metres to balconies)
- Fitzsimmons Lane: 6 metres to building line

Local Centre Built Form

The development proposes ground floor commercial tenancies on Fitzsimmons Lane which will assist in activating the laneway. However, the proposed ground floor residential use to Merriwa Street is not consistent with a supporting 'active use'. A Clause 4.6 request to vary the development standard in Clause 6.7 of the KLEP 2015 has been submitted in support of this variation.

- Fitzsimmons Lane: Principal active frontage

KDCP Definition: a principal active frontage *is located on primary streets within the centres and supports a wide variety of uses and activities on the ground floor and has a very open and public presence (i.e. windows and doors).*

- Merriwa Street: Supporting active frontage

KDCP Definition*: a supporting active frontage is located on primary streets or secondary streets or lanes. This frontage will support active uses at ground level however it is acknowledged that vehicle and service access will be a requirement.*

Local Centre Public Domain, Pedestrian Access, Car parking and service areas

In keeping with the activation of Fitzsimmons Lane as the principal active frontage, the proposed development is considered to satisfy the objectives of this clause by proposing vehicular entrance from Merriwa Street.

Per Figure 14D.6-1 in Part 14D.6 of the KDCP, as required, the proposed development provides pedestrian access through the site within both the western and the eastern setback areas.

Ku-ring-gai Development Control Plan - Section C

Development Control	Proposed	Complies
Part 21 General Site Design		
21.1 – Earthworks and slope		
Development consider site topography, drainage, soli landscapes, flora, fauna and bushfire hazard by: • Stepping buildings down the site • Locate finished ground level as close to the natural ground level as practicable • Level changes to occur primarily within building footprint • Minimum 0.6 metres width between retaining walls • Maintain existing ground level within 2m from any boundary • Limit slope for embankments to 1:6 (grassed) and 1:3 (soil stabilising vegetation) • No fill and excavation within sensitive environments • Minimise altered groundwater flows	The proposed development is located as close to existing ground level and interpolated ground level as possible. The slope within the side setbacks is managed effectively via transitional retaining walls and pedestrian staircases. Where fill is proposed up to the side boundaries, this is a necessary response to the existing excavated levels on the site.	**YES**

21.2 – Landscape Design		
The site planning and design of developments is to: i) retain and enhance indigenous vegetation, biodiversity corridors and existing natural features on the site including trees, shrubs and groundcovers, soils, rock outcrops and water features. These provide habitat, breeding sites, food and shelter for a wide variety of life forms and ecological processes that support life and define the character of the locality. ii) retain significant and visually prominent trees and vegetation that contributes to neighbourhood character; iii) Retain habitat within the site including:- drainage features and damp areas;- rock outcrops- hollow-bearing trees;- areas of leaf litter; - bushrock.	Compliance is demonstrated.	**YES**
Landscape design is to demonstrate consideration of: i) the proximity of trees to buildings, walls and other structures on site and on adjoining sites; ii) the proximity of trees to stormwater, electricity, gas, sewer and other services; and iii) the potential hazard of planting types and densities on sites prone to bushfire risk (refer to Planning for Bushfire Protection 2019).	Compliance is demonstrated.	**YES**
Existing ground level are to be maintained beneath the Tree Protection Zone of trees to be retained.	Compliance is demonstrated.	**YES**
7. Vegetation retention is to consider the following: i) healthy specimens that have a high Useful Life Expectancy are to be the first priority for retention; ii) trees and vegetation within heritage items or heritage conservation areas are to be assessed in terms of heritage significance.	Compliance is demonstrated.	**YES**
Part 22 - General access and parking		
22.1 – Equitable Access		
Compliance with DDA demonstrated Entry access ramps located within the site and does not dominate the front façade Access ways for pedestrians and for vehicles are separated	Compliance is demonstrated.	**Yes**
Residential only Multi Dwelling Housing, Residential Flat Buildings and Shop Top Housing within Mixed Use developments provide access to, and between, dwellings and parking in accordance with the Livable Housing Guidelines as stipulated in Part 6 Multi Dwelling Housing, Part 7 Residential Flat Buildings and Part 8 Mixed Use Development.	Compliance is demonstrated.	**YES**

22.2 – General vehicle access		
• Minimise width and number of vehicle access points • Access driveways set back at least 10 metres from street intersections and 3 metres from pedestrian entrances • Vehicle and pedestrian access to buildings clearly distinguished and separated at l • Vehicle crossing width is acceptable for intensity of use proposed • Vehicles must exit in a forward direction • Vehicle entries are integrated into the external façade and are finished in a high quality material • Retaining walls associated with driveways maximum height of 1.2 metres • No driveways are longer than 30 metres unless a passing bay is provided	Vehicular access is provided from Merriwa Street and generally satisfies these controls.	**YES**
Maximum driveway width = 6 metres	Proposed: 8.2 metres.	**NO**
Maximum driveway length = 30 metres	Proposed: 17.6 metres.	**YES**
22.3 – Basement car parking		
Logical and efficient basement design AS2890.1	Compliance is demonstrated.	**YES**
Appropriate floor to ceiling heights and ventilation provided: • 2.5 metres for parking area for people with a disability; • 2.6 metres for residential waste collection and manoeuvring area • 4.5 metres for commercial waste collection and manoeuvring area	Proposed ceiling heights for carpark areas: • Carpark areas: 2.88 metres • Waste collection area: 3.2 metres	**YES**
Basement is fully tanked	Compliance is demonstrated	**YES**
Unimpeded access to visitor parking and waste recycling rooms	Compliance is demonstrated	**YES**
Ventilation grilles and screening devices are integrated into the landscape design	Compliance is demonstrated	**YES**
Vehicles access ways are not in close proximity to doors and windows of habitable rooms	Sufficient distance is provided between the driveway and windows of Unit 102	**YES**
Safe and accessible intercom access provided	Compliance is demonstrated	**YES**
22.4 – Visitor parking		
Visitor parking located behind a security grille with an intercom system to gain entry At least one visitor space is accessible and designed in accordance with AS2890.6	Compliance is demonstrated.	**YES**

22.5 – Parking for people with a disability		
Accessible spaces are signposted and have a continuous path of travel to the principal entrance or a lift.	Compliance is demonstrated	**YES**
Non-residential development provides accessible parking as follows: Type of facility — Rate of provision *Retail/commercial* — 1-2% *Civic/community centres* — 2-3 *Recreational facilities* — 2-3% *Schools* — 2-3% *Tertiary Education* — 2% *Entertainment* — 3-4% *Hospitals* — 3-4% *Medical centres* — 3% *Other uses* — At least 1%	• Residential: 10 (18.5%) • Commercial: 1 (14.3%) One accessible visitor space is also proposed.	**YES**
22.6 – Pedestrian Movement within Car Parks		
Pathways designed in accordance with AS1428.1	Compliance is demonstrated.	**YES**
Marked pedestrian pathways have clear sightlines, appropriate lighting, are visible, conveniently located and constructed of non-slip material	Compliance is demonstrated.	**YES**
22.7 – Bicycle Parking and facilities		
Bicycle parking and storage facilities satisfy AS2890.3	Bicycle parking is not clearly delineated.	**NO**
Bicycle access paths have a minimum width of 1.5 metres	Insufficient information has been provided to enable assessment.	**NO**
Required parking rates: Commercial rates: • 1 space per 33m2 of GFA • 1 courier space to be provided within a convenient location. Residential rates (Per Part 7 of the DCP): • Two bedrooms: o Minimum rates: 1 space per dwelling o Maximum rates: 1.25 spaces per dwelling • Three bedrooms: o Minimum rates: 1.4 spaces per dwelling o Maximum rates: 2 spaces per dwelling • Four bedrooms: o Minimum rates: 1.4 spaces per dwelling o Maximum rates: 2 spaces per dwelling	Compliance is demonstrated.	**YES**
Part 23 – Building Design and Sustainability		
23.1 – Social Impact		
Social Impact Statement required/lodged	Compliance is demonstrated.	**YES**

23.3 – Sustainability of Building Materials and 23.4 – Materials and Finishes		
External walls constructed of high quality and durable materials	Compliance is demonstrated.	**YES**
Use of materials and colours creates well-proportioned facades and minimises visual bulk.	Compliance is demonstrated.	**YES**
23.5 – Roof Terraces and Podiums		
Podiums and roof terraces are trafficable and support landscaping.	Compliance is demonstrated.	**YES**
Roof & terrace common areas design encourage usage.	Compliance is demonstrated.	**YES**
23.6 – Building Services		
Services and related structures are appropriately located to minimise streetscape impact.	Compliance is demonstrated.	**YES**
In mixed use precincts substations and fire hydrants are not visible from the primary and principal street frontages	Compliance is demonstrated.	**YES**
Air-conditioning units are well screened and do not create adverse noise impacts.	Compliance is demonstrated.	**YES**
23.7 – Acoustic Privacy		
Design minimises impact of internal and external noise sources.	Subject to conditions, compliance can be achieved.	**YES**
Noise levels associated with air conditioning, kitchen, bathroom, laundry ventilation, or other mechanical ventilation systems and plant either as an individual piece of equipment or in combination shall not be audible within any habitable room in any residential premises before 7am and after 10pm. Outside of these restricted hours noise levels associated with air conditioning, kitchen, bathroom, laundry ventilation, or other mechanical ventilation systems and plant either as an individual piece of equipment or in combination shall not emit a noise level greater than 5dB(A) above the background noise (LA90, 15 min) when measured at the boundary of the nearest potentially affected neighbouring properties. The background (LA90, 15 min) level is to be determined without the source noise present. Note: Council requires an acoustic assessment be undertaken for multi-dwelling housing, residential flat buildings, mixed-use development, non-residential buildings, and child care centres. Council may require an acoustic assessment be undertaken for dwelling houses and secondary dwellings. Assessment must be undertaken by a suitably qualified acoustic consultant to assess compliance with the above criteria. Recommended noise attenuation measures must be included in this report where applicable.	Subject to conditions, compliance can be achieved.	**YES**
23.8 – Visual Privacy		
Visual privacy maintained for occupants and for neighbouring dwellings.	Compliance is demonstrated.	**YES**

23.10 – Construction, Demolition and Disposal		
Satisfactory Environmental Site Management Plan.	Subject to conditions, compliance can be achieved.	**YES**
Part 24 Water Management		
For detailed discussion refer to Development Engineer referral above.	Subject to conditions recommended by Council's Development Engineer, the proposal is capable of satisfying this part.	**YES**
Part 25 Waste Management		
All waste and recycling facilities are to comply with the NCC and all relevant Australian Standards.	Compliance is demonstrated.	**YES**
During the design of the development, construction waste is to be minimised by: i) using recycled materials, ii) selecting materials that reduce waste or do not require disposal, or iii) can be reused or recycled in the future; and designing with minimal site disturbance by avoiding unnecessary excavation or fill.	Compliance is demonstrated.	**YES**
All waste and recycling storage containers are to be stored within the boundary of the subject site.	Compliance is demonstrated.	**YES**
All putrescible and non-putrescible waste materials stored in any waste and recycling room or at centralised collection points are to be contained in approved rigid containers supplied by the Council.	Compliance is demonstrated.	**YES**
No compaction equipment is to be used for any sized bin.	Compliance is demonstrated.	**YES**
Part 25A.2 Storage Rooms		
Sufficient space is to be provided within the premises for the storage and manoeuvring of the number of bins required to store the volume of waste and recycling materials.	Compliance is demonstrated.	**YES**
Sufficient space is to be provided to adequately house any additional equipment to handle or manage the waste generated from the development.	Compliance is demonstrated.	**YES**
For buildings exceeding four (4) storeys which contain a residential component, where a chute system is proposed, a fully enclosed waste and recycling materials compartment is to be provided within each storey of the building. The facility is to be designed to contain the waste chute hopper and the number of recycling storage bins equivalent to 2 x 240 litre bins for every 4 units per storey.	Compliance is demonstrated.	**YES**
Part 25A.3 Access to collection point		
The location of the waste and recycling room is to be conveniently accessible and have unimpeded access for both occupants and collection service operators. In the event that the proposed	The waste and recycling storage room will be located	**YES**

development is protected by a security system and/or locked gates, the waste and recycling room/s are to have unimpeded access for the collection service providers. Where security gates are provided to the development, gates are to be accessible by Council's master key.	approximately five metres walking distance from the nearest internal elevator.	
The waste and recycling collection point is to be located on a level surface away from gradients and vehicle ramps, with the path of travel being free from any floor obstructions, such as steps, to allow for the transfer of wheelie bins to and from the storage room to the collection vehicle.	Compliance is demonstrated.	**YES**
The vehicle access road leading to and from the collection point in a waste and recycling room is to have a minimum finished floor to ceiling height of 2.6m for residential waste rooms and 4.5m for commercial waste rooms for the entire length of travel within the building. This clearance is to be kept free of any overhead conduits, ducting, services or other obstructions.	A 3.2 metres ceiling clearance will be provided within the basement carpark.	**YES**
The Waste Management Plan (WMP) are to describe how the waste management system is to be managed and who is responsible for each stage of the process.	Compliance is demonstrated.	**YES**
Part 25A.4 Construction of Waste and Recycling rooms		
The floor of any waste and recycling room is to be: i) constructed of either concrete which is at least 75mm thick; ii) or other equivalent material; and graded and drained to a floor waste which is connected to the sewer.	Compliance is demonstrated.	**YES**
The walls of any waste room, recycling room and waste service compartment are to be constructed of solid impervious material and cement rendered internally to a smooth even surface coved at all intersections.	Compliance is demonstrated.	**YES**
All waste and recycling rooms are to be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock. This does not include waste and recycling service compartments located on residential floors of multioccupancy dwellings.	Compliance is demonstrated.	**YES**
A close-fitting and self-closing door that can be opened from within the room is to be fitted to all waste and recycling rooms.	Compliance is demonstrated.	**YES**
All waste and recycling rooms are to be constructed to prevent the entry of vermin (eg. no gaps under access doors etc).	Compliance is demonstrated.	**YES**
All waste and recycling rooms are to be ventilated by either i) mechanical ventilation system exhausting at a rate of 5L/s per m2 of floor area, with a minimum rate of 100L/s; or ii) permanent, unobstructed natural ventilation openings direct to the building exterior, not less than one-twentieth (1/20th) of the floor area.	Compliance is demonstrated.	**YES**
Meters and piping are not to be located in the waste and recycling room.	Compliance is demonstrated.	**YES**

All waste and recycling rooms are to be provided with artificial light controlled by switches located both outside and inside the rooms.	Compliance is demonstrated.	**YES**
Clearly printed “NO STANDING” signs are to be affixed to the external face of each waste and recycling room.	Compliance is demonstrated.	**YES**
Clearly printed signage is to be affixed in all communal waste collection and storage areas, specifying which materials are acceptable in the recycling system and identifying the location of waste and recycling storage areas, as well as waste and recycling service compartments.	Compliance is demonstrated.	**YES**
Waste management systems are not to be visible from outside the building.	Compliance is demonstrated.	**YES**
Part 25A.5 Residential Buildings		
Centralised waste collection points are required in the following circumstances: i) Attached dwellings where the number exceeds two dwellings in total; and ii) Where site characteristics (eg. steep sites, narrow street frontage) make access to the street difficult for individual unit holders and where placement of bins on the street frontage is assessed as dangerous for either the public or service personnel, or would have a detrimental effect on the street amenity.	Centralised waste storage areas for both residential and commercial premises are to be located within the basement. Individual waste storage (except for necessary temporary storage within apartments) is not proposed.	**YES**
If there are four or more dwellings and basement parking is provided, Council’s standard waste and recycling service is as follows:	Storage spaces have been designed to accommodate bins in accordance with the requirements of this control.	**YES**
All new dwellings are to be designed to allow the internal accommodation of one receptacle to collect waste and another to collect recycling, each with the capacity to store one day’s worth of materials.	Compliance is demonstrated.	**YES**
Centralised waste and recycling rooms are to be provided in the basement that has sufficient capacity to store all waste and recycling likely to be generated in the entire building in a week.	Compliance is demonstrated.	**YES**
The full path of travel to and from the waste and recycling room is to be designed to allow a 6.0m rigid vehicle, weighing GVM 7 tonnes, to enter and exit the development in a forward direction.	The basement is designed to enable forward access and egress by a waste management vehicle.	**YES**
The maximum grade of any access road leading to a waste and recycling room is not to be more than 1:5 (20%). The turning area at the base of any ramp is to be sufficient to allow for the manoeuvre of a 6.0m rigid vehicle to exit the building in a forward direction.	Compliance is demonstrated.	**YES**
The minimum floor to ceiling height within the vehicle accessway leading to and from the waste and recycling room(s) is to be 2.6 metres for the	A 3.2 metres floor to ceiling clearance will be	**YES**

entire length of travel required within the development.	provided within the part of the basement to be allocated for waste collection.	
Noise attenuation measures are required to ensure that the use of, and collection from, the waste and recycling room do not give rise to "offensive noise" as defined under the Protection of the Environment Operations Act 1997.	Garbage will be stored and collected from within the basement.	**YES**
Mixed Use Buildings		
In a mixed use development, the waste handling, storage and collection system from residential waste and commercial waste is to be completely separate and self-contained.	Segregation of waste locations are proposed.	**YES**
There are to be at least two separate centralised waste and recycling storage areas, one for residential waste and one for commercial. The Waste Management Plan is to identify the collection points and management systems for both residential and commercial waste streams.	Compliance is demonstrated.	**YES**
An area is to be nominated on relevant plans for on-site composting and/or worm farm for the residential component of the mixed-use building.	Compliance is demonstrated.	**YES**
Where there is a residential component, any new dwellings are to be designed to allow the internal accommodation of one receptacle to collect waste and another to collect recyclable materials, each with the capacity to store one day's worth of materials.	Compliance is demonstrated.	**YES**
Bulky Goods Waste		
All Residential Flat Buildings, Multi Dwelling Housing and Mixed-use developments are to provide an on-site Bulky Goods Storage Area that is. i) located within the basement of the building; and ii) located directly adjacent to the basement vehicular entry; and iii) be separate from the general Waste Storage Area; and iii) be screened and not be visible from the street or any public area outside the basement; and iv) not be accessible to the general public.	A dedicated 10.1m^2 bulky goods storage area is proposed within the basement.	**YES**
Min 6m^2 bulk goods storage area	Proposed: 10.1m^2	**YES**
The Bulky Goods Storage area is to be: i) a room or a caged area; and ii) have a minimum doorway width of 2 metres; and iii) have instructive signage regarding storage and collection of bulky items.	Compliance is demonstrated.	**YES**
The instructive signage displayed at the Bulky Goods Storage area is to: i) provide contact details for the Building Manager; and ii) clearly label the room as 'Bulky Goods Storage'; and iii) provide instruction on the storage of bulky goods; and iv) indicate the route to the 'Bulky Goods	Compliance is demonstrated.	**YES**

Collection Point'; and v) provide instruction on the timing and responsibility of movement of bulky goods from the Bulky Goods Storage area to the on-site Bulky Goods Collection Point.		

Ku-ring-gai Contributions Plan 2010

A condition requiring payment of a contribution would be required, were the application to be recommended for approval.

REGULATION

Section 61(1) of the Environmental Planning & Assessment Regulation 2021 requires the consent authority to consider the provisions of *Australian Standard AS 2601-2001: The demolition of structures.* The demolition of the existing structure will be carried out in accordance with a work plan and statement of compliance that will be required to be submitted to the Principal Certifier prior to the commencement of any works. A condition to this effect would be included were the application to be approved.

LIKELY IMPACTS

The likely impacts of the development have been considered within this report and are deemed not to be acceptable.

SUITABILITY OF THE SITE

The site is not suitable for the proposed development for the reasons given throughout the report.

PUBLIC INTEREST

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by the Panel ensuring that any adverse effects on the surrounding area and the environment are minimised. The proposal has been assessed against the relevant environmental planning instruments and is deemed to be unacceptable. On this basis, the proposal is contrary to the public interest.

CONCLUSION

Having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, the proposed development is considered to be unsatisfactory.

RECOMMENDATION

PURSUANT TO SECTION 4.16(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

THAT the Sydney North Planning Panel, as the consent authority, is of the opinion that the variation requests submitted under Clause 4.6 of the Ku-ring-gai Local Environmental Plan (KLEP) to vary the height of building development standard in Clause 4.3(2) and to vary the floor space ratio development standard in Clause 4.4(2), fail to demonstrate that compliance is unreasonable and unnecessary in the circumstances of the case and has not identified sufficient environmental planning grounds to justify the variation to the development standard which is not in the public interest.

THAT the Sydney North Planning Panel, exercising the functions of Ku-ring-gai Council under Section 4.16 of the Environment Planning and Assessment Act 1979, refuse development consent to eDA0223/24 for demolition of existing structures, construction of a mixed-use development (shop-top

housing addressing Fitzsimmons Lane) comprising 27 residential apartments, 3 commercial tenancies, basement car parking, tree removal, associated works and strata subdivision at, 7-9 Merriwa Street, Gordon for the following reasons:

1. Excessive building height and inadequate Clause 4.6 variation request

The proposal exceeds the maximum height of buildings development standard pursuant to Clause 4.3(2) of the KLEP and the applicant's request seeking a variation to the development standard is not well founded.

Particulars:

a) Pursuant to Clause 4.3(2) of the KLEP, the maximum building height prescribed for the site is 23.5 metres.

b) The proposed development details a maximum building height of 25.99 metres which exceeds the maximum height of buildings development standard by 5.44 metres, a 27.2% exceedance of the numerical development standard.

c) The applicant's variation request does not demonstrate that compliance with the development standard is unreasonable or unnecessary or that there are sufficient environmental planning grounds to justify contravening the development standard, for the following reasons:

   i. The non-compliant building height will result in a built form that does not suitably transition between the higher and lower density residential zones that are located on the southern side of Merriwa Street.
   ii. The non-compliant building height is not compatible with the size of the land to be developed, as it is higher than the existing neighbouring development.
   iii. The proposal is therefore inconsistent with Objectives (1)(b) and (c) of Clause 4.3 of KLEP.
   iv. The variation request has not demonstrated that compliance is unreasonable and unnecessary in the circumstances.
   v. The variation request has not demonstrated that there are sufficient environmental planning grounds to justify the contravention of the development standard.
   vi. The variation request has failed to demonstrate why a compliant building height is not practical or achievable.
   vii. Control 1 of Part 7C.7 in KDCP specifies that a maximum of 7 storeys are permitted on the site, whereas the proposed number of storeys is 8.
   viii. Control 2 of Part 7C.7 in KDCP specifies that on steep sites the floor plate is to reflect the topographic constraints, which may require smaller and/lor stepped floor plates to negotiate the topography. The proposed development does not respond to this control.

2. Excessive floor space ratio and inadequate Clause 4.6 variation request

The proposal contravenes the floor space ratio development standard in Clause 4.4(2) of the KLEP and the applicant's request seeking a variation to the development standard is not well founded.

Particulars:

a) Pursuant to Clause 4.4(2) of the KLEP, a maximum FSR of 2:1 is permitted on the subject site. The proposed FSR for the development is approximately 2.59:1, resulting in an exceedance of the maximum permitted FSR of 29.5%.

b) The variation request is not acceptable as it does not demonstrate that compliance with the development standard is unreasonable or unnecessary or that there are sufficient environmental planning grounds to justify contravening the development standard, for the following reasons:

   i. The proposal fails to achieve the relevant objective in Clause 4.4(1a) of the

KLEP, which states:

(a) to enable development with a built form and density that is compatible with the size of the land to be developed, its environmental constraints and its contextual relationship.

ii. The FSR exceedance results in excessive site coverage and deficient deep soil landscaped areas.
iii. The FSR exceedance is attributable to three levels of above ground car parking, which is not consistent with Council's parking requirements prescribed in KDCP.
iv. The non-compliant FSR results in acceptable bulk and scale when viewed from neighbouring properties and a built form which is not consistent with the desired future character of the area.
v. The non-compliant FSR results in additional site coverage and insufficient deep soil landscaping for a site of this size.
vi. The site is highly constrained by way it's topography, shape, size, and its location upslope of a lower density zone. Where a site is constrained, a highly sensitive design is required in conjunction with a comprehensive site analysis which may mean that the maximum development potential of a site is not achieved.
vii. The extent of the non-compliance is considerable and is directly attributable to the above ground car parking.

c) For the reasons set out above, the proposal is inconsistent with Objective (a) of the FSR development standard, which requires a built form and density that is compatible with the size of the land to be developed, its environmental constraints and contextual relationship.

d) Consequently, the proposal is not in the public interest because it is inconsistent with the objectives of the FSR development standard pursuant to Clause 4.4(1)(a) of KLEP.

3. Undesirable character

The site analysis fails to encourage good site planning informed by an understanding of the site's context, fails to adequately consider the amenity of users of the subject site and adjoining land including the potential zone interface impacts and fails to ensure that the design response is well founded and responsive to the context of the site (KDCP Part 2.1, Objectives 2, 5, 7 and 8).

Particulars:

a) The relationship between the proposal and development within the neighbouring lower density zone in terms of the number of storeys, streetscape presentation, bulk and scale has not been adequately considered. This results in a failure to adequately achieve a high standard of amenity for future residents, a failure to adequately minimise impacts on the amenity of neighbouring sites and a failure to adequately ensure that visual amenity is preserved to neighbouring developments (KDCP Part 7A.2, Objectives 7, 8).

b) The site analysis fails to encourage good site planning informed by an understanding of the site's context, fails to adequately consider the amenity of users of the site and adjoining sites including the potential zone interface impacts and fails to adequately ensure that the design response is well founded and responsive to the context of the site (KDCP Part 2.1, Objectives 2, 5, 7 and 8).

4. Non-compliant number of building storeys, top floor design and roof forms

The proposal fails to respond to the high quality characteristics of the neighbourhood and proposes 8 storeys where only 7 storeys are permitted.

Particulars:

a) The proposed 8 storeys is contrary to the roof deign objectives of Part 4N of the ADG, Control 1 in Part 7C.7, Controls 1, 3, 5 and 6 in Part 7C.8 of the Ku-ring-gai DCP .

b) An absence of rooftop solar power is contrary to achieving a passive environmental design and does not achieve objectives 4U-1 and 4U-3 for energy efficiency in the Apartment Design Guide.

c) The proposed development has a gross floor area of 633.3m^2 at Level 8. Whereas KDCP, Part 7C.8, Control 1 requires the GFA of the top storey of a residential flat building to not exceed 60% of the GFA of the storey immediately below it. In this instance, the top floor (Level 8) proposes a GFA of 633.3m^2 which equates to 68.7% of the GFA of the floor level below (Level 7). The variation is significant and is directly attributable to the non-compliant building height on the basis that Level 8 is not permitted and therefore the entire GFA of this level is inconsistent with the Objectives of Clause 4.3 and specifically Objective 1 in KDCP Part 7C.8.

5. Insufficient deep soil landscaping

The proposed development provides inadequate area of deep soil landscaping.

Particulars:

a) The submitted deep soil calculations are incorrect because it has not been calculated in accordance with the deep soil landscape definition within the DCP. The calculation includes non-compliant areas in the side setbacks that are divided by retaining walls, resulting in areas less than 2 metres wide. The deep soil areas between the boundary and the proposed retaining walls result in areas less than 2 metres in width, which are excluded from the calculation.

b) Deep soil is not in accordance with Controls 1, 3 and 4 of Part 7A.6 and its related objectives of the DCP. The required 50% deep soil is 1,392m^2 where the proposal is approximately 1,095m^2 (39.3%) deep soil.

c) An increase to the deep soil area has not been considered, such as if the retaining walls to the north-western set of steps are deleted, allowing path/steps to be included within the calculations, the approximate deep soil area could be increased.

6. Solar access

Insufficient information has been provided to determine solar access impacts.

Particulars:

a) Views-from-the-sun or sun-eye modelling is required to accurately demonstrate overshadowing impacts to 11-15 Merriwa Street and from 1-3 Merriwa Street assuming a complying development building envelope is on both sites. As a result, there is insufficient information demonstrating both the overshadowing impacts of compliant future development from 1-3 Merriwa Street and overshadowing impacts *to* future development on 11-15 Merriwa Street.

7. Design verification statement

The submitted Design Verification Statement, prepared by Aplus Design Group and dated 8 December 2023, has not been prepared in accordance with Section 29 of the EP&A Regulation and Section 147 of the Housing SEPP.

Particulars:

a) The use of the word ‘restrictions’ when referring to Council’s public policy requirements is incorrect. The descriptor used for references to ADG requirements should be described as ‘controls’. This is appropriate and is to be used likewise when referring to local planning policies to ensure impartial descriptors are attributed consistently and accurately describe

public policies.

b) The Design Verification Statement contains largely generic information with only limited examples of specific design decisions needed to describe ‘how’ the design has addressed the SEPP Housing Schedule 9 Design Principles and ADG as required.

8. Provision for future electrification

The following should be accommodated for the development to facilitate increasing electrification and design for the expected life cycle of the development. But has not been detailed on the architectural plans:

Particulars:

a) Maximise rooftop photovoltaic panels, solar power generation and battery storage;

b) Accommodate charging facilities for the increasing use of electric vehicles including cars and e-bikes;

c) Confirm substation capacity for the development and scope for expansion if foreseeable; and

d) Full electrification of cooktops, no gas connections.

9. Public Interest

The proposal is not in the public interest, by reason of the above contentions and the submissions made in objection to the development application.

Particulars:

a) The proposal was notified in the circumstance set out in Part A and a total of 22 submissions have been received objecting to the proposed development. The submissions raised a large number of concerns in relation to the proposed development, a number of which are reflected in the contentions set out above.

b) The proposed development should be refused on the basis of the submissions that have been received by Council to the extent that such submissions are consistent with the contentions set out above (noting that the contentions extend beyond the public concerns raised).

c) The proposed development does not satisfy section 4.15(e) of the EP&A Act.

Brent Pearce
Executive Assessment Officer