
SUPPLEMENTARY 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	20 total submissions (to original notification)
Total Number of Unique Objections	18 unique objections (to original notification)
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	<ul style="list-style-type: none"> • SEPP (Planning Systems) 2021 • SEPP (Housing) 2021 • SEPP (Biodiversity and Conservation) 2021 • SEPP (Transport and Infrastructure) 2021 • SEPP (Resilience and Hazards) 2021 • SEPP (Sustainable Buildings) 2022 • Ku-ring-gai Local Environmental Plan 2015 • Ku-ring-gai Development Control Plan • Ku-ring-gai Contributions Plan 2023
Summary of submissions	<ul style="list-style-type: none"> • Adverse acoustic impacts to neighbouring residential dwellings. • Traffic congestion. • Overshadowing. • Excessive building height. • Excessive bulk and scale.
Attachments	a. Clause 4.6 written request 2025/028224 b. Cover letter 2025/028229 c. Architect's response to solar access and deep soil 2025/028223 d. Amended architectural plans 2025/041227 e. Amended landscape plans 2025/028228 f. Solar analyses 2025/045720 g. BASIX 2025/041229 h. NatHERS Summary Certificate 2025/041228
Report prepared by	Brent Pearce
Report date	18/02/2025

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)? **No**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

PURPOSE OF REPORT

To report back to the Panel Development Application No. eDA0223/2 that was originally reported to the SNPP for determination on 18 December 2024, with a recommendation of refusal. The Panel resolved:

to defer the determination of the matter to allow for the provision and assessment of the following information:

- *Clarification of the height variation sought and updating the Clause 4.6 written request;*
- *Consideration of increased setbacks, deep soil provision and landscaping;*
- *Clarification of solar analysis*
- *Preparation of a comparison between the impacts of a compliant building versus the proposal.*

The Panel requires Council to provide a Supplementary Assessment Report responding to amended information as detailed above and for the matter to be reported to the 5th March 2025 Panel meeting.

The following report is an assessment of the amended plans and information 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:	<ul style="list-style-type: none">- Non-compliant building height. Unsatisfactory Clause 4.6 variation request.- Non-compliant floor space ratio. Unsatisfactory Clause 4.6 variation request (refer to original assessment report)- Excessive bulk and scale.- Excessive site coverage.- Insufficient deep soil area.
Submissions:	N/A - Additional information was not required to be re-notified - refer to Community Consultation section of in this report
Land and Environment Court:	N/A
Recommendation:	Refusal

HISTORY

A Development Assessment Report was considered by the Sydney North Planning Panel on the 18/12/2024, that report had a recommendation for refusal. The main reasons for refusal included excessive bulk/scale, landscaping, solar access, and streetscape character. At the meeting, The Panel deferred consideration of the application as follows:

The Panel considered to matters listed at item 6, the material listed at item 7 and the material presented at the meetings observed at the site inspection listed at item 8 in Schedule 1.

During the public meeting, the Panel heard from one member of the community who wished to address The Panel and then discussed the proposal and Council's reasons for refusal with the Applicant and Council. Following the meeting, The Panel formed the view that key issues could possibly be resolved with the provision of further information and assessment.

The Panel unanimously resolved to defer the determination of the matter until February 2025 to allow for the provision and assessment of the following information:

- *Clarification of the height variation sought and updating of the Clause 4.6 written request;*
- *Consideration of increased setbacks, deep soil provision and landscaping;*
- *Clarification of solar analysis;*
- *Preparation of a comparison between the impacts of a compliant building versus the proposal.*

To allow for urgent progression of the Development Application to determination, the Panel requests:

1. *The Applicant provide the above information to Council and upload it to the Planning Portal by 17th January 2025.*
2. *Council provide a supplementary assessment report responding to the matters above by the 31st January 2025.*
3. *When the supplementary assessment report is received, The Panel will convene a further Panel briefing, which is tentatively scheduled for 12 February 2025, to determine the matter.*

The above dates were revised on 10/01/2025 as follows:

1. Applicant provide the above information to Council and upload it to the Planning Portal by 31 January 2023.
2. Council provide a supplementary assessment report responding to the matters above by the 28 February 2025.
3. The Panel to convene a further briefing to determine the matter on the 5 March 2025.

APPLICANT'S RESPONSE TO DEFERRAL/REQUEST FOR INFORMATION

In response to the deferral by the Panel and its request for additional information, the applicant provided the following information via the NSW Planning Portal on the following dates:

3/02/2025

- A revised written variation request (prepared pursuant to Clause 4.6 of the *Ku-ring-gai Local Environmental Plan 2015* (KLEP 2015)) related to the variation of the building height development standard pursuant to clause 4.3(2) of the KLEP 2015 (**Attachment A**).
- A cover letter (**Attachment B**).
- Architect's written response to solar access and deep soil (**Attachment C**).
- Amended architectural plans (**not attached – see below**).
- Amended landscape plans (**Attachment E**).
- Solar analysis, comprising of 'sun eye diagrams' that included comparisons between the proposed development and a 'compliant building' (i.e. one that complies with key built form controls based upon both existing ground levels and extrapolated contours) (**Attachment F**).

13/02/2025:

- Amended architectural plans (including NatHERS stamp) (**Attachment D**).
- Amended BASIX Certificate (**Attachment G**).
- Amended NatHERS Certificate (**Attachment H**).

CONSULTATION

In accordance with Part 3 of the Ku ring gai 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.

ASSESSMENT OF THE ADDITIONAL INFORMATION

An assessment of the additional information submitted in response to the deferral of the application is provided below:

Building height

The applicant has provided an amended Clause 4.6 variation request (**Attachment A**) to justify the variation to the height of building standard pursuant to Clause 4.3(2) of the KLEP 2015. Due to the sloping topography the extent of the height breach is varied across the site. The applicant has applied the extrapolated ground level method to measure the building height.

Using extrapolated ground levels, the height is proposed to reach a maximum of 25.99 metres. If approved, this would constitute a 2.49 metre / 10.6% variation to the 23.5 metre numerical standard, as can be seen in **Figure 1** below.

Extrapolating the ground levels is an appropriate method to measure the proposed building height in this instance, as the existing commercial building and basement has been developed from boundary to boundary, having existing deep excavation in the side setbacks to accommodate driveways resulting in existing ground levels that do not relate to the adjoining properties.

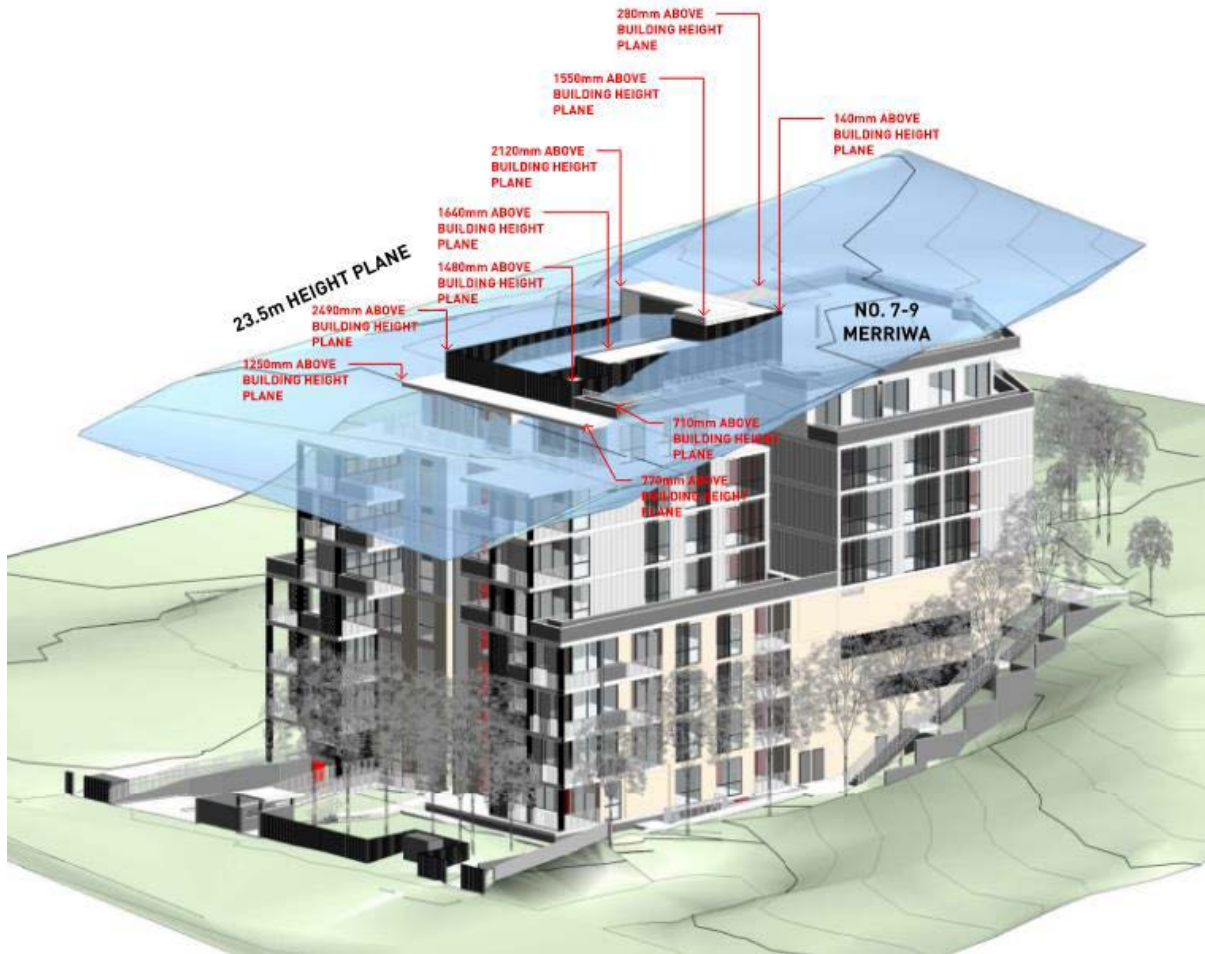


Figure 1: Maximum height variation shown as “2490mm above building height plane” in the SW corner (source: Clause 4.6, revision C Mecone 2025).

Clause 4.6 assessment

Clause 4.6 provides flexibility in applying certain development standards. An assessment of the amended Clause 4.6 variation request to the maximum building height development standard, under Clause 4.3 of the KLEP 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.*

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

The complete Clause 4.6 variation request provided by the applicant is located in (**Attachment A**). The following is an assessment of the applicant's justifications:

The applicant states that the objectives of the standard are achieved notwithstanding non-compliance with the standard. The objectives of Clause 4.3 KLEP 2015 are addressed as follows:

(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,*

The applicant correctly identifies that the subject site is zoned 'mixed use' within the Gordon Centre precinct and provides their interpretation of the anticipated building height as prescribed on the height of buildings map in KLEP 2015. The applicant further suggests that objective 'a' is satisfied because "*except for relatively small proportions of the overall development, the proposal is otherwise consistent with development height and scale envisaged for mixed use precincts surrounding the local centre*".

It is not agreed that the proposed 2.49 metre height variation achieves a progressive transition toward the R3 medium density residential zone located on the southern side of Merriwa Street, where the maximum height of buildings prescribed by the KLEP 2015 is 11.5 metres (properties directly adjacent to No. 7-9 Merriwa Street Gordon). Similarly, the properties located on the southern side of Merriwa Street are not listed as a 'precinct' in Part 14D.1 of the Gordon Local Centre DCP and therefore are reliant on adherence to the development standards to ensure development within the adjacent precinct/s supports and enhance the planned future character of the area. To achieve an appropriate scale and to satisfy objective 'a', the proposed development should be lowered to comply with the 23.5 metre height development standard. 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,*

The applicant notes the height of existing development transitions down from the Pacific Highway in the east towards the lower density zones to the west. The applicant states that the height of existing development "*within this block*" is highly variable and there is "*no transitional character established on the southern end of the subject MU1 zone*".

The claim that there is an absence of a transitional character within the MU1 zone is contested. This environmental planning ground fails to acknowledge the height of existing development on the same block as the subject site and does not demonstrate how the transitional character is absent. The absence of any valid development consents on the adjoining properties is not an environmental planning ground. The

applicant claims that the proposed development will achieve a transitional building height with future development on adjoining sites because *“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”*. However, the focus on the MU1 zoned block fails to demonstrate how the proposed development transitions to the “adjoining lower density zones” located on the southern side of Merriwa Street, which is important and necessary in determining the character.

As a consequence of the above, 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 when the DCP only permits 7. Accordingly, it is not agreed that the proposal satisfies the objective in Clause 4.3(1)(b) relating to “adjoining lower density residential....”.

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

The applicant provides four points to demonstrate how the height and scale of the development is compatible with the size of the subject site, as follows:

- *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.*

Council does not agree with the first dot point. In addition to the height variation, the proposed development 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 the KDCP is 7. Level 8 of the proposed development details a top storey gross floor area (GFA) of 633.3m² or 68.7% of the GFA of the storey immediately below. 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. The variation is inconsistent with the objectives of Clause 4.3 and specifically Objective 1 in KDCP Part 7C.8.

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. This impact

Council does not agree with the second dot-point as 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.

In respect to the third dot point, Council does not agree, as claimed, that the development will *“provide large landscaped and deep soil space”* due to the failure to comply with the 50% deep soil control. Strict compliance with the control would achieve the outcomes of the deep soil control by providing more communal open space (COS) at ground level.

Council does not agree with the fourth and fifth dot-points, as the cumulative impact of the non-compliances outlined above fail to result in a building that is compatible with the future planner character of the neighbourhood.

The submitted Clause 4.6 variation request is not well founded. The applicant has failed to demonstrate that compliance with the development standard is unreasonable and unnecessary in this instance.

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

The complete Clause 4.6 variation request provided by the applicant is located in (**Attachment A**). The following is an assessment of the applicant's justifications (underlined) regarding sufficient environmental planning grounds.

Visual privacy and amenity improvements for communal open space areas

The applicant contends that the elements which breach the height standard include "vertical circulation cores that provide access to the rooftop communal open space area." (COS), then goes on to justify why the COS is provided on the rooftop.

The reasons for locating the communal open space COS on the rooftop are supported by Council. However, the applicant has not explored a design whereby the rooftop COS is located on top of a 7 storey building and Council cannot foresee a substantial reduction in amenity to the rooftop COS, were the number of storeys reduced to 7 to comply with KDCP. The location of COS and considerations pertaining to its location, serviceability etc, are not sufficient environmental planning grounds in and of themselves. Therefore, the applicant has not demonstrated that the COS would experience less amenity or other adverse impacts if it were located on top of a 7 storey building instead.

Consideration of site conditions and amenity

To justify the variation, the applicant describes the site's topography and which parts of the proposed development breach the height standard. A description of the parts of the building that breach the building height standard is not an environmental planning ground. Whilst site constraints are environmental planning grounds, it has not been demonstrated that the subject site's characteristics alone cause the breach of the building height 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. 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 fails to take this outcome into consideration and therefore insufficient regard has been applied to the KDCP.

No significant or unreasonable impacts on the public domain

The applicant addresses impacts to the public domain by listing the retention of existing trees, stepping back of the additional 8th level and suggests that "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".

It is not agreed that the proposed height variation results in an absence of adverse visual impacts to the public domain. Level 8 has not been stepped back sufficiently to avoid being perceptible and overbearing element when viewed from the properties on the southern side of Merriwa Street. Furthermore, the retention of trees at ground level will not off-set the non-compliant height of the building. Vegetation should not be relied upon to disguise the built form; it is a supplementary element. The built form needs to be acceptable by itself because trees and vegetation can change significantly over a short period of time. The role of vegetation is to soften and balance the built form and to scale with the building.

Moreover, it is not agreed that the Merriwa Street frontage is "setback substantially greater" than required 12 metres, rather the front setback measures 16 metres and 12.5 metres to the balconies and is only marginally greater (than the control) and still insufficient to reduce bulk and scale impacts. Furthermore, design outcomes such as setbacks, top floor articulation and retention of trees are required by other controls in the KDCP and compliance is expected regardless. Were the proposed development to consist of 7 storeys, the additional top-floor setback requirements would apply to Level 7 and a KDCP compliant development would therefore present substantially less bulk, and scale compared to the proposed scheme. The applicant has failed to identify an absence of environmental impacts, compared to a compliant building envelope.

The justification put forward by the applicant fails to take this outcome into consideration and therefore insufficient regard has been applied to the KDCP.

Lastly, the proposed development still details insufficient deep soil landscaped area, which suggests the landscape contribution to the streetscape will be undesirable and inconsistent with the planned future character of the area. A deep soil area of 226m² (42%) is an 8% departure from the numerical control and directly impacts the ability to provide high quality landscape outcomes to the streetscape.

No significant or unreasonable impacts on surrounding residential sites

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

The proposal fails to adequately consider the lower density interface zone which requires a heightened degree of sensitivity for the design of the building. 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 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 to follow the topography and when viewed from the rear and side of the site, it presents eight storeys when viewed from Merriwa Street resulting in excessive visual bulk and scale.

The applicant's argument around the lack of amenity or streetscape impacts to adjoining properties is not a sufficient environmental planning ground to justify a breach to the building height standard. The built form is not adequately sited or articulated and results in a built form which is excessive and that will cause detrimental visual, and amenity impacts to the lower density properties on the southern side of Merriwa Street.

The applicant has put forward that the future development potential of neighbouring properties as 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 south of Merriwa Street. 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.

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 justification put forward by the applicant fails to take this outcome into consideration and therefore insufficient regard has been applied to the KDCP.

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 development standard variation to a numerical standard that exceeds 10% or relates to a non-numerical standard and where the estimated development cost (ESD) exceeds \$30,000,000 the development application must be considered by the Sydney North Planning Panel for determination. The original application EDC was greater than \$30,000,000 and this remains the case, as the application has been amended consequently the application will be referred to the Sydney North Planning Panel as the determining authority.

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.

INTERNAL REFERRAL

Landscape

Amended Landscaping plans were submitted along with a written submission from the applicant's architect, refer to **Attachment C**.

The amended landscape plans and written response were referred to Council's Senior Landscape and Tree Assessment Officer who provided the following comments:

Recommendations:

The proposal is not acceptable in the current form as the proposal fails to comply with the deep soil requirement (50%) in Part 7A.6 of the KDCP.

The area of deep soil, with minimum 2m dimension, is insufficient to meet the 50% requirement (1393m²) of the site area (2786m²) to comply with Control 1, Part 7A.7 of the DCP. The proposed deep soil is approximately 1167.3m² (42%).

Planner's response:

The proposed deep soil is approximately 1167.3m² or 42% of the requirement or a shortfall of 8% or 225.7m² from the minimum 50% or 1393m² control. The amended proposal is not supported because the area of deep soil, with a minimum 2 metres dimension, does not comply with Control 1, Part 7A.7 of the DCP nor the underlying objective(s) which seek to provide consolidated deep soil zones of adequate area in all residential development sites through quality planning and building design. Consequently, this remains a recommended reason for refusal.

EXTERNAL REFERRAL

Urban Design

Amended architectural plans, solar analysis and a written submission from the applicant's architect (refer to **Attachments C and D**) were referred to Council's urban design consultant who provided the following comments:

1 Context and Neighbourhood Character	20241028: Satisfied
<p>1. <u>Merriwa Street streetscape</u> – 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.</p> <p>20241028: Resolved for gas meters – hydrant booster location still dominates the Merriwa Street main pedestrian entry point</p> <p>20241118: No change – resolved.</p> <p>2. <u>Fitzsimons Lane streetscape</u> – 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 1m between the north-eastern and north-western corners of the site which is easily</p>	

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 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 – resolved

3. Urban landscape character – the deep soil deficiency will need to demonstrate how Ku-ring-gai's required canopy landscape is to be achieved. The proposed 38% deep soil (to be confirmed is consistent with the KDCP definition) represents a 12% variation to the minimum expected of all similar development within the Ku-ring-gai Local Government Area. Likewise, the proposed site coverage is 41.5% 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: Resolved for urban design. Amendments to landscape stairs, paths and retaining walls have increased deep soil to the minimum 50% subject to confirmation by Council's Landscape officer.

20241118: No change– resolved for urban design noting amendments may be subject to Council's further landscape requirements.

4. Signage – 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.

5. Through-site link – clarification is sought regarding the Site Plan and through-site link. The design does not propose a publicly accessible connection where 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.

6. Business tenancy access – 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.

2 Built Form and Scale

20241028: See 6 – Amenity

20241118: See 6 – Amenity

20250210: See 6 - Amenity

1. Building height – Attention is drawn to requirements of the Design and Building Practitioners 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 3.2m 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 3.2m representing an overall building height in the vicinity of 0.8m to 1.2m higher compared to previous industry practice of 3.1m (often reduced to 3.05m) 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.

2. Building form and scale – 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 for urban design. However, clarification of solar access impacts is still to be confirmed, see comments above and at 4 – Sustainability and 6 – Amenity.

20241118: See comments above and at 4 – Sustainability and 6 – Amenity.

20250210: See comments at 6 - Amenity

3 Density

Satisfactory

1. Proposed density - is consistent with KLEP provisions. Note general comments to address 4 – Sustainability, 5 - Landscape, and 6 - Amenity.
2. Basement/above ground car parking - 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.

<p>4 Sustainability</p> <p>Amendments</p> <p>Amendments</p>	<p>Satisfactory</p> <p>20241028: required</p> <p>20241118: required</p> <p>20250210: Resolved</p>
<p>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.</p> <p>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.</p> <p>Council's Landscape officer to confirm alternative ground cover options such as a trafficable green roof suitable for the purposes proposed.</p> <p>20241028: Not Resolved. Synthetic turf to be deleted and replaced by alternative – timber decking or paving shaded by the pergola.</p> <p>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.</p> <p>20241118: Resolved for urban design. Amendments have replaced synthetic turf with decking 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.</p> <p>2. <u>Planting on structure</u> – 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.</p> <p>20241028: Applicant's response is noted. No further urban design comments.</p> <p>20241118: No further comments.</p> <p>3. <u>Rooftop PV and electrification</u> – future-proofing the development needs to be maximising rooftop PV and commitments around full electrification – no gas connections.</p> <ul style="list-style-type: none"> • 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. <p>Proposed rooftop plan appears to have no area for rooftop solar.</p> <p>20241028: Resolved for allowing for EV charging provisions.</p>	<p>4U-1, 4U-3 Energy efficiency for passive environmental design</p>

Not resolved for PV and future-proofing. Roof Plans are to annotate locate of rooftop PV required by BASIX.

The applicant's response at point 5c of Mecone's Cover Letter dated 8th October 2024 at point 5c:

The current design allows for EV charging to all car spaces. We're advised that amending the building design to allow for full electrification in the future could not be accommodated without the adverse effect of increasing the plant area on the rooftop, which would reduce the communal open space area. The current substation may also not be able to support the increase in load and would result in an unreasonable cost and timeframe.

While it is accepted no specific requirements at local or state level are currently mandated for accommodating/providing full electrification, it is also noted statutory requirements are changing increasingly rapidly. Further, registered architects do have annual compulsory CPD that includes 'Sustainability' which is intending industry to be moving towards zero emissions outcomes. It is therefore expected that design practice is reflecting this on-going mandatory registration requirement so that the built environment is capable of performing at sustainable levels over its life-cycle. This is considered to represent good industry and design practice.

No gas cooktops (i.e. full induction) should be demonstrated as a minimum as this is foreseeable as being a requirement that would be aligned with existing Victorian and ACT provisions.

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.

20250210: Resolved. Area for PVs clearly located on roof plan with capacity.

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.

5 Landscape

Satisfactory

20241028: Satisfied subject to Council confirmation.

20241118: Subject to Council confirmation for edge planters.

20250210:
Satisfactory for urban design

1. Deep soil – Note deep soil deficiency and site coverage exceedances. As regards urban design, it is of high importance that Ku-ring-gai retains and repairs existing and/or lost urban

40 Landscape design

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 for urban design – subject to confirmation by Council's Landscape requirements.

20241118: No further comments.

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 landscape assessment. 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 and maximum permitted site coverage.

20241028: Resolved for urban design – subject to confirmation by Council's Landscape requirements.

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 preferable 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.

4P Planting on structures

20250210: Resolved for urban design. Previous comments were suggestions for consistency with Ku-ring-gai's objectives for long-term quality of landscape. This usually requires all planter/landscape on structures and deep soil landscape to be accessed from common property. Detailed requirements therefore could be conditions of consent should approval be granted.

6 Amenity

Satisfactory

20241028:
Clarifications and minor amendments required.

Clarifications still

20241118:
required.

20250210: Resolved

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) and to be compared with overshadowing resulting from a compliant height.

- 3D Communal Open Space
- 3J Bicycle and car parking
- 4A Solar and Daylight Access

20241028:

Not Resolved for 3D shadow analysis for future development 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 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 accepted as being limited to after 2pm and therefore acceptable.

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.

20250210. Resolved. See Table 1 urban design comments at the end of this report.

The requested views-from-the-sun (sun-eye) modelling has been submitted. Table 1 provides detailed comments comparing the proposed development against two (2) different compliant envelope scenarios.

Additional information plan DA406 (H) through to DA414 (A) provides the solar and 3-d views-from-the-sun. These studies demonstrate the overshadowing impacts to a building envelope permitted on the neighbouring properties using two (2) compliant building envelope scenarios.: Scenario 1 – Interpolated Contours and Scenario 2 - Existing contours.

Notably, each compliant scenario proposes quite different building envelopes principally for the number of podium levels to Fitzsimons Lane and the proportions for stepping back for the upper levels.

In both scenarios, the modelling confirms the height exceedances, in combination with the setbacks proposed, do increase overshadowing impacts to the neighbouring western property at 11-15 Merriwa Street and to a much lesser extent 1-3 Merriwa Street.

However, the extent of ‘additional impacts’ as a comparison between a compliant building envelope and the proposed development will largely depend on which interpretation of contour modelling and resulting complaint building envelope is accepted by the consent authority. Noting the interpretation of Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582.

The Scenario 1 - Interpolated Contours envelope (ground line consistent with Merman) results in more building height and bulk than does Scenario 2 - Existing Contours (ground line based on existing excavated levels) as compliant building envelopes.

Accordingly, the compliant envelope of Scenario 1 - Interpolated Contours results in greater overshadowing impacts for a future development on 11-15 Merriwa Street and 1-3 Merriwa Street than does Scenario 2.

The proposed development is based on the Scenario 1 compliant building envelope. Therefore, if comparing impacts of a compliant building envelope with the proposed development, the differences are less significant compared against Scenario 1 and more significant compared against Scenario 2.

In both scenarios, the proposed development demonstrates where some improved outcomes occur and where additional impacts result.

Overall, the proposed impacts are likely acceptable, noting future development on 11-15 Merriwa Street could then be anticipated to propose similar variations to a complying development envelope in response to achieving a positive urban form and to specifically address areas where additional overshadowing impacts occur.

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.

3. Ceiling heights – see comments 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.

20250210: Resolved. Updated architectural documents have annotated the locations of all bicycle parking.

7 Safety

Satisfactory

20241028: Satisfied subject to minor clarification.

20241118:

Satisfactory

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.
- 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. Security conflicts – 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:

3G Pedestrian access and entries
4F Common circulation spaces
4S Mixed Use

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. Basement Platinum Level car spaces – bollards should be installed to ensure unobstructed pedestrian access to basement egress stairs. As proposed it is possible for 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.

8 Housing Diversity and Social Interaction

Satisfactory

1. Livable Housing provisions – 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. Platinum car parking – it is noted the Platinum Level car spaces anticipate losing one car space if required. Being within walking distance to public transport options, this solution is acceptable for urban design. See comments to install bollards at 7 – Safety.
3. Apartment mix – 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.

9 Aesthetics

Satisfactory

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.

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 subject to Council's landscape requirements.

20250210: Resolved for urban design. Not pressed. See 5 – Landscape - detailed requirements will be to Council's conditions should a consent be granted.

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.*

Design statement

20250210: Not Resolved. For completeness, a final Design Statement will be required for a final documentation set should an approval be granted.

General comment: Delete use of the word 'restrictions' when referring to Council's public policy requirements.

The descriptor used for references to ADG requirements is 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.

20241028: The word 'restrictions' has not been deleted. A final Design Statement should be submitted that replaces 'restrictions' with 'controls' on page 4 and 5.

20241118: Not resolved. Replace the word 'restrictions' with 'controls' so language remains neutral when describing public policies.

20250210: Not resolved. Replace the word 'restrictions' with 'controls' so language remains neutral when describing public policies. NOTE: Ensure the Design Statement includes specific design features/elements of the proposed development that have considered solar amenity for neighbouring properties as well as residents of the subject development.

Jurisdictional pathway: The ADG compliance table is to be included as a single document with the Design Verification Statement.

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 section 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.

The pathway is as follows:

The design statement (DS) has work to capture the design rationale and decisions in submitted drawings as follows (text emboldened):

29 Residential apartment development

...

- (2) The statement must—
- (a) verify that the qualified designer designed, or directed the design of, the development, and
 - (b) explain **how** the development addresses—
 - (i) the design principles for residential apartment development, and
 - (ii) the objectives in Parts 3 and 4 of the Apartment Design Guide.

Comments: 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.

Information would be expected to include elements such as **how** the site arrangement and internal layout makes use of the topography to accommodate car parking within a basement and above ground component while ensuring Ku-ring-gai's residential streetscape character is achieved. Similar bespoke examples should be provided for each Design

Solar Access

Compliant Building Envelope scenarios	Comments: Built form and overshadowing of 'control' envelope	Comments: Comparison of the 'control' envelope with proposed development Dwg DA414 Rev A
Scenario 1 Dwg DA411 Rev B INTERPOLATED CONTOURS	<ul style="list-style-type: none"> Compliant building envelope results in a ziggurat form (undesirable – poor streetscape & waterproofing complexities). Assumes 6 storeys to Fitzsimons Lane – 4-storey podium with 2 storeys stepped above. Massing steps down the subject site to Merriwa St assumes 7 storeys – 4-storey podium with 3 storeys stepped above Impacts to 11-15 Merriwa St between 9-11am: Lesser impacts to stepped levels above the 4-storey podium with greatest impacts to the 4-storey podium. The extent of impacts affects approximately 60-75% of the length of the 11-15 Merriwa St envelope during 9-10am with the lower 1-2 levels not getting solar access until approx. 11:30 possibly for 1 hr. Impacts to 1-3 Merriwa St are likely acceptable given the site has a long axis oriented to north to better achieve solar amenity. However, its triangular 	<ul style="list-style-type: none"> The proposed development assumes the 'interpolated contours' as the basis for a compliant building envelope, and then proposes some modifications to a compliant form in response to design considerations. As a result, the proposed development has reallocated GFA and thus locations of building bulk

	<p><i>geometry places greater pressure on its western side for solar access, which is impacted from 2-3pm. Some solar access will still be available between 1-2pm.</i></p>	<p><i>compared to the Scenario 1 envelope. The 4-storey podium to Fitzsimmons Lane is proposed while more bulk is moved south and central on the site to reduce the number of set-backs of levels that avoids a ziggurat form. Generally, the overall proposed envelope is an improvement on the Scenario 1 envelope in terms of urban form and allowing for less complex construction practice.</i></p> <ul style="list-style-type: none"> • <i>The proposed design has some solar benefits to limited areas of the northern part of a future development on 11-15 Merriwa St – which is the combination of proposed development's increased north-west corner setback and balconies.</i> <ul style="list-style-type: none"> a) <i>The increased setback is achieved by regularising the building form rather than following the skewed geometry resulting in additional solar access.</i> b) <i>The location of balconies at the north-western corner (using the skewed geometry)</i>
--	---	---

		<p><i>introduces some permeability to the corner of the proposed development (between the handrail and the balconies slab) allowing for sun to reach additional areas of the 11-15 Merriwa St north-east façade.</i></p> <ul style="list-style-type: none"> <i>• The offset to these benefits is in the increased overshadowing for the upper levels of a future development of 11-15 Merriwa Street resulting from the relocated building bulk. It is generally limited to the south-eastern corner for a short time between 9-10am.</i> <i>• In both Scenario 1 and the proposed development, the greatest overshadowing impacts occur on the 4-storey podium levels, with similar outcomes between 9-11am.</i> <i>• In both Scenario 1 and the proposed development, impacts to 1-3 Merriwa St are similar and occur between 2-3pm.</i> <i>• Impacts to properties to the south resulting from the proposed development are not considered to be significant in</i>
--	--	--

		comparison to Scenario 1.
<p>Scenario 2</p> <p>Dwg DA412 Rev B</p> <p>EXISTING CONTOURS</p>	<ul style="list-style-type: none"> • Scenario 2 building envelope also results in an undesirable ziggurat form (poor streetscape & waterproofing complexities) that is also poorer outcomes for the proportions of building form than the Scenario 1 'interpolated contours' ziggurat. • Scenario 2 proposes only 5 storeys to Fitzsimons Lane – a 3-storey podium with 2 storeys stepped above. • Massing steps down the subject site to Merriwa St where 7-storeys are proposed – a 4-storey podium with 3 storeys stepped above. • This envelope is 1-storey lower than Scenario 1 which is the primary reason Scenario 2 overshadowing is less impactful to both 11-15 Merriwa St and 1-3 Merriwa St envelopes compared to Scenario 1. • Overshadowing to the eastern side of 11-15 Merriwa between 9-10am is less than Scenario 1 though would still be a consideration needing resolution/mitigation for a future development on the neighbouring property. • Between approx 11-12:30pm, the full eastern side of 11-15 Merriwa St appears would have some access to solar amenity – a slightly better outcome than the Scenario 1 'interpolated contours' envelope. • Likewise, the reduction in podium storey to Fitzsimons Lane and multiple stepping of the levels above results in significantly less impacts than Scenario 1 generally. • Impacts to 1-3 Merriwa St are relatively minor impacting the lower south-western side of the envelope between 2-3pm. 	<ul style="list-style-type: none"> • The proposed development, being based on the bulkier Scenario 1 envelope, is larger and bulkier than Scenario 2. • The increased comparative bulk moved south on the site with the 4-storey podium to Fitzsimons Lane and a simplified stepping back that avoids a ziggurat form of Scenario 2 which is generally positive as an urban form. • However, the larger form has comparatively greater overshadowing impacts compared to Scenario 2. • Despite Scenario 2 having lesser podium bulk to Fitzsimons Lane, the proposed design with the 4-storey podium still achieves some solar benefits to limited areas of the northern part of a future development on 11-15 Merriwa St – again through the combination of proposed development's increased north-west corner setback and balconies: <ul style="list-style-type: none"> c) The increased setback achieved by regularising the building form rather than

		<p><i>following the skewed geometry resulting in additional solar access.</i></p> <p><i>d) The location of balconies at the north-western corner (using the skewed geometry) introducing some permeability to the corner of the proposed development (between the handrail and the balconies slab) allowing for sun to reach additional areas of the 11-15 Merriwa St north-east façade.</i></p> <ul style="list-style-type: none"> <i>• However, impacts caused by the proposed 4-storey podium (compared to the Scenario 2's 3-storey podium) on the 4-storey podium of a future development at 11-15 Merriwa St are significantly worse than the comparison with the Scenario 1 podium envelope.</i> <i>• Between 9-10am, a greater area of the upper levels at the rear 30% of a future development on 11-15 Merriwa St would be impacted by overshadowing from the proposed development than the Scenario 2 envelope. The comparative difference between the 'complying</i>
--	--	--

		<p><i>development' scenarios making for a greater difference in impacts to those upper levels for the proposed development and Scenario 2.</i></p> <ul style="list-style-type: none"> • <i>Impacts to 1-3 Merriwa St appear would be to an additional 2 storeys from 2pm with areas increasing with the lowering sun angle at 3pm.</i> • <i>Impacts to properties to the south are not considered to be significant in comparison to Scenario 2. Those properties have good northern aspect and overshadowing is limited to late in the afternoon (appears to be after approx. 2:30pm).</i>
--	--	---

Planner's response:

The additional overshadowing impact of the non-compliant building height is shown to be minimal, and that 'future' neighbouring development is capable of achieving solar access to meet the requirements of the ADG. As a result, this contention has been deleted from the original reasons for refusal.

CONCLUSION

Having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory for the reasons given in this supplementary report.

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 2.49 metres, a 10.6% 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/or 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 unacceptable 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 design 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 633.3m² 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 633.3m² 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 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 dimension is approximately 1167.3m² (42%). A 226m² shortfall remains and would require considerable amendments to the design to increase the total deep soil.

6. Design verification statement

The submitted Design Verification Statement, prepared by *Aplus Design Group* and dated 02/10/2024, 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.

7. 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.