

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-575
DA Number	eDA0516/24
LGA	Ku-ring-gai
Proposed Development	Demolition works, tree removal, subdivision, lot consolidation and construction of a residential apartment development, including basement, landscaping and associated works.
Street Address	136 – 144 and 148 Fox Valley Road, Wahroonga
Applicant/Owner	Applicant: The Trustee for Capital Corporation Wahroonga 3 Unit Trust Owner: Australasian Conference Association Limited
Date of DA lodgement	3 December 2024
Total number of Submissions	Two
Number of Unique Objections	
Recommendation	Refusal
Regional Development Criteria Schedule 6 of the SEPP (Planning Systems) 2021	Estimated development cost of greater than \$30 million
List of all relevant s4.15(1)(a) matters	• Wahroonga Estate Concept Plan (MP07_0166) – MOD 9 (Concept Plan) • Environmental Planning and Assessment Regulation 2021 • Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Sustainable Buildings) 2022 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Housing) 2021 • Ku-ring-gai Local Environmental Plan 2015 • Ku-ring-gai Development Control Plan
Attachments	• Development Assessment Report (2025/028422) • Location sketch (2025/229587) • Zoning sketch (2025/229573) • Architectural plans (2025/142644) • Subdivision plans (2025/142643) • Landscape plans (2025/142652) • Civil drawings (2025/142656) • Civil intersection plans (2025/046159) • Variation request (2025/142655) • Bushfire Protection Assessment (2025/194014)
Summary of submissions	i. compatibility with low density character ii. inadequate setbacks iii. excessive building height iv. request for appropriate landscape planting including street trees

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	v. increase in residents, traffic and inadequate public transport vi. adequacy of stormwater systems vii. impacts of Asset Protection Zone (APZ) on protected vegetation
Report prepared by	Shanika Kappagoda
Report date	9 July 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? **Not applicable**

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**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

PURPOSE OF REPORT

To determine Development Application No eDA0516/24 for demolition works, tree removal, subdivision, lot consolidation and construction of a residential apartment development, including basement, landscaping and associated works.

The application is- Nominated Integrated Development as a bushfire safety authority from the Rural Fire Service under the Rural Fires Act 1997, plus a controlled activity approval from NSW Water under the Water Management Act 2000 are required.

Pursuant to Schedule 6 of the State Environmental Planning Policy (Planning and Systems) 2021, the development has an estimated development cost of greater than \$30 million. In this case, the estimated development cost is \$42,825,000.

The consent authority for this development is the Sydney North Planning Panel (SNPP) (Section 4.5(b) and Clause 9(b) in Schedule 2 of the Environmental Planning and Assessment Act 1979).

INTEGRATED PLANNING AND REPORTING

Places, Spaces and 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:

- Prohibited development
- Water management
- Inadequate deep soil
- Landscape Plan has not been endorsed by the Bushfire Consultant
- BASIX Certificate is inconsistent with plans
- Landscape Plans do not indicate BASIX requirements
- Inadequate Environmental Site Management Plan
- Service design plan not provided
- Inadequate landscape design
- Inadequate vehicle access detail
- Inadequate waste collection detail

Submissions: Two

Land and Environment Court: N/A

Recommendation: Refusal

HISTORY

Site history

The site has a history of residential and multipurpose use.

Previous applications history:

A Pre-DA consultation was undertaken with Council prior to the lodgement of this Development Application (PRE0093/23). The key issues identified in the Pre-DA Meeting included:

- footprint of Building B results in amenity impacts to the central communal open spaces and limits natural cross ventilation and outlook
- insufficient RL information
- relationship of Building A entry with the street
- excessive building depth
- internal and external amenity impacts
- building envelope variation to the eastern façade of Building A
- insufficient detail of façade treatment for Building B
- setbacks at the south-western corner of Building A is inconsistent with the requirements of the National Construction Code
- inadequate Deep Soil Zones (DSZ)
- Solar access information

Current Development Application History

Date	Action
03 December 2024	Application lodged.
07 January 2025	The application was notified to neighbouring property owners for a period 30 days from 14 January 2025 to 13 February 2025. In response, two submissions were received.
12 March 2025	The SNPP was briefed on the progress of the application, including details of the pending Council's preliminary assessment letter.
26 March 2025	Council sent a letter to the applicant advising that amended plans and additional information were required. The letter identified the following key issues: • Proposed modification to the approved Asset Protection Zone (APZ) is to be accompanied with a case for change. • Bushfire Consultant to confirm the private open space of Building B, encroaching into the APZ line is allowed • Extent of variation to the Concept Plan approved building envelope is not supported. • Updated Contaminated land investigation is required, which: ○ includes all sites involved in the subject application ○ addresses Council's 'Contaminated Land Policy'

	○ includes a detailed assessment against Chapter 4 in SEPP (Resilience and Hazards) 2021 ○ includes a detailed assessment against Part B13 (Contamination) of the Concept Plan ○ includes a detailed assessment against relevant sections of the KDCP • Updated subdivision plan, detailing accurate proposed site area • Garden and lawn areas specified in the landscape plans and the BASIX Certificate are inconsistent • Deep soil non-compliance is not supported • Tree impacts due to stormwater proposal • BDAR required for the removal of Trees 108 and 109 which form part of critically endangered Blue Gum High Forest • Inadequate Water Management detail • Carparking and vehicular access detail • Waste Management detail required • Construction Traffic Management Plan required • To ensure compliance with the minimum 36m APZ requirement, the subdivision plan is to be amended so that the property boundaries of proposed Lot 1101 include a portion of the R4 zoned land on proposed Lot 1102 (east of the proposed buildings)
02 April 2025	The SNPP was briefed on the progress of the application, including details of Council's preliminary assessment letter, dated 26 March 2025.
08 May 2025	In response to the preliminary assessment letter, the following amended plans and additional documentation were provided: <u>Modifications to the APZ line</u> 1. Case to modify the approved AZP provided <u>Modifications to the Communal Open Space</u> 1. The central planter is detached from the planter connected to the building edge. 2. New pathway within communal open space 3. 600mm retaining walls <u>Modifications to improve amenity</u>

	1. Additional lift in Building A 2. Additional skylights within the lobby. 3. Communal Room 2 is not within subterranean and includes glazing to full height for light penetration. 4. Amendments to Units ALG.01, BGL.02, B1.02, B2.02, and B3.02: - o redesign to reduce depth or - o introduce a skylight within 8m from the rear of the apartment 5. Units ALG.01/06, A1.01/06, A2.01/06, A3.01/06, BLG.01/03, BGL.06, BLG.04, BGL.04, B1.04, B2.04: - o apartment entries have been reoriented to open from a corridor rather than directly into the living room, or - o a sliding door has been added to separate the wardrobe from the main bedroom 6. Units ALG.01/02, AGL.01, A1.09, A2.09, A3.09, BLG.04, BGL.02/05, B1.02/05, B2.02/05, and B3.02/05 are redesigned to reduce the length of the internal corridors. <u>Modifications to common circulation spaces</u> 1. Double-height spaces have been incorporated <u>Modification to Basement and lower ground floor plans</u> 1. Platinum level car spaces are identified <u>Further detail and matters of clarification:</u> 1. Overlays provided on the Architectural Plans 2. Internal area detail for each apartment provided 3. Architectural detail of the proposed swimming pool. 4. On-site detention (OSD) tank is located entirely outside of the building line and associated access hatches are located externally. <u>Modifications to the Lot consolidation/ Subdivision Plan</u> 1. South-eastern corner of the site incorporated within the lot consolidation. 2. Land consolidation resulting in a revised site area of 8,205m². <u>Modifications building envelope</u>
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	1. Encroachment of building envelope on Building A, L4, to straighten the internal area. <u>Modifications to balconies of Building A</u> 1. Inclusion of privacy screens and translucent glazing. <u>Modifications to fencing height</u> 1. 1.8m high palisade fences to ground floor units facing Fox Valley Road. 2. Eastern elevation fencing for private open space is 1.8m (900mm solid brick base and 900mm palisade). 3. Western elevation fencing for private open space is 1.5m – 2.35m (maximum height of 1m solid brick base and 1.35m palisade). 4. Southern elevation fencing is 1.8m high (1m solid brick base and 800mm palisade).
15 May 2025	The amended plans were notified to neighbouring property owners for a period 14 days from 22 May 2025 to 05 June 2025. No submissions were received.



Figure 1: Aerial photograph of subject site and surrounding development

Site description

The site is known as 136-144 and 148 Fox Valley Road and is legally described as Lot 1 in DP 834963, Lot 701 in DP 1291622 and part Lot 1 and 103 in DP 1293107 (**Figure 1**). The site is bound by Fox Valley Road to the north, single storey dwellings to the east, bushland to the south and the Seventh-day Adventist Church Head Office to the west.

The site has a natural crossfall of 9m from the Fox Valley Road (northern) boundary to the rear (southern) boundary.

Existing improvements on site includes five detached dwelling houses which address Fox Valley Road. Pedestrian and vehicular access to each dwelling is via Fox Valley Road.

A single storey multipurpose building, with a loading dock, is located centrally in the site and is currently used for a variety of community uses. Vehicular access to the multipurpose building is via a private road accessible from Fox Valley Road, which is located to the west of the development site. Additional car parking spaces are provided to the east of the multipurpose building, which are accessible from the private road.

A pergola is located to the south-eastern corner of the site.

The eastern and southern boundaries of the site adjoin bushland, which is mapped as containing Blue Gum High Forest.

Constraint:	Application:
Visual character study category	1945 - 1968
Easements/rights of way	Drainage easement
Heritage Item - Local	Yes – 148 Fox Valley Road (Item No. 1929) - Seventh-Day Adventist administrative building and front garden
Heritage Item - State	No
Heritage conservation area	No
Within 100m of a heritage item	Yes – 118 and 145 Fox Valley Road
Bush fire prone land	Yes – Bushfire prone vegetation buffer and Vegetation Category 1
Natural Resources Biodiversity	Yes
Natural Resources Greenweb	Yes
Natural Resources Riparian	Yes – Category 1
Within 25m of Urban Bushland	No
Contaminated land	Yes
Wahroonga Estate: The total maximum number of dwellings is not to exceed 500, as per the KLEP Precinct D to have a maximum of 88 RFB units and 8 dwelling houses	<u>Within Precinct D:</u> Proposed and existing RFB units: 77 Existing dwellings: 8 Total dwellings: 293

Surrounding development

Surrounding development includes a range of mixed uses.

To the north of the development site, are single and two storey dwelling houses; sports field and tennis courts associated with the Wahroonga Adventist School; and bushlands.

Development to the east includes one and two storey dwelling houses of the Inter War period and bushlands. The entire southern boundary adjoins bushland. The Sydney Adventist Hospital and the Seventh-Day Adventist Church and Administrative Office are located to the west of the development site.

Within the visual catchment of the development site, there is no consistent subdivision pattern for non-residential development (**Figure 1**).

Surrounding zoning includes a mixture of E1 Local Centre, R4 High Density Residential, C2 Environmental Conservation, C4 Environmental Living, SP1 Special Activities and R2 Low Density Residential.

THE PROPOSAL

The application proposes demolition works, tree removal, subdivision, lot consolidation and construction of a 71-unit residential apartment development, including basement, landscaping and associated works. The key elements of the proposed works include:

- lot consolidation and subdivision
 - consolidate Lot 701 in DP 1291622 and Lot 1 in DP 834963
 - total site area: 8,205m².
- demolition works, including:
 - five existing dwellings and associated garages and driveways
 - multipurpose building
 - hardstand area
- construction of two residential flat buildings (Building A and Building B), set over the lower ground floor level and a single basement level, as detailed below:
 - 71 units comprising of:
 - 1 bedroom: 10 units
 - 2 bedrooms: 19 units
 - 3 bedrooms: 42 units
 - building height and form:
 - Building A: 6 storeys (lower ground to Level 04)
 - Building B: 5 storeys (lower ground to Level 03)
 - flat roof forms
 - materials and finishes consist of glass, a variety of cladding and masonry brickwork
 - car and bicycle spaces:
 - 118 residential spaces
 - 18 visitor spaces
 - 1 car wash space
 - 1 car share space
 - 21 bicycle spaces
 - plant located on the rooftop of both buildings
 - access and parking:
 - carparking located in the basement level and the lower ground floor level
 - primary pedestrian access is via Fox Valley Road frontage
 - vehicular access to the car parking is via the existing private road to the west
 - truck bay for waste collection is located on the ground level
 - external fire truck parking bay is to the south of the proposed driveway
- landscaping works:

- communal open space
- 40 new trees
- built landscape zones to provide diverse communal open spaces
- civil infrastructure including new pipes, pits and an OSD
- augmentation of services as required

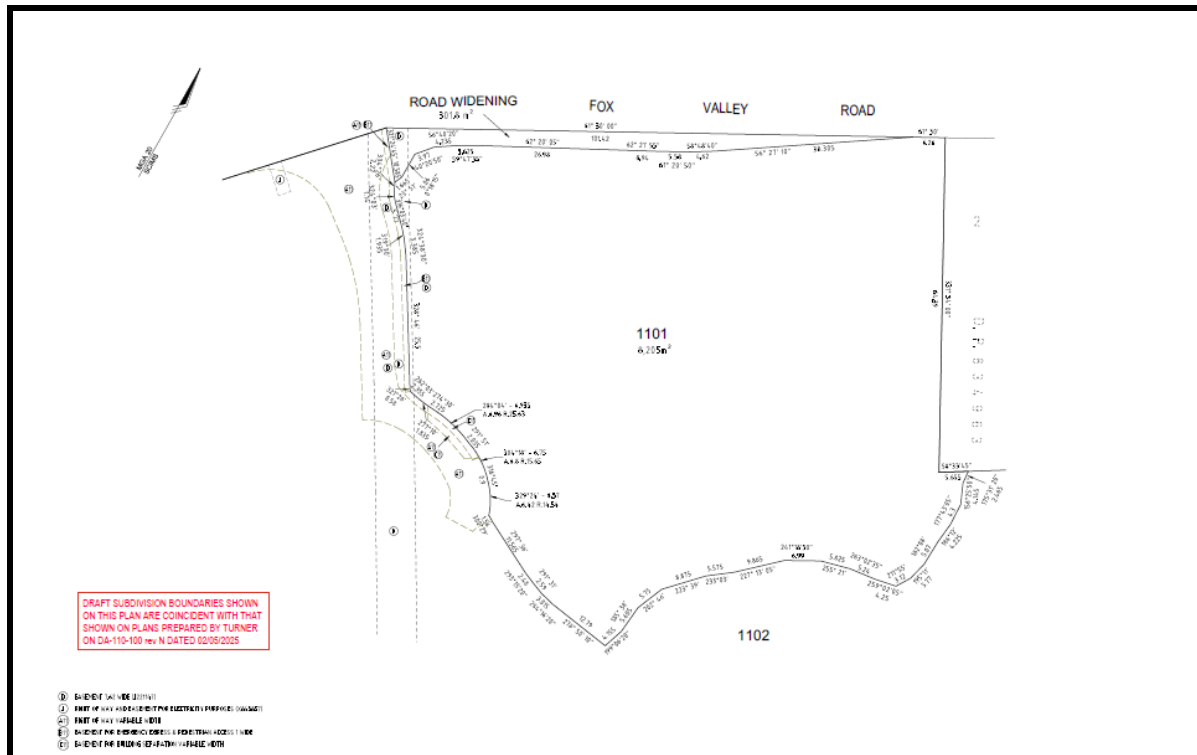


Figure 2: Subdivision plan detailing consolidated lots



Figure 3: ground floor plan of proposed development, demonstrates the building footprint for Building A and Building B



Figure 4: the front (northern) and rear (southern) elevations of the proposed development



Figure 5: photomontage of the proposal, as viewed from Fox Valley Road (northern elevation)

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 between 14 January 2025 and 13 February 2025. In response, submissions from the following were received:

1. Kane Kersaitis – 47 Campbell Drive, Wahroonga
2. Jill Green – On behalf of STEP Inc

The submissions raised the following issues:

The proposal is not in keeping with the character of the low-density local area

The site is zoned part R4 High Density Residential and C2 Environmental Conservation (south-eastern corner). The proposed residential flat buildings are consistent with the type of development anticipated under the approved Concept Plan and the zoning of the site under KLEP 2015.

Inadequate setbacks

Under Condition B1(1) (Urban Design) of the Concept Plan, development applications are to be generally consistent with indicative building footprint of the approved Concept Plan, unless it can be satisfactorily demonstrated to the consent authority that a superior built form and/ or urban design outcome can be achieved with an alternative layout, while remaining consistent with the terms of approval and intent of the approved Concept Plan.

The proposal seeks a variation to the building envelope stipulated in Condition B1 (1), which

includes projections outside the footprint and part of the approved footprint that have not been utilised including balconies on Level 4, over the roof form of Level 3 in Building A (**Figures 14 and 15**). The proposal satisfactorily demonstrated that the proposed building footprints result in a superior built form and urban design outcomes following key reasons:

- The proposal is adequately set back from the front (northern) and rear boundary (southern) boundaries, allowing the provision of satisfactory landscape treatment including both the retention and planting of tree canopies;
- The visibility of the variations to the southern elevation of Building A, Level 4 and the south-western balconies of Building B is negligible from the streetscape, thus being of an appropriate scale when viewed from Fox Valley Road;
- The modulation of the eastern façade due to the building envelope variation results in a superior built form that provides visual interest when viewed from Building B and the public domain, whilst also optimising outlook to bushland to the south of the development site;
- With the use of materials and finishes, articulation, and landscaping features, the variation to the building envelope has been designed to be of an appropriate bulk and scale when viewed from the public domain thus being good urban design outcome; and
- The extrusion outside the approved building envelopes promotes internal residential amenity and liveability while reducing reliance on passive thermal design for ventilation, heating and cooling.

The setbacks to the side (eastern and western) boundaries are within the building footprints and are compliant at 6m.

Excessive building height

The proposal is compliant with the maximum building heights specified in the approved concept plan.

Planting within the frontage of the site should replicate the tree canopy of Fox Valley Road

The proposal provides fifteen tall local trees to the street frontage, which will be within additional landscape plantings of shrubs, groundcovers and grasses. Appropriate planting has been proposed within the frontage of the development site.

Substantial increase in local residents

An increase in the number of residents within the Wahroonga Estate precinct is anticipated under the Concept Plan with Condition A1(b) and Condition A4(1) permitting up to a total of 500 private residential dwellings across the precinct. Of note, Clause 6.11 (Wahroonga Estate, Fox Valley Road, Wahroonga) of the KLEP 2015 states that development consent must not be granted for the erection of a dwelling on land identified as “Wahroonga Estate” on the Key Sites Map if the number of dwellings on all of that land would exceed 500.

Inadequate existing public transport links to cater to the increase in local residents

The development site is located approximately 20–40 metres from two bus stops, which provide direct services to Turrumurra Railway Station at frequencies of 15–20 minutes during weekday peak periods and hourly over weekends.

Excessive increase to the local traffic volume

Upgrades to road infrastructure were required under the approved Concept Plan for Wahroonga Estate to accommodate anticipated increases in local traffic. Recently completed works include upgrades to the intersection of Fox Valley Road and the Comenarra Parkway, installation of new traffic lights at the Sydney Adventist Hospital entry, and the addition of two south-bound lanes between the hospital entrance and the Comenarra Parkway. Traffic signals proposed on Fox Valley Road between the development site and Wahroonga Adventist School are currently under review by Transport for NSW. Delivery of remaining infrastructure works will be coordinated in line with the timing of future development stages under the Concept Plan.

Ongoing maintenance of stormwater systems is required to ensure that pollutants do not flow into the critically endangered ecological community

In the event of an approval, conditions could be imposed requiring the registration of a Positive Covenant for the ongoing maintenance of the stormwater management system, including the on-site detention (OSD) and filtration components.

Ground covers and mid storey vegetation should be selected from the ecological community

The landscape plan includes native ground covers and mid storey vegetation appropriate for the site.

Asset Protection Zone (APZ) should not impact Sydney Turpentine Forest (STIF)

The APZ will not affect any STIF. No native vegetation needs to be modified as the APZ is already established.

Internal Referrals

Urban Design

The Urban Design Consultant commented on the proposal as follows:

The following comments are based on a review of the amended plans and supporting documentation, which aim to address urban design and other issues previously identified by Council. For continuity, the original urban design issues and comments have been included. The response to the amended plans are provided in red text, along with the date of the updated referral.

1. Context and Neighbourhood Character

Streetscape – A thorough Site Analysis has been submitted that provides the foundations for the design response to the streetscape and neighbourhood character. In context of the skewed geometry for the site arrangement of built form, it is acknowledged the proposed design is consistent with the arrangement.

The materials selection and composition of facades has sought to engage with the street and surrounding urban context in a characterful way, which is important in mitigating the dissonant geometry of Building B both in its presentation to Fox Valley Road and its spatial relationship with Building A.

Building Entries – Building entries have achieved more direct, accessible and inviting sequence from the street to each of the building entry lobbies.

2. Built Form and Scale

Floor-to-Floor height and building height - Proposed 3.2m min FL-FL heights are supported as consistent with requirements for future compliance with the Design and Building Practitioners Act and satisfying ADG (and KDCP)minimum 2.7m unobstructed floor-to-ceiling height for habitable rooms.

National Construction Code amendments for 2025 and industry practice for waterproofing (Ross Taylor professional development course) is now stating a minimum FL-FL of 3.2m should be demonstrated for design drawings, likely will be reflected as a minimum through to construction.

It is noted that depending on the vertical relationship of internal layouts between each level, additional clearances may be required where accessible paths of travel may be required between internal and external spaces, within dwellings and/or where extensive areas of terraces/wet areas are above habitable rooms of units below. This is necessary to accommodate structure, wet area setbacks, services. There may be further increases due to the wall geometries between the Lower Ground and Ground Floor levels not being vertically aligned and the significant areas of landscape above those Lower Ground floor units.

Consistent with these requirements, the development proposes general floor-to-floor heights of 3.2m. The proposed height exceedance due to accommodating the requirements of the DBP Act and NCC amendments for waterproofing is supported.

Overshadowing impacts resulting from the exceedance are considered to be very minor and acceptable.

3. Density

Number of units – Remains consistent with Concept Plan approvals.

Amenity and unit mix – Acceptable. See comments at 6 – Amenity issues indicate the unit mix might benefit with further consideration to address awkward layouts, and resolution of geometries. However, this would not be expected would change proposed yield.

4. Sustainability

General comments - the focus on passive design performance and resident amenity is supported in principle. Page 58 of Appendix B Architectural Design Report confirms no gas connections and sustainability commitments including responses to Council's preDA considerations, which is positive.

5. Landscape

The amended proposal satisfactorily addresses the previous issues regarding tree planting within the street setback and the design of retaining wall within communal open space.

Amenity

The lobbies in Building A serve 10 units which is inconsistent with the ADG recommendation for a maximum of 8, however natural daylight and ventilation are provided. Previous issues regarding natural light and ventilation for common rooms and rooms within apartments have been resolved. Skylights that accommodate

natural ventilation can be required by condition. Solar access and natural ventilation performance is consistent with the requirements of the ADG.

6. Safety

The landscape wall heights to achieve clear sightlines and avoid any furtive spaces.

7. Housing Diversity and Social Interaction

A suitable housing mix is proposed.

8. Aesthetics

Materials – proposed materials are satisfactory. The use of face brickwork will provide a sympathetic interface for the heritage item and church in the vicinity.

Composition of elevations – there is a cohesive composition of the elevations the presents a clear architectural language and expression with a disciplined palette. Balcony treatments had positively expressed balustrades to provide visual privacy and outlook amenity by avoiding full-height glazing. Junctions of material changes from brickwork to lightweight cladding are clearly defined. The use of arches interprets the rhythm of the heritage item and other significant buildings in the area that also generally presents positive proportions for the building form.

Heritage

Council's Heritage Advisor commented on the proposal as follows:

Heritage status

Local Heritage Item	No
Heritage Conservation Area	No
Immediate vicinity of a heritage item	Yes - Item 929 - Seventh-Day Adventist administrative building, including interiors and front garden setting, located at 148 Fox Valley Road, Wahroonga (1929).
Immediate vicinity of a HCA	No
Interim Heritage Order	No
SHR	No

Planning instruments

Ku-ring-gai Local Environmental Plan (KLEP) 2024

Clause 5.10 (4) of the KLEP 2015 requires that, before granting consent to the proposed works, Council must consider the effect of the works on the heritage values of a place listed in the Heritage Schedule of KLEP 2015

Clause 5.10 of the KLEP 2015 requires that before granting consent to the proposed works Council must consider the effect of the works on the heritage item, nearby items or conservation area concerned. Clause 5.10 (5) allows Council to require a Heritage Impact Statement before granting consent.

Statement of Significance

The NSW Heritage Inventory contains the following information for database entry number 1880256:

Administrative headquarters, seventh day Adventist church:

Statement of Significance:

Reasons for listing; cultural, social, architectural, group value, municipal significance.

Description

Altered or extended sympathetically.

History

The following site history was abridged from the HIS report:

Fox Valley Road is one of the earliest roads in the area as shown on Mitchell's 1835 Parish of Gordon, County of Cumberland map of 1840. By 1899, the Adventist Church decided to construct a purpose-built medical and surgical "sanitarium" in the Sydney suburbs. The original Sanitarium opened in 1903. It was a timber building designed by Dr Merritt Kellogg.

Throughout the course of the twentieth century, The Sanitarium underwent periodic expansion to continue its role within the local community and to accommodate the growing diversity in medical fields of knowledge.

In the 1970s, the Sanitarium became the Sydney Adventist Hospital and was the first private hospital in New South Wales to be accredited by Australian Council of Hospital Standard.

As part of this modernisation, the original 1903 timber building designed by Dr Merritt Kellogg was demolished in 1973, to be replaced by a ten-storey tower block, the HE Clifford Tower.

In March 2010, a Concept Plan (Wahroonga Estate MP07_0166) for the proposed expansion of the Sydney Adventist Hospital, including residential, commercial, education and religious development, was approved by the Minister for Planning. The consent was modified several times, most recently in January 2021 (Mod 8).

Proposed Works as per the HIS

The HIS states that *proposal is for relatively minor modifications to the approved concept plan MP07-0166 (as modified) for the Wahroonga Estate - Precinct D - Fox Valley Road, located at 136 - 144 Fox Valley Road, Wahroonga.*

The HIS lists the following proposed works:

The proposed modifications to the concept plan designed by Turner, include:

- *Modify the approved building envelopes*
- *Proposed road realignment and intersection upgrade to Fox Valley Road.*

The proposed modifications to the building envelope allow for a better built form and improved ADG compliance, while the road realignment and intersection upgrade effect the northern boundary and western easement, ensuring a green buffer zone is maintained.

Controls

The following objectives and controls of the Ku-ring-gai Development Control Plan 2024 (KDCP) apply:

Development Control	Complies
19F DEVELOPMENT IN THE VICINITY OF HERITAGE ITEMS OR HERITAGE CONSERVATION AREAS (HCAS)	
19F.1 Local Character and Streetscape	
General	
1. All development in the vicinity of a Heritage Item or HCA is to include a Heritage Impact Statement (HIS). The HIS is to address the effect of the proposed development on a Heritage Item or HCA and demonstrate that the proposed works will not adversely impact upon significance, including any related heritage features within the identified curtilage and setting.	YES
Built Form	
2. Development on sites that either directly adjoin or are in the vicinity of a Heritage Item or an HCA is to have regard to:	
i) the form of the existing building or buildings including height, roofline, setbacks and building alignment;	YES
ii) dominant architectural language such as horizontal lines and vertical segmentation;	YES
iii) proportions including door and window openings, bays, floor-to-ceiling heights and coursing levels;	
iv) materials and colours;	YES
v) siting and orientation;	YES
vi) setting and context;	YES
vii) streetscape patterns.	YES
Views	
New development in the vicinity of a Heritage Item or HCA is to demonstrate that it will not reduce or impair important views to and from the Heritage Item from the public domain.	YES
• The HIS established that proposed development will have no or visual impact on the heritage item in the vicinity of the site, because there are no views between the subject site and the heritage item.	

Conclusion

The proposal will have minimal impact on the heritage items in the vicinity and is acceptable from a heritage perspective.

Engineering

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

Water management

The site falls over 9m across the site from Fox Valley Road to the south boundary. The site is not affected during a 1% AEP flood event. The site is limited in its ability to convey stormwater connection to Council's existing Fox Valley Road by gravity due to the above level differences with Fox Valley Road.

Civil plans prepared by TTW, showing stormwater management, have been submitted. These plans indicate that stormwater runoff from the roof area will be captured and directed to an underground OSD chamber tank located within the

driveway. The overflow from the OSD chamber tank, along with runoff captured from portion of hard-paved areas, will be directed to a level spreader/dispersal trench (length unknown) and discharged towards the nature reserve in accordance with the existing site conditions.

The Civil Development Application Report, also prepared by TTW, states that majority of the development works will be conveyed to an in-ground OSD tank located within the driveway. Discharge from downstream catchment will reduce the post-development via an increase in pervious area and deep soil planting zones when compared to pre-development conditions.

Details of the OSD chamber tank under the driveway have been provided. Supporting calculations for the sizing of the detention system has been provided which has been checked to confirm compliance with Part 24C.5 of the KDCP. The location of the access pits to the retention and detention system are readily accessible from within the building common area, which is acceptable.

The overflow from the OSD chamber tank will be directed towards the dispersion trench system. No details of the trench have been submitted to confirm sizing and details of how this system will be designed.

The design also incorporates suitable inlet pits to capture sub-surface water flows from hardstand areas and direct to the chamber tank. Any uncontrolled runoffs can be directed to rainscaping, which is acceptable. It is noted that permeable paving has not been proposed in the revised drawings.

A pump-out pit of 3m³ within the basement is provided to capture any groundwater seepage and driveway runoff. The pump-out tank must 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 to be connected to the OSD prior to discharging to the public drainage system.

The BASIX Certificate does not include water commitments, however, Part 24C.3-4 of the Ku-ring-gai DCP requires that rainwater retention and re-use be provided to achieve a 50% reduction in runoff days. Details of the rainwater tank, purpose of water re-use, and location of tank have not been included in the stormwater management plan.

A proprietary pollution device comprising 7 x 690mm Stormfilter PSorb filtration cartridges within the detention chamber and 2 x Ocean Guard pollutant trap pits by Ocean Protect have been provided as a stormwater quality measure to improve stormwater runoff quality from the subject site. MUSIC modelling and calculations supporting the above approach has been prepared and provided in Table 5 and Figures 9-10 of the Civil Development Application Report. MUSIC modelling has been checked and is compliant with KDCP Part 24C.6.

Civil Plans – Stormwater Section Drawing No. 231292-TTW-00-DR-CI-04001, 04011, 04012, 04041, 04042, 04100 prepared by TTW are not supported as per recommendations below.

Car parking and vehicular access

Concept Plan Car Parking rates (B9)

Condition B9 of the Concept Plan provides the following car parking rates applicable for the proposed development:

- (a) 1 bedroom apartment: a maximum of 1 space per dwelling
- (b) 2 bedroom apartment: a maximum of 1.25 spaces per dwelling
- (c) 3 bedroom apartment: a maximum of 2 spaces per dwelling
- (d) visitor parking: 1 visitor space per 4 dwellings
- (e) car share spaces: a minimum of 1 car share space per 90 dwellings or part thereof

The proposal would require 118 residential parking spaces and 18 visitor parking spaces. The proposed development includes 118 residential parking spaces and 18 visitor parking spaces, 1 car shared space and 1 dedicated car wash bay resulting in 138 spaces, which meets the requirements of Condition B9 of the Concept Plan.

The applicant does not rely on SEPP Housing which provides lower rates of parking for apartment buildings.

The proposal also seeks one (1) accessible visitor parking space designed in accordance with AS2890.6 (2009) in terms of space width and providing a shared area.

The minimum sight lines for pedestrian safety as per Figure 3.3 of AS2890.1:2004 has not been demonstrated on the Architectural Plans.

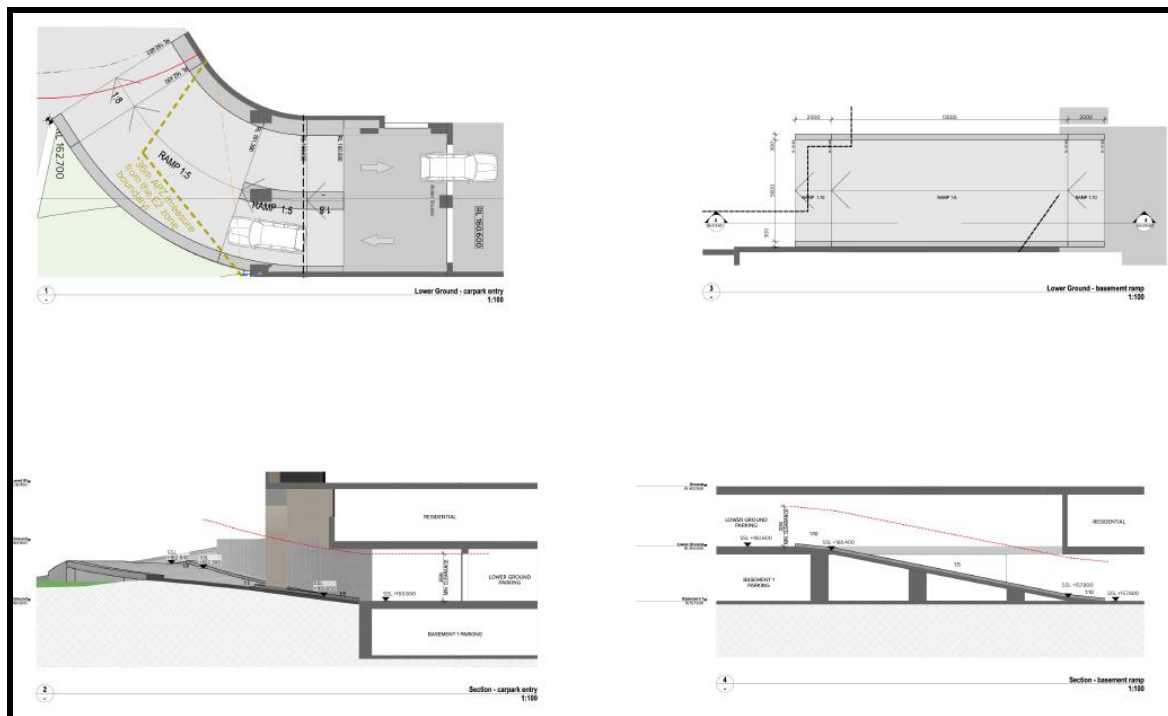
A dedicated waste collection / loading area meets the minimum dimensions of 3.5m x 6.0m as required in Part 7B.1(14) of the Ku-ring-gai DCP, which is acceptable.

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 A of the traffic report demonstrating all cars can enter and exit in a forward direction. In addition, swept paths for the 10.5m fire truck and 6.7m waste collection vehicle has been provided, which are acceptable.

Site Access

Access to the site will be through a new driveway crossing from Link Road accessed from Fox Valley Road. The proposal provides on-site car parking within a basement with vehicular access to the car parking facility provided via a 6.5m wide entry / exit driveway for two-way traffic movements. 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 not been submitted as previously requested. The driveway longitudinal section fails to demonstrate a maximum 20% grade along the main access ramp to the basement entry as required under Part 25A.5 (17) as well demonstrating the driveway gradient of 5% for the first 6m as per AS2890.1:2004. This non-compliance was also brought to the applicant's attention during Pre-DA stage.



Traffic generation

According to the traffic generation rates nominated by The Roads & Maritime Services (RMS) 'Guide to Traffic Generating Developments', a high density residential development (based on Metropolitan Regional (CBD) Centres) would generate 37 vehicle trips per unit in each peak AM and PM hour period on weekdays. As a nett result with the deduction of the existing 5 dwelling, the proposed development would increase the existing traffic by approximately 32 vehicle trips per hour, which equates to 1 vehicle trip every 2 minutes.

According to the above guidelines, the vehicle trips are minimal and would not be expected to generate any noticeable impacts of the existing local and arterial road network.

SIDRA analysis of the intersection performance has been carried out, taking into consideration of pre-development conditions, 2036 scenarios with no development and post-development traffic 2036 scenarios. The analysis anticipates that surrounding intersections will maintain a satisfactory level of service in The Comenarra Parkway and Fox Valley Road intersection as well as the Hospital Access and Fox Valley Road intersection. Overall, the development will have a minimal impact on traffic, ensuring efficient operations by 2036.

Waste management

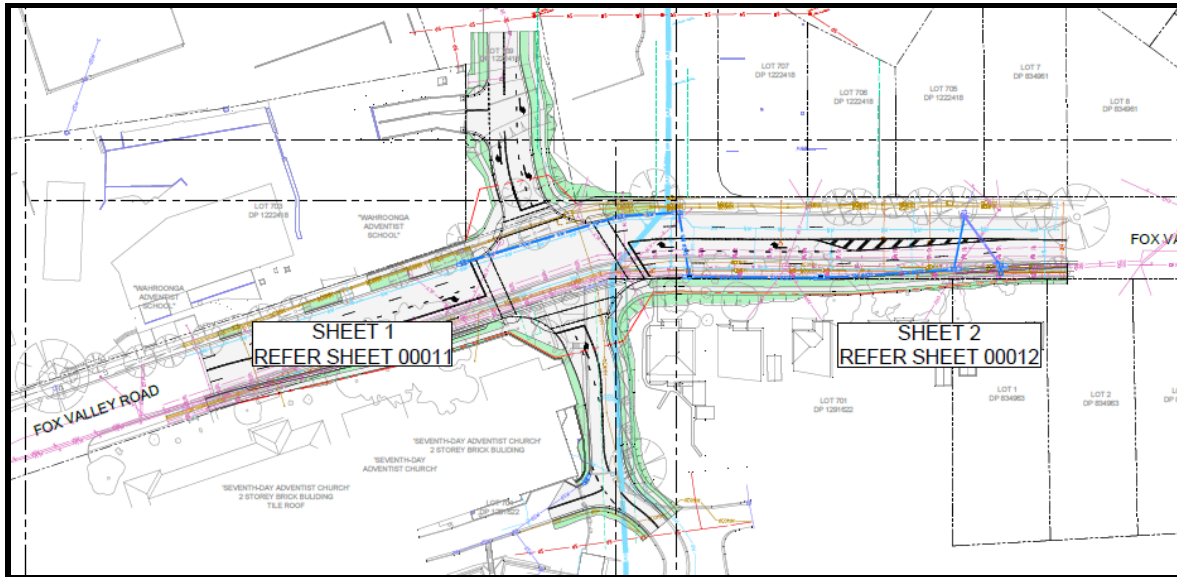
According to the Waste Management Plan, general waste and recycling bins are proposed and located in a central garbage storage area in the basement which complies with Part 25 of KDCP. Waste and recycling collection for residential development is to be undertaken by Council's Waste Services.

The development allows a garbage truck to enter and depart the garbage/room recycle storage area in a forward direction. Swept paths has

been demonstrated in Appendix A (Drawing No. SKT01/P3) of the traffic report demonstrating that Council's Waste Collection Vehicle of 6.7m length (Mitsubishi Canter) can enter and depart the garbage/room recycle storage area in a forward direction.

A longitudinal section is to be submitted demonstrating that a clear head height of 2.6m and throughout the basement carpark along the path of travel can be provided. The driveway grade of 20% for the small waste collection vehicle is to be provided.

Impacts on Council infrastructure



The traffic report states that to facilitate the residential development project and other works within the precinct, external roadworks are proposed, including the construction of a signalised intersection at the access driveway and Fox Valley Road which will be completed as part of a separate approval. An intersection upgrade is understood to be underway as part of the precinct development. It is understood that these roadworks are not part of this development application. The civil plan will have to show the design details for footpaths, nature strips, and any necessary civil works approved in the SSD, ensuring consistency with the masterplan approval.

Construction management

An indicative Construction Traffic Management Plan (CTMP) has been submitted which provides limited information.

If the proposal were to be approved, a condition requiring a detailed CTMP prior to the issue of a Construction Certificate, would be recommended. The CTMP would need to show the 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

The 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 of up to 7 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, drilling of six cored boreholes, subsequent conversion of three boreholes into groundwater monitoring wells were put down to determine the relative density of the overlying soil and the depth to bedrock.

The subsurface conditions consist of fill material (0.2 to 1.2 metres) overlying residual silty and sandy clays (1.8 to 3.3 metres). Below this, low-strength Shale bedrock is found at depths of 2.7 to 3.3 metres, followed by bedrock (3.3 to 6.4 metres) consisting of interbedded sandstone and siltstone. Below 6 to 7 metres, Sandstone is encountered.

Groundwater was not encountered during auger drilling of the boreholes. Groundwater levels in monitoring wells BH01, BH04, and BH06 were measured, with levels varying between 1.9 metres and 7.0 metres below ground level.

The submitted dewatering management plan (DMP) outlines the dewatering approach for the proposed development. Excavation will proceed in 1.5 to 2.0-metres increments, with groundwater managed onsite via a sump and pump system, discharging into a series of treatment tanks before disposal. Groundwater levels have been monitored, and total dewatering volumes are estimated to range from 0.6 to 1.7 ML per year during construction and 0.4 to 1.4 ML annually post-construction.

The treated water will be discharged into a Council approved stormwater pit, with a maximum flow rate of 25 litres per second, which is a separate approval issued by Council's Development Engineers.

Whilst the findings would expect it to be less than the nominated 3ML/year, if the proposal were to be approved, a condition recommending the basement excavations are to be fully tanked unless it can be demonstrated to 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 (if such an approval is required per the Water Management Act 2000).

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.

Plan of subdivision

A draft 88B instrument and Administration Sheet has been submitted which also includes a draft Plan of Subdivision, which is acceptable. This is to

create all required easements or other burdens /benefits as may be required.

It is understood that the following easements are to be created.

- *Right of carriageway variable width*
- *Easement for Emergency Egress & Pedestrian Access 1m Wide*
- *Easement for Building Separation Variable Width*

Any other easements and restrictions could be added to the 88B instruments which are to include detention, retention, easement for waste collection etc, as per conditions in a notice of determination, if the development were to be approved.

A Section 73 (Sydney Water) Compliance Certificate for subdivision could be required by condition.

Connection to services

The applicant fails to provide plans which show the utility services in particularly the sewer main / line that would be required to service the development.

Conclusion

The proposed development is not acceptable.

Landscaping

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

RECOMMENDATIONS:

The proposal is not acceptable in the current form.

Landscape Referral

SEPP (Sustainable Buildings) 2022		
Part 3 Aims	Proposed	Complies
<i>To encourage sustainable residential development</i>	<i>Certificate BSX-25218M_02 dated 5 May 2025 is submitted with the application. The following areas are stated in the certificate. Proposed total lawn area –702.46m2. Proposed total garden area – 3117.95m2. Area of indigenous low water use – 3055.59m2. (Landscape report states Turf -702m2 and garden 2979m2) Area of low water use planting is not identified on plans. Areas of low water use cannot consist of a mix of low water with high water plants. Due to the high quantity of low water plants proposed in certificate, plans may prefer to identify the areas that</i>	NO

	aren't low water, stating remaining is low water. A401 – 16.48m² A402 – 27.37m² A403 – 6.55m² A404 – 15.46m² A405 – 30.1m² A406 - Not provided A104 – 26.9m² A105 – 27m² A106 -16.6m² AGL01-11m² AGL05 – 25.6m² ALG01 – 49.54m² ALG02 – 56.2m² BLG01 – 46m² BLG02 – 41.15m² BLG03 – 91.21m² BLG04 – 65.95m² BLG05 – 4.42m² BLG06 – 4.48m²	
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KDCP COMPLIANCE TABLE		
Control	Proposed	Complies
Part 7A.3 Building setback, 7A.6 Deep Soil Landscaping and Part 13 Tree and Vegetation Preservation		
Part 7A.6 Objective 1 To ensure landscape areas contribute to the garden character and canopy of the Ku-ring-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	Site Area Minimum Deep Soil Landscaping Less than 1800^{m2} 40% of the site 1800^{m2} or more 50% of the site The proposal does not satisfy this part. Site Area – 8205m² 50% deep soil requirement based on 8205m² – 4135.655m². Deep soil stated on plan as 4258m² including slip lane and 3956m² (48.2%) excluding slip lane, however deep soil plan provided is incorrect as includes the following areas as deep soil that are not under the deep soil definition. - Inclusion of private open space to ground floor units to east, west and south, rather than within common areas. - Area less than 2m width and paths more than 1.2m wide Slip lane (301.8m²) is not considered for inclusion. Actual approximate deep soil area from my	NO

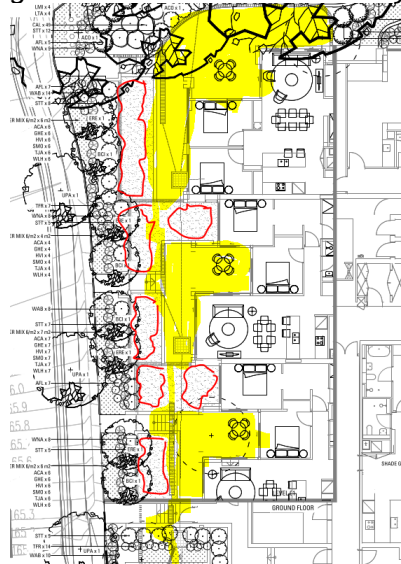
fences; has a minimum width of 2.0m; is not used for car parking; and can be used for water sensitive urban design.

calculations is **approximately 3562m² (43.4%)**

A fire truck bay is included in the calculation following discussion and agreement to include, due to the RFS requirement.

To obtain deep soil compliance the following could be provided.

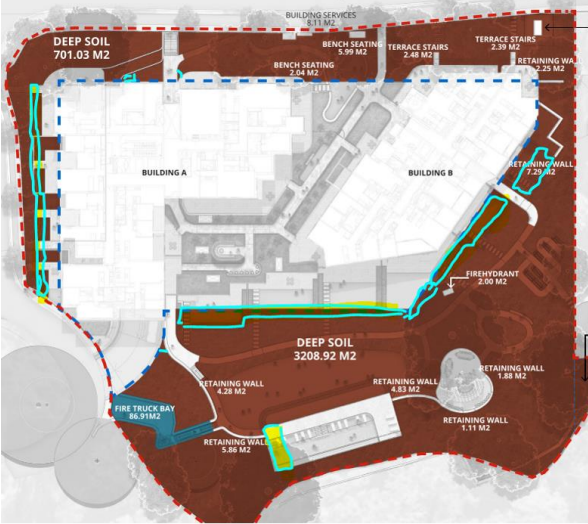
- To western ground floor units delete turf and move courtyard fences to limit private open space to area within line of proposed paved courtyards and over basement-67m² approx.
In addition, a wider deep soil area will allow for a larger tree to be provided to western boundary plus the retaining walls located with greater setback from boundary.



- Southern and eastern courtyards to be restricted to line of basement. An additional 157.5m² approx. could be added to deep soil.



- Pool reduced to 15m in length then 42m² approx deep soil available or if pool deleted approx 207m² deep soil available.

	Reduction of private courtyards to line of courtyards/basement under and reduction in pool would result in approximately 3828.5m² (46.7%) based on my calculations of current deep soil at 3562m². Deletion of pool plus reduction of private courtyards to in line with basement would result in approximately 3998.5m² (48.7%). 	
Part 7A.6 Control 2. Deep soil zones are to retain healthy and significant trees where possible	Three trees are proposed for retention on site, Tree 108 <i>Eucalyptus saligna</i> (Sydney Blue Gum), and 109 <i>Syncarpia glomulifera</i> (Turpentine) and Tree 134 <i>Platanus x hispanica</i> (Plane tree) to south-western corner. Trees 108 and 109 are in poor condition and recommended for removal in Arborist report due to 50% crown dieback in T109 and codominant stems at 8m with one dead to T108 however removal triggers BDAR and trees are indicated to be retained Tree 107 <i>Eucalyptus saligna</i> (Sydney Blue Gum) to the western boundary within neighbouring lot. Trees 1, 2, 3, 10, 13, 14, 15, 16, 17, and 19 are approved for removal under the road widening works for the intersection. Trees 4, 5, 6, 7, 8, 9, 11, 12, 20, 21, 22, 24, 25, 111 – 117 removed due to building works and level changes. Trees 6, 7, 25, 110, 118, 119 120 removed due to proposed level changes within landscaping and exempt species (T25) Trees to be retained. Trees 104, 105 within planting bed to the west of the entry road. Tree 107 to the south of the proposed fire truck parking Trees 108, 109 and 134 on site	YES

	Trees 121, 126 (Neighbouring property)									
Part 7A.3 Objective 1, 2, 3, 4 and Part 7A.6 Control 3. To allow for required tree planting including tall canopy tree and screen planting at front, side and rear boundaries (to all sides of building)	The proposal does not satisfy this part. Small to medium trees provided to western setback, however consolidation of deep soil within common area between western boundary and basement will allow for optimum deep soil area for the proposed trees plus will enable the addition of a couple of larger trees. The eastern and southern side boundaries lack tree canopy, however are acceptable as bushfire APZ restricts additional planting.	NO								
Part 7A.4 Objective 1 and Part 7A.6 Control 4. To ensure deep soil landscape is within common areas	The proposal does not satisfy this part. Western and southern courtyards extend into deep soil and insufficient total area of deep soil proposed.	NO								
Control 5 To ensure deep soil areas within the street setback are maximised	The proposal satisfies this part to Fox Valley Road, however it does not satisfy the Link Road frontage. Increase deep soil to common area by increasing deep soil up to line of basement below within the western setback to Link Road.	NO								
Control 7 Tree replenishment and planting to soften the built form and create a garden setting.	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 18m on shale, transitional soils and 15m on sandstone derived soils. <table><thead><tr><th>Lot Size</th><th>Number of Tall Trees</th></tr></thead><tbody><tr><td>1,200m2 (or less)</td><td>1 per 400m2 of site area or part thereof</td></tr><tr><td>1,201m2 - 1,800m2</td><td>1 per 350m2 of site area or part thereof</td></tr><tr><td>1,801m2 +</td><td>1 per 300m2 of site area or part thereof</td></tr></tbody></table> Site area – 8185m2 1/300m2 =27 trees 40 trees are proposed.	Lot Size	Number of Tall Trees	1,200m2 (or less)	1 per 400m2 of site area or part thereof	1,201m2 - 1,800m2	1 per 350m2 of site area or part thereof	1,801m2 +	1 per 300m2 of site area or part thereof	YES
Lot Size	Number of Tall Trees									
1,200m2 (or less)	1 per 400m2 of site area or part thereof									
1,201m2 - 1,800m2	1 per 350m2 of site area or part thereof									
1,801m2 +	1 per 300m2 of site area or part thereof									
Control 8. At least 50% of all tree plantings are to be locally occurring trees.	The proposal satisfies this part. More than 50% locally occurring with only 12 exotic tree species proposed.	YES								
Control 9. At least 30% of all tree plantings are	The proposal satisfies this part. 27 trees are proposed to the street frontage and 13 to Forest Edge.	YES								

to be located in the front setback		
Part 7C.2 Communal Open Space		
Control 1 At least 10% of the site area is provided as communal open space.	The proposal satisfies this part.	YES
Control 2. At least one single parcel of primary communal open space is to be provided with minimum area of 80m ² and minimum dimension of 8m.	The proposal satisfies this part.	YES
Control 3. The Primary communal open space is directly accessible from the internal common circulation areas.	The proposal satisfies this part.	YES
Control 4 The primary communal open space is to be 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.	The proposal satisfies this part.	YES
Control 5. Secondary communal open space is provided with a minimum dimension of 5m.	The proposal satisfies this part.	YES
Control 7. Shared facilities are provided within the primary communal open space	The proposal satisfies this part. Pergola and BBQ area, communal gardens, swimming pool and deck, sunset podium, seating areas and lawn provided	YES
Control 9. The	The proposal satisfies this part	YES

<i>communal open space is integrated with significant natural feature(s) of the site and soft landscape areas.</i>		
<i>Control 10 & 11. The communal open space has surveillance from at least 2 onsite apartments and avoids concealment areas.</i>	<i>The proposal satisfies this part.</i>	YES
7C.3 Ground Floor Apartments		
<i>7C3.3 Ground floor apartments</i> <i>Private outdoor areas differentiated from communal areas by change of level, or fence/walls, or planting of hedge and low shrubs</i>	<i>The proposal satisfies this part</i>	YES
7C.5 Building entrance		
<i>To soften the impact of hard landscaping within the site.</i> <i>C12. Building entry paths are to be a minimum 1.2m wide and located within the common area with a minimum dimension of 1.2m on either side for landscape planting.</i>	<i>The proposal satisfies this part</i>	YES
Part 16 Bushfire Risk		
<i>16.1 Bushfire Risk Management</i>	<i>The bushfire report has not certified the landscape plan. Planting within the 36m wide APZ to be an IPA.</i>	NO
Part 19 Heritage Items and Heritage Conservation Areas		
<i>19F.3 Gardens and Landscaping – in the vicinity of</i>	<i>The landscape objectives have been addressed as follows:</i>	YES

<i>Heritage Items/HCAs</i>	<i>Proposed additional tree and planting to the front setback to provide a landscape character to the streetscape.</i>	
Part 21 General Site Design		
<i>21.1 Earthworks and Slope</i> <i>C3. Landscape cut or fill should not be more than 600mm above or below natural ground line.</i>	<i>Proposed landscape cut or fill is acceptable.</i> <i>Rear lawn filled up to 1.5m is acceptable to create a useable lawn area on a sloped area that previously was occupied by a building.</i> <i>Cut and fill is required to northern and western boundaries to meet new road and driveway levels is acceptable.</i>	NO
<i>C4. A minimum 0.6m width is required between retaining walls.</i>	<i>The proposal satisfies this part</i>	YES
<i>C5. Existing ground level is to be maintained for a distance of 2m from any boundary.</i>	<i>Existing ground level has been maintained for 2m from any boundary.</i> <i>Retaining walls to the eastern boundary are to be set back a minimum of 2m from the boundary and are to retain the existing levels along the boundary.</i> <i>Cut and fill due to widening of road to frontage is required to meet design levels and is acceptable.</i>	YES
<i>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.</i>	<i>The proposal satisfies this part.</i>	YES
<i>21.2 Landscape Design</i> <i>To ensure the landscape design and species selection is suitable to the site its context and considers the amenity of residents and neighbours.</i>	<i>The landscape plan is not acceptable.</i> <i>No landscape plan provided for Level 4 planter boxes.</i> <i>Area of indigenous/low water plants specified in BASIX Certificate to be identified on plans</i>	NO
Part 23.5 Roof Terraces and Podiums	<i>Minimum soil provision for a range of plant sizes must be in accordance with the following:</i>	YES

<i>To encourage use of low maintenance planting and low water use on roof terraces and podiums with appropriate support systems</i>	i. <i>large trees (canopy diameter of up to 16m at maturity) - minimum soil volume 150m³ - minimum soil depth 1.3m - minimum soil area 10m x 10m area or equivalent</i> ii. <i>medium trees (8m canopy diameter at maturity) - minimum soil volume 36m³ - minimum soil depth 1m - approximate soil area 6m x 6m or equivalent</i> iii. <i>small trees (4m canopy diameter at maturity) - minimum soil volume 11m³ - minimum soil depth 0.8m - approximate soil area 3.5m x 3.5m or equivalent</i> iv. <i>shrubs - minimum soil depth 0.5-0.6m</i> v. <i>ground cover - minimum soil depth 0.3-0.45m</i> vi. <i>vi) turf - minimum soil depth 0.1-0.3m</i>	
Part 23 General Building Design and Sustainability		
<i>23.10 Construction, demolition and disposal</i>	<i>An adequate Environmental Site Management Plan has not been submitted. The Construction Management Plan is to add trees and tree protective fencing to plans and ensure proposed works and structures are located outside of the TPZ.</i>	NO

Ecology

Council's Ecological Assessment Officer commented on the proposal as follows:

Biodiversity Conservation Act 2016		
Section 7.3	Proposed	Complies
<i>The purpose of the Act is to maintain a healthy, productive and resilient environment</i>	<i>The vegetation within the rear is mapped as being plant community type (PCT) 3136 Blue Gum High Forest.</i> <i>PCT 3136 is representative of Blue Gum High Forest (BGHF) is listed as a Critically Endangered Ecological Communities (CEEC's) under the Biodiversity Conservation Act 2016.</i> <i>The proposed development will not result in the removal of native vegetation from lands mapped upon the biodiversity values (BV) map.</i> <i>The development is predominantly over existing developed/cleared area.</i> <i>The proposed development will not result in significant impacts upon BGHF nor will</i>	YES

Biodiversity Conservation Act 2016		
Section 7.3	Proposed	Complies
	<i>the proposal result in the clearing of native vegetation beyond the designated threshold of 0.25ha.</i> <i>No biodiversity development assessment Report (BDAR) is deemed to be necessary in this instance.</i>	

LEP 2015 COMPLIANCE TABLE		
Part 5 Miscellaneous provisions	Proposed	Complies
Clause 5.23 Public Bushland	Clause 5.23 Public bushland <i>The subject property does not adjoin "Public Bushland"; therefore, the proposal is unlikely to directly or indirectly impact upon Public Bushland. The proposal is consistent with the aims and objectives of this clause.</i>	YES

Control	Proposed	Complies
Part 16 Bushfire Risk		
16.1 Bushfire Risk Management	<i>The subject property is mapped on the bushfire prone lands map as being buffer.</i> <i>A bushfire assessment report (BAR) has been submitted with the proposal. The BAR recommends as follows:</i> <i>The Asset Protection Zone shall be designed, constructed and maintained as an Inner Protection Area [IPA] in accordance with Appendix 4 of Planning for Bushfire Protection 2019 and the NSW Rural Fire Service's document 'Standards for Asset Protection Zones'.</i> <i>No native vegetation modification is required to establish the recommended asset protection zone as the APZ is existing.</i> <i>The proposal is be consistent with the objectives and controls under this part.</i>	YES
Control	Proposed	Complies

Control	Proposed	Complies
Part 16 Bushfire Risk		
Part 18 Biodiversity Controls		
18.3 Category – Support for core	<i>The proposed development will not result in the direct removal of vegetation from lands mapped under part 18.3/18.5 of the DCP.</i> <i>No mapped native vegetation is to be impacted directly upon as a result of the proposed development. The amended landscape plans are acceptable from an ecological perspective.</i> <i>The proposal is considered to consistent with controls and objectives under this part.</i>	YES
18.5 Category – Biodiversity corridors and buffer areas		
18.7 Category – No Net loss		

Recommendation

The proposal is acceptable from an ecological perspective without the need for any conditions.

Environmental health

Council's Environmental Health Officer does not object to the proposal, subject to conditions.

Building

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

The BCA and Access reports, prepared by Bm+G and Accessible Building, advise the development can achieve compliance with the BCA by DtS or Performance Solutions.

Further, it is considered that the BCA review and the additional preparation of the required Construction Certificate documentation will be sufficient to ensure that the proposed design will achieve the necessary compliance with the BCA. Recommended conditions may be provided.

External referrals

Rural Fire Service

In accordance with the provisions of Section 4.46 of the Environmental Planning and Assessment Act 1979 and Section 100B of the Rural Fires Act 1997, Council has consulted with the Commissioner of the NSW Rural Fire Service concerning measures to be taken with respect to the protection of persons, property and the environment from danger that may arise from a bush fire. The comments provided by the Rural Fire Service are as follows:

Asset Protection Zones

Intent of measures: to provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels at the buildings are below critical limits and prevent direct flame contact.

1. Proposed lot 1101 must be entirely managed in perpetuity to the standards of an inner protection area (IPA) as outlined in Appendix 4 of *Planning for Bush Fire Protection 2019*:

- Tree canopy cover should be less than 15% at maturity;
- Trees at maturity should not touch or overhang the building;
- Lower limbs should be removed up to a height of 2 m above the ground;
- Tree canopies should be separated by 2 to 5 m;
- Preference should be given to smooth-barked and evergreen trees;
- Large discontinuities or gaps in the shrubs layer should be provided to slow down or break the progress of fire towards buildings;
- Shrubs should not be located under trees;
- Shrubs should not form more than 10% ground cover;
- Clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;
- Grass should be kept mown (as a guide, grass should be kept to no more than 100mm in height); and
- Leaves and vegetation debris should be removed regularly.

2. Landscaping for the proposed Lot 1101 must comply with Appendix 4 of *Planning for Bush Fire Protection 2019*. In this regard, the following principles are to be incorporated:

- A minimum 1 metre wide area (or to the property boundary where the setbacks are less than 1 metre), suitable for pedestrian traffic, must be provided around the immediate curtilage of the building;
- Planting is limited in the immediate vicinity of the building;
- Planting does not provide a continuous canopy to the building (i.e. trees or shrubs are isolated or located in small clusters);
- Landscape species are chosen to ensure tree canopy cover is less than 15% (IPA) at maturity and trees do not touch or overhang buildings;
- Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies;
- Use smooth bark species of trees species which generally do not spread fire up the bark into the crown;
- Avoid planting of deciduous species that may increase fuel at surface/ ground level (i.e. leaf litter);
- Avoid climbing species to walls and pergolas;
- Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building;
- Locate combustible structures such as garden sheds, pergolas and materials such as timber garden furniture away from the building; and
- Low flammability vegetation species are used.

Construction Standards

Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.

3. New construction must comply with Sections 3 and 7 (BAL 29) of the Australian Standard AS3959-2018 *Construction of buildings in bush fire-prone areas* or the relevant BAL 29 requirements of the *NASH Standard - Steel Framed Construction in Bushfire Areas 2021*, and Section 7.5 of *Planning for Bush Fire Protection 2019*.

4. Any new fences, gates and retaining walls must be entirely constructed from non-combustible materials.

Water and Utility Services

Intent of measures: to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

5. The provision of water, electricity and gas for the residential flat building development must comply with Table 5.3c of *Planning for Bush Fire Protection 2019* and Section 9 of *Planning for Bush Fire Protection - Addendum 2022*.

Water NSW

In accordance with the provisions of Section 90(2) of the Water Management Act 2000, Council has consulted Water NSW of the proposed development. In response, Water NSW provided the following General Terms of Approval:

Dewatering

- GT0117-00001 A water access licence, for the relevant water source, must be obtained prior to extracting more than 3ML per water year of water as part of the construction dewatering activity. Advisory Notes: 1. This approval is not a water access licence. 2. A water year commences on 1 July each year. 3. This approval may contain an extraction limit which may also restrict the ability to take more than 3ML per water year without further information being provided to WaterNSW. 4. Note that certain water sources may be exempted from this requirement - see paragraph 17A, Schedule 4 of the Water Management (General) Regulation 2018.
- GT0118-00001 If no water access licence is obtained for the first 3ML / year (or less) of water extracted, then, in accordance with clause 21(6), Water Management (General) Regulation 2018, the applicant must: (a) record water taken for which the exemption is claimed, and (b) record the take of water not later than 24 hours after water is taken, and (c) make the record on WAL exemption form located on WaterNSW website "Record of groundwater take under exemption", and (d) keep the record for a period of 5 years, and (e) give the record to WaterNSW either via email to Customer.Helpdesk@waterNSW.com.au or post completed forms to - PO Box 398 Parramatta NSW 2124 (i) not later than 28 days after the end of the water year (being 30 June) in which the water was taken, or (ii) if WaterNSW directs the person in writing to give the record to WaterNSW on an earlier date, by that date.
- GT0119-00001 All extracted groundwater must be discharged from the site in accordance with Council requirements for stormwater drainage or in accordance with any applicable trade waste agreement.
- GT0122-00001 Construction Phase Monitoring programme and content: a) A monitoring programme must be submitted, for approval, to WaterNSW with the water supply work application. The monitoring programme must, unless agreed otherwise in writing by WaterNSW, include matters set out in any Guide published by the NSW Department of Planning Industry and Environment in relation to groundwater investigations and monitoring. Where no Guide is current or published, the monitoring programme must include the following (unless otherwise agreed in writing by WaterNSW): i. Pre-application measurement requirements: The results of groundwater measurements on or around the site, with a minimum of 3 bore locations, over a minimum period of 3 months in the six months prior to the submission of the approval to WaterNSW. ii. Field measurements: Include provision for testing electrical conductivity; temperature; pH; redox potential and standing water level of the groundwater; iii. Water quality: Include a programme

for water quality testing which includes testing for those analytes as required by WaterNSW; iv. QA: Include details of quality assurance and control v. Lab assurance: Include a requirement for the testing by National Association of Testing Authorities accredited laboratories. b) The applicant must comply with the monitoring programme as approved by WaterNSW for the duration of the water supply work approval (Approved Monitoring Programme)

- GT0123-00001 (a) Prior to the issuing of the occupation certificate, and following the completion of the dewatering activity, and any monitoring required under the Approved Monitoring Programme, the applicant must submit a completion report to WaterNSW. (b) The completion report must, unless agreed otherwise in writing by WaterNSW, include matters set out in any guideline published by the NSW Department of Planning Industry and Environment in relation to groundwater investigations and monitoring. Where no guideline is current or published, the completion report must include the following (unless otherwise agreed in writing by WaterNSW): 1) All results from the Approved Monitoring Programme; and 2) Any other information required on the WaterNSW completion report form as updated from time to time on the WaterNSW website. c) The completion report must be submitted using "Completion Report for Dewatering work form" located on WaterNSW website www.watarnsw.com.au/customer-service/water-licensing/dewatering
- GT0150-00001 The extraction limit shall be set at a total of 3ML per water year (being from 1 July to 30 June). The applicant may apply to WaterNSW to increase the extraction limit under this condition. Any application to increase the extraction limit must be in writing and provide all information required for a hydrogeological assessment. Advisory note: Any application to increase the extraction limit should include the following: - Groundwater investigation report describing the groundwater conditions beneath and around the site and subsurface conceptualisation - Survey plan showing ground surface elevation across the site - Architectural drawings showing basement dimensions - Environmental site assessment report for any sites containing contaminated soil or groundwater (apart from acid sulphate soils (ASS)) - Laboratory test results for soil sampling testing for ASS - If ASS, details of proposed management and treatment of soil and groundwater. Testing and management should align with the NSW Acid Sulphate Soil Manual
- GT0151-00001 Any dewatering activity approved under this approval shall cease after a period of two (2) years from the date of this approval, unless otherwise agreed in writing by WaterNSW (Term of the dewatering approval). Advisory note: an extension of this approval may be applied for within 6 months of the expiry of Term.
- GT0152-00001 This approval must be surrendered after compliance with all conditions of this approval, and prior to the expiry of the Term of the dewatering approval, in condition GT0151-00001. Advisory note: an extension of this approval may be applied for within 6 months of the expiry of Term.
- GT0155-00001 The following construction phase monitoring requirements apply (Works Approval): a. The monitoring bores must be installed in accordance with the number and location shown, as modified by this approval, unless otherwise

agreed in writing with WaterNSW. b. The applicant must comply with the monitoring programme as amended by this approval (Approved Monitoring Programme). c. The applicant must submit all results from the Approved Monitoring Programme, to WaterNSW, as part of the Completion Report

- GT0174-00001 Construction phase monitoring bore requirements GTA: a) Monitoring bores are required to be installed and collecting data prior for at least 3 months prior to submitting a water supply work approval b) A minimum of three monitoring bore locations are required at or around the subject property, unless otherwise agreed by WaterNSW. c) The location and number of proposed monitoring bores must be submitted for approval, to WaterNSW and should be submitted prior to the application for a water supply work approval. d) The monitoring bores should be used to develop a water table map for the site and its near environs. e) The monitoring bores must be protected from construction damage. Advisory note: no approval under the Water Management Act 2000 is required for these monitoring bores provided that they extract less than 3ML/water year.
- GT0241-00001 A construction certificate can be issued for excavation work in accordance with a valid development consent, however dewatering cannot take place without an Approval being granted by Water NSW for any water supply works required by the development. If the excavation work will or is likely to require dewatering, the applicant must apply and obtain, an approval under the Water Management Act 2000 prior to any dewatering taking place and notify WaterNSW of the programme for the dewatering activity including the commencement and proposed completion dates of the dewatering activity. Advisory Note: An approval under the Water Management Act 2000 is required to construct and/or install the water supply works. For the avoidance of doubt, these General Terms of Approval do not represent any authorisation for the take of groundwater, nor do they constitute the grant or the indication of an intention to grant, any required Water Access Licence (WAL). A WAL is required to lawfully take more than 3ML of water per water year as part of the dewatering activity. A water use approval may also be required, unless the use of the water is for a purpose for which a development consent is in force.

Transport for NSW

In accordance with the Roads Act 1993 – Section 138 (non-integrated), Council consulted Transport for NSW (TfNSW) regarding the development. In response, TfNSW provided the following comment:

TfNSW notes that Fox Valley Road at the development sites location is a 7000 series unclassified regional road (unclassified under the Roads Act 1993) under the care and control of Council. As such, concurrence under section 138 of the Roads Act 1993 is not required from TfNSW.

Further to the above, the following advisory comments are provided for the Council's consideration in the assessment and determination of the DA:

- a) Council will need to satisfy itself as to the suitability of the proposed developments connection with Fox Valley Road.
- b) Council will need to satisfy itself that sufficient land is being preserved at developments connection (i.e. Link Road) with Fox Valley Road to ensure required future upgrades to Fox Valley Road / Link Road intersection can be provided.
- c) TfNSW consent under Section 87 of the Roads Act 1993 is required for new traffic signals.
- d) Are there any infrastructure upgrades and/or contributions required under MP07_0166, as amended (e.g. the Pacific Highway and Fox Valley Road intersection), does this DA need to contribute and have the requirements been complied with?

Council's Development Engineer provided the following response:

"The proposed intersection upgrade is part of the approved Concept Plan for Wahroonga Estate – Major Project No. 07_0166 (Concept Plan). Any infrastructure upgrades and contributions must be delivered as part of the Concept Plan approval. No objection is therefore raised by Council.

Under the subject application, traffic signals are not proposed. Approval from TfNSW should be obtained by the applicant for future traffic signals."

Concept Plan for Wahroonga Estate – Major Project No. 07_0166

On 31 March 2010, the Minister of Planning approved Part 3A Concept Plan for Wahroonga Estate (Concept Plan) which allows for the expansion of the Sydney Adventist Hospital (SAN) and other developments intended for residential, commercial, educational, and religious purposes (**Figure 6**).

The Concept Plan has been subject to various modifications, including **MOD 9**, which was approved on 20 February 2023, and is applicable to the subject application. MOD 9 included:

- Modifications to the building envelope of the proposed residential flat buildings in Precinct D: Fox Valley Road East
- Modifications to the car parking rates for the residential flat buildings in Precinct D: Fox Valley Road East

The Concept Plan includes concept building envelopes and conditions of consent. Depending on the nature of the project, the plan also details project modifications, ongoing assessment and mitigation measures. The Concept Plan provides certainty and direction regarding the redevelopment potential of the site and guides further considerations to be made and addressed to realise the development envisaged under the Concept Plan.



Figure 6: Concept Plan overview

Precinct D – Fox Valley East

The development site is located within Precinct D – Fox Valley East of the Wahroonga Estate (**Figure 7**).



Figure 7: Precinct D – Fox Valley East (Source: MP 07_0166 MOD 9 Application)

The Concept Plan requires that future development subject to Part 4 of the Act to be generally consistent with the terms of the approval of the Concept Plan as specified by Condition A2, Point 3.

An assessment against the relevant terms and further assessment requirements of the Concept Plan (as modified) in relation to Precinct D: Fox Valley Road East, is provided below.

A2 Development in Accordance with Plans and Documentation

- (1) *The development shall generally be in accordance with the following plans and documentation (including any application therein):*
 - (a) *Wahroonga Estate Redevelopment Incorporating Sydney Adventist Hospital Environmental Assessment and Concept Plan dated April 2009, as amended by the Wahroonga Estate Redevelopment Incorporating Sydney Adventist Hospital Final Preferred Project Report and Concept Plan dated January 2010, and the appendices of the document titled Wahroonga Estate Redevelopment Incorporating Sydney Adventist Hospital Preferred Project Report and Concept Plan dated September 2009, prepared by Urbis.*
 - (b) *Section 75W Modification Request 'Claiming and Redistribution of Approved Wahroonga Estate Hospital Floorspace (07_0166)' dated 23 November 2012 and Response to Submissions letter dated 22 February 2013, prepared by MacroPlanDimasi.*
 - (c) *Section 75W Modification Request '(MP07_0166 MOD 4) Modification of Wahroonga Estate Concept Plan to better articulate residential and commercial development components' dated 18 September 2013 and Response to Submissions letter dated 19 November 2013, prepared by MacroPlanDimasi.*
 - (d) *Section 75W Modification Request '(MP07_0166 MOD 5) Modification to Building Footprints and Road Alignment at Precinct B: Central Church under the Wahroonga Estate Concept Plan' dated 12 November 2013 and Response to Submissions dated 14 April 2014, prepared by MacroPlanDimasi.*

- (e) Section 75W Modification Application (MP07_0166 MOD 8) Central Church Precinct, Wahroonga Estate dated 1 February 2018 and Response to Submissions dated 16 August 2018 and 10 December 2018, as amended by Response to Submissions dated 27 May 2019 prepared by Ethos Urban and additional information dated 15 October 2019, 2 April 2020 and 7 August 2020 prepared by Ethos Urban.
- (f) **Section 75W Modification Application (MP 07_0166 MOD 9) Environmental Assessment Report dated 8 October 2021 and Response to Submissions dated 27 April 2022 prepared by Ethos Urban, as amended by additional information dated 9 June 2022, 28 June 2022 and 15 August 2022 prepared by Ethos Urban.**
- (g) Section 75W Modification Application (MP07_0166 MOD 6) San Hospital Wahroonga Roadworks dated 26 April 2017 prepared by Macro Plan Dimasi, as amended by Response to Submissions dated 3 November 2017 prepared by prepared by Macro Plan Dimasi and additional information dated 29 July 2019, 11 December 2020, 2 May 2022 and 20 May 2022 prepared by Memphis Strategic.

Except as otherwise provided for in the Department's administrative terms of approval and further assessment requirements as set out this Schedule.

- (2) In event of any inconsistencies between administrative terms of approval and further assessment requirements of this concept approval and the plans and documentation described in this schedule, the administrative terms of approval and further assessment of this concept approval prevail.
- (3) Future development subject to Part 4 of the Act is to be generally consistent with the terms of the approval of the Concept Plan, under section 75P(2)(a) of the Act.

A3 Gross floor area

- (1) The maximum gross floor area for each precinct is detailed in the following table:

Precinct	Maximum Gross Floor Area (m²) (excluding dwellings)	Maximum Gross Floor Area (m²) by land uses
Precinct A: Mount Pleasant	17,700m ²	17,700m ² Seniors Housing
Precinct B: Central Church	12,200m ²	9000m ² Education 3,200m ² Place of Public Workshop
Precinct C: Central Hospital	115,000m ²	94,450m Hospital & Facilities 13,000m ² Student Accommodation 1,500m ² Hostels/ group homes/ boarding houses 7,050m ² Faculty of Nursing 2,000m ² Retail 1,000m ² Commercial
Precinct D: Fox Valley Road East	15,000m ²	

Precinct E: <i>Residential East</i>	N/A	-
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The Concept Plan does not specify a GFA for residential land use within Precinct D. The proposal therefore satisfies Condition A3.

A4 Dwellings

- (1) *The maximum dwellings / other accommodation types for each precinct is detailed in the following table:*

Precinct	Maximum Dwellings
Precinct A: <i>Mount Pleasant</i>	16 Dwelling Houses 38 Townhouses 27 Residential Flat Building Dwellings
Precinct B: <i>Central Church</i>	9 Dwelling Houses 200 Residential Flat Building Dwellings
Precinct C: <i>Central Hospital</i>	3 Dwelling Houses 105 Residential Flat Building Dwelling
Precinct D: <i>Fox Valley Road East</i>	8 Dwelling Houses 88 Residential Flat Building Dwelling
Precinct E: <i>Residential East</i>	6 Dwelling Houses

Within Precinct D: Fox Valley Road East, the Concept Plan limits the number of dwellings to 8 dwelling houses and 88 residential flat dwellings. The proposal provides 71 residential apartments. Precinct D currently accommodates 6 existing residential apartment units and 8 existing dwelling houses. The total number of residential apartments is 77 and the total number of dwelling houses is 8. No additional dwelling houses are proposed pursuant to the subject application. The proposal therefore satisfies Condition A4 (**Figure 8**).



Figure 8: Precinct D – existing and proposed dwelling house (Source: Ethos Urban, dated 8 May 2025)

A8 Building height

- (1) *The building shall generally comply with the Ku-ring-gai Planning Scheme Ordinance Wahroonga Estate Height of Buildings Map, except as follows:*

(k) Precinct D: Fox Valley Road East residential flat buildings shall be restricted to the maximum RLs as shown in Drawing DA-110-100 'GA Plans Roof Level' revision 01 dated 14.04.2022 and area between RL180 and RL183 in Building 1 and RL177 and RL180 in Building 2 is not to include any residential or habitable floor space.

The proposal satisfies Condition A8 by detailing the following:

- Building A: RL180 for habitable and RL183 for plant
- Building B: RL177 for habitable and RL180 for plant

B1 Urban Design

- (1) *Future development applications are to be generally consistent with the following indicative elements of the approved Concept Plan unless it can be satisfactorily demonstrated to the consent authority that a superior built form and/ or urban design outcome can be achieved with an alternative layout, while remaining consistent with the terms of approval and intent of*

the approved Concept Plan:

- (a) Building footprints
- (b) Asset Protection Zone widths
- (c) Internal road location
- (d) Detention basin location

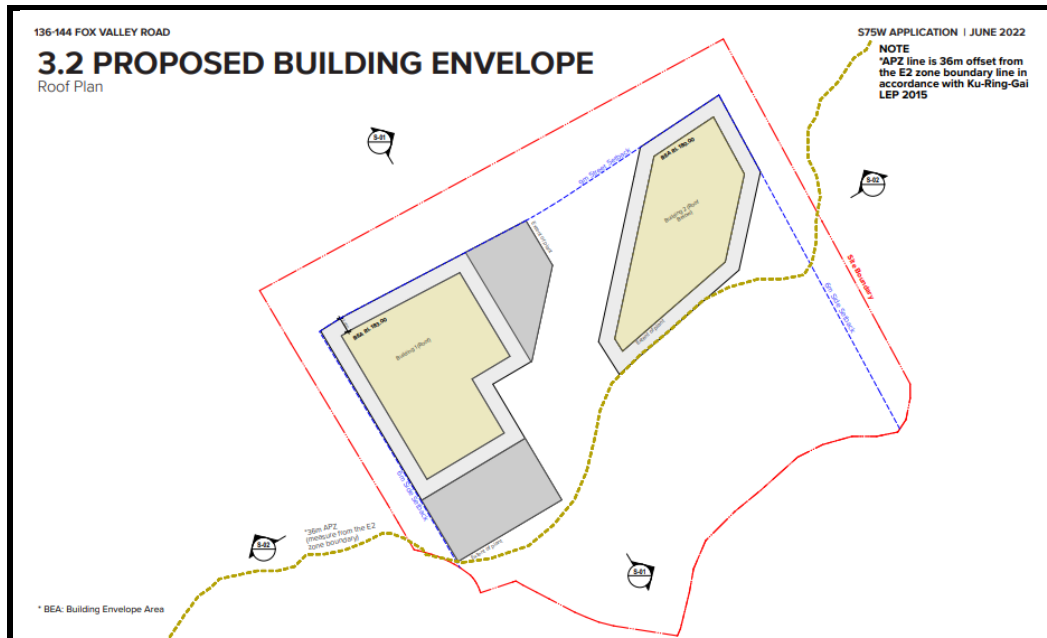
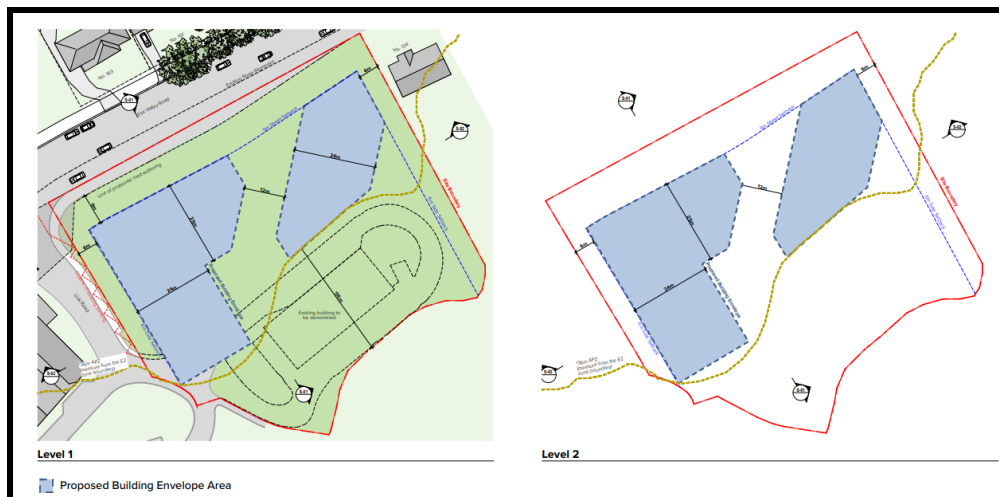


Figure 9: Approved building footprint including roof level plant (Source: MP 07_0166 MOD 9 Additional Information dated 9 June 2022)



Figure 10-11: Approved building envelope for Lower Ground/ Basement 1 and ground Level (Source: MP 07_0166 MOD 9 Additional Information dated 9 June 2022)

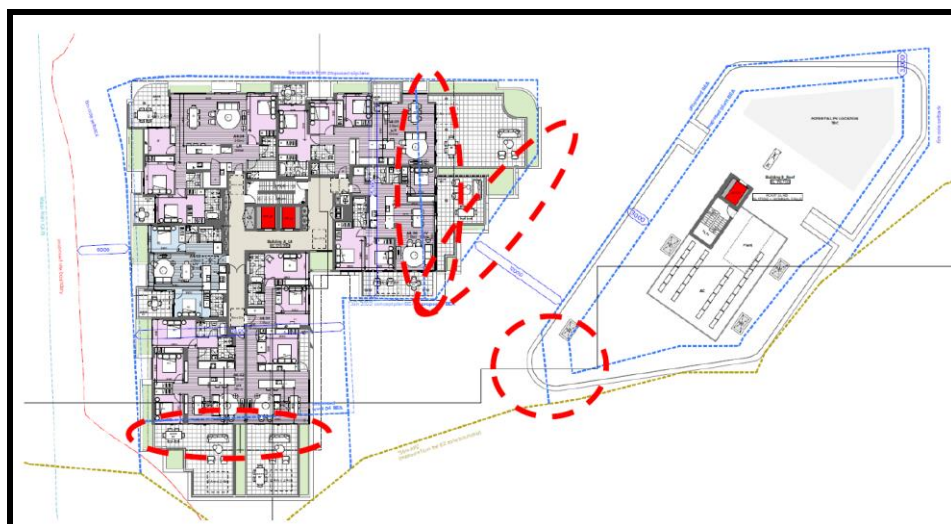
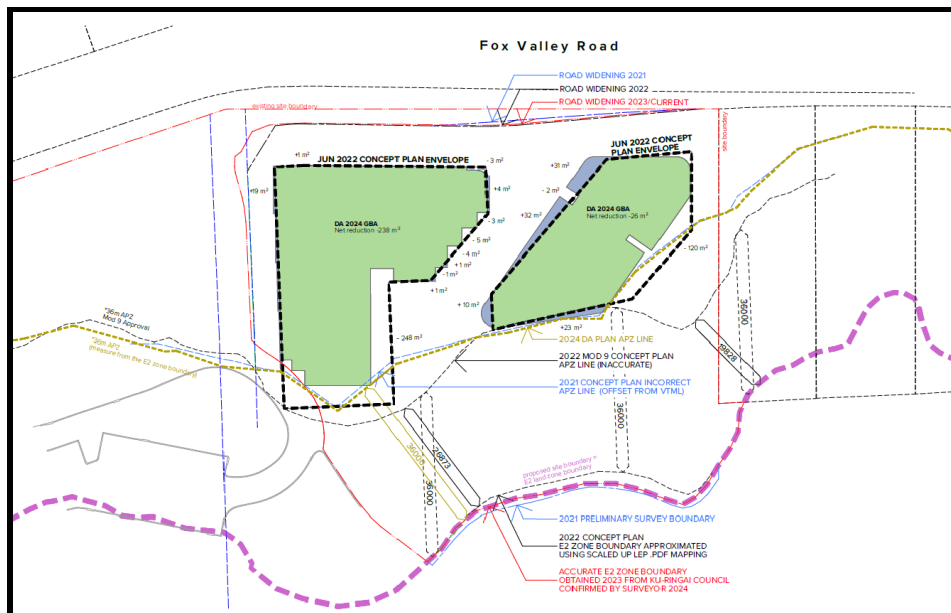


Figures 12-13: Approved building envelope for Level 1 and Level 2 (Source: MP 07_0166 MOD 9 Additional Information dated 9 June 2022)

The approved building envelope plans (**Figures 9 – 13**) under the Concept Plan are established per the dimensions shown on the extracts above. The subject plan details the following:

- Front setback: 9m from proposed road widening
- Side setback: 6m from the lot boundary
- Rear setback: 36m from the APZ line
- Internal building separation: 12m
- Maximum width of Building A: 25m and 24m
- Maximum width of Building B: 24m

The proposal seeks a variation to the building envelope stipulated in Condition B1(1) (Figures 14 and 15).



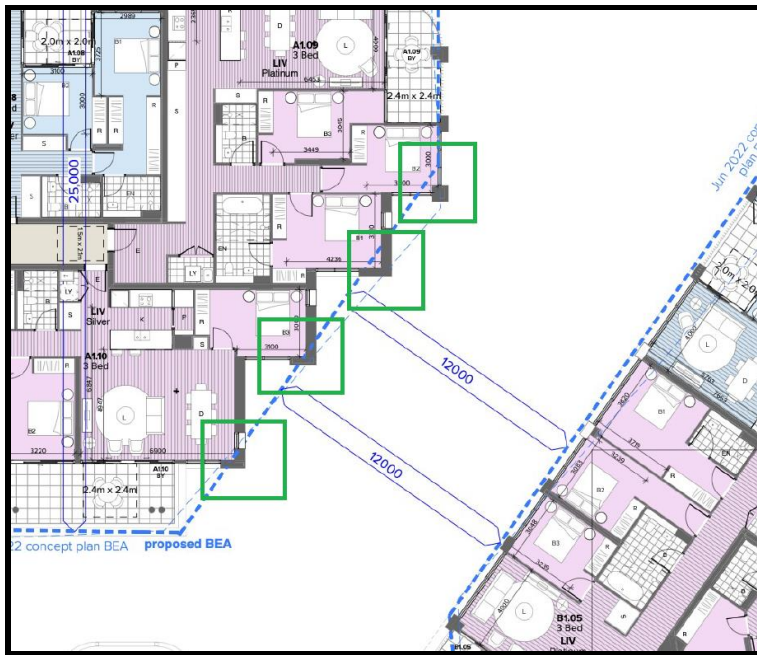
Figures 14 and 15: Proposed variations to the approved building envelopes

The variations to the approved building envelopes include projections outside the footprint and parts of the approved footprint that have not been utilised, including balconies on Level 4, over the roof form of Level 3 of Building A. The specific areas of the development which protrude beyond the approved building envelope are as follows:

Building A: Internal building separation

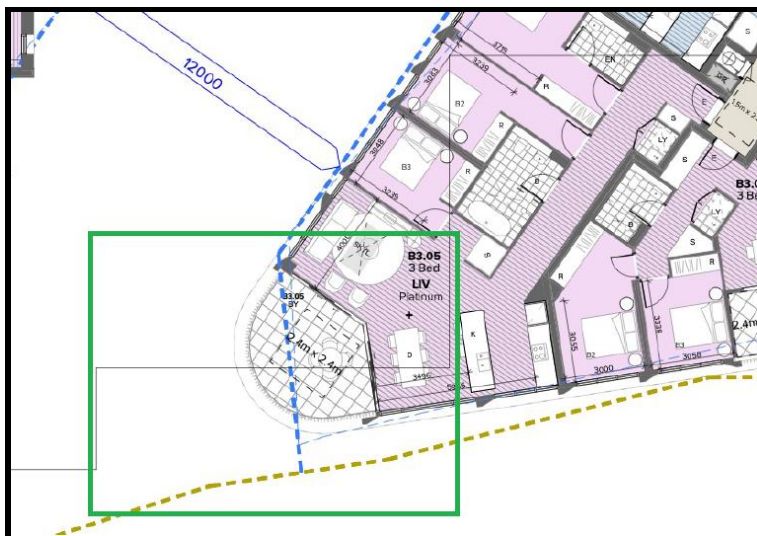
The eastern façade of Building A is stepped and encroaches up to 1.7m into the

approved 12m internal building separation required under the Concept Approval.



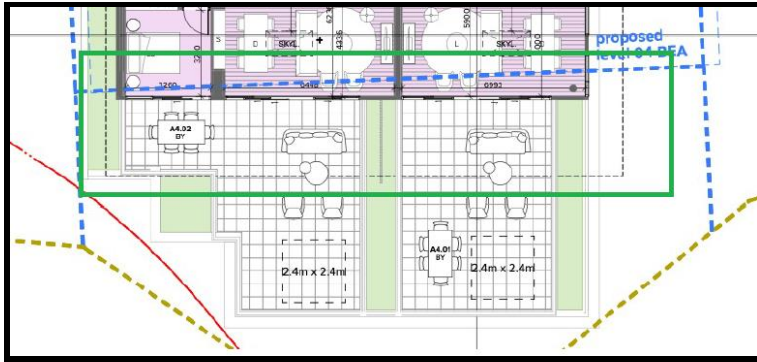
Building B: south-west facing balconies on Levels 1, 2 and 3

A portion of the south-west facing balcony of Unit B3.04 extends a maximum of 2.4m beyond the approved building envelope.



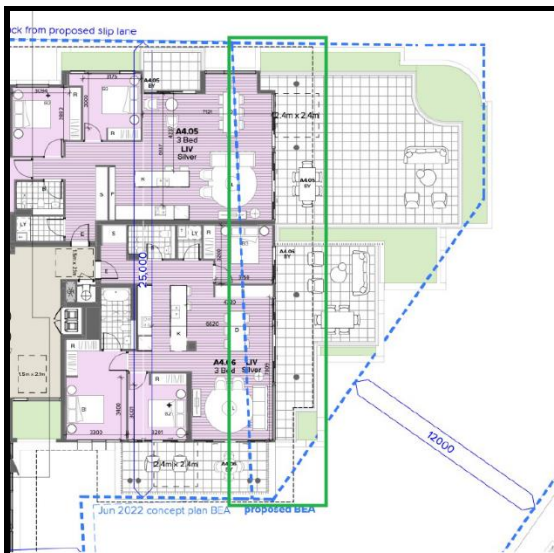
Building A: southern portion of building on Level 4

A portion of the habitable area, balconies, roof and eaves on Level 4, Building A, encroaches beyond the approved building envelope to the south.



Building A: eastern portion of the building on Level 4

A portion of the habitable area, roof and eaves on Level 4, Building A, encroaches beyond the approved building envelope to the east.



The applicant states that, despite the building envelopes being realigned, the intent and the key setback, separation and building width controls within the building envelope realignment are consistent with the approved plans therefore are considered that the position of future development is 'generally consistent' with the approved Concept Plan building envelopes.

Variation request prepared by the applicant

Section 3B (Provisions applying with respect to approval of concept plans), Control 2(d) Schedule 2 in the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (2018 SI 67) states that:

*a consent authority must not grant consent under Part 4 for the development unless it is satisfied that the development is **generally consistent** with the terms of the approval of the concept plan.*

Additionally, Conditions A2(1) and B1(1) states that future applications are to be 'generally consistent' with the 'indicative' elements. The applicant asserts this terminology accentuates the flexibility allowed for within the Concept Plan approval.

The applicant has submitted a request to vary the approved building envelope. However, the variation has been incorrectly framed per the requirements of Clause KLPP Assessment Report

4.6 'Exceptions to development standards' of KLEP 2015, which is not the correct mechanism for the subject variation, as Condition B1(1) is not a development standard. In contrast to Condition A8(2) of the Concept Plan, Condition B1(1) requires:

Future development applications are to be generally consistent with the following indicative elements of the approved Concept Plan unless it can be satisfactorily demonstrated to the consent authority that a superior built form and/ or urban design outcome can be achieved with an alternative layout, while remaining consistent with the terms of approval and intent of the approved Concept Plan:

The following assessment considers the justifications provided by the applicant and concludes that the alternative layout does achieve a superior built form/urban design outcome whilst remaining consistent with the terms of approval and intent of the Concept Plan:

The objectives of Condition B1(1)

The applicant states that the objectives of the condition are achieved for the following reasons:

- *The minor protrusion into the internal building separation requirement is not dominant from the street. The minor intrusions will help define the view corridor between buildings, towards the bushlands.*
- *The south-west facing balcony on Building B is located towards the rear of the development. The area of non-compliance is setback 38m from Fox Valley Road and will have a negligible impact upon the scale of the development when viewed from the street.*
- *The southern portion of the building, located on Level 4 of Building A, is negligibly visible from the streetscape.*
- *The eastern portion of Building A will have limited visibility from the streetscape. The design of the proposal employs a defined base, middle and top structure (**Figure 16**), drawing from precedents in the local and historical context of Wahroonga. The variation to Level 4 and the extended eaves are located within the recessed 'top' of the building, which is visually distinguishable through materials and finishes, architectural articulation, setbacks and on-structure landscaping to soften its appearance. These design strategies ensure the variation is well integrated, maintains an appropriate scale when viewed from Fox Valley Road and results in negligible impacts in relation to building bulk and scale. **Figure 17** illustrates that the additional massing has been carefully integrated into the overall design and does not result in an additional visual impact.*

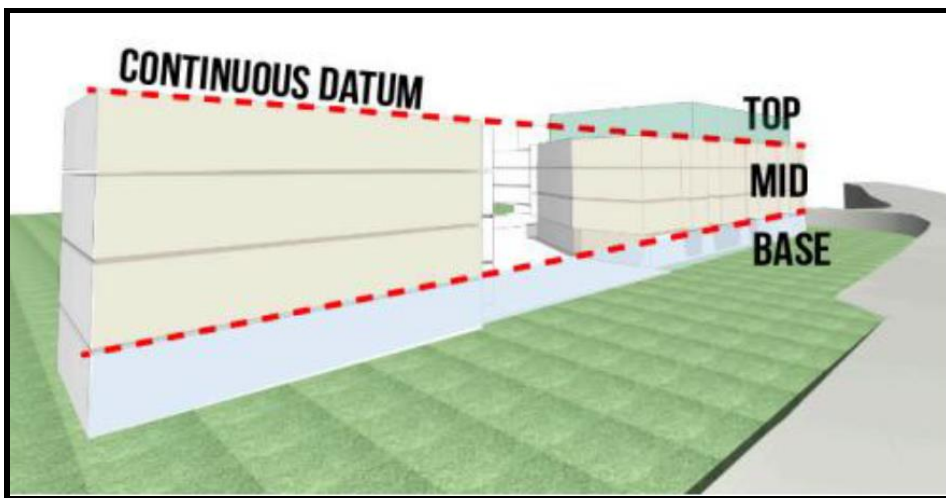
The applicant has satisfactorily demonstrated that the variation to the approved building envelope will result in a superior built form and urban design outcome.

The breach is limited to four portions of Building A and B. It is notable that the visibility of the variations to the southern elevation of Building A, Level 4 and the south-western balconies of Building B is negligible from the streetscape, thus being an appropriate scale when viewed from

Fox Valley Road.

Whilst the variations to the eastern façade of Building A will be visible from Fox Valley Road, these elements are considered to provide positive urban design outcomes. The modulation of the eastern façade results in a superior built form that provides visual interest when viewed from Building B and the public domain whilst also optimising outlook to bushland to the south of the development site. When viewed from the public domain, the minor protrusions assist in defining a view corridor between the two buildings and the rear bushlands.

The encroachment of habitable space and overhead elements along the side (eastern) elevation of Building A is contained within the recessed upper portion of the building (**Figures 16 and 17**). Through use of materials and finishes, articulation, setbacks and landscaping features, it is concurred that the variation to the building envelope has been designed to be of an appropriate bulk and scale when viewed from the public domain. The variation results in a superior built form and urban design outcome.



Figures 16 and 17 - The encroachment of habitable space and overhead elements along the side (eastern) elevation of Building A is contained within the recessed upper portion of the building

It is agreed that the proposed building envelopes are adequately set back from the front and rear boundaries, allowing satisfactory landscape treatment within the setback areas, including both the retention and planting of tree canopies.

The variation does not hinder the development from achieving compliance with the ADG objectives including those relating to visual separation, solar access and cross ventilation.

The applicant satisfactorily demonstrates that Objective (c) is met, as the variation will deliver a high level of internal amenity, consistent with the requirements of the ADG, while optimising opportunities for outlook onto the surrounding bushlands. The applicant provided the following summary:

- *70.4% (50/71) of apartments achieve at least 2 hours of direct sunlight between 9am and 3pm at midwinter, complying with Objective 4A-1 of the ADG.*
- *14% (10/71) of apartments receive no direct sunlight, complying with Objective 4A-1 of the ADG.*
- *60.5% (43/71) of apartments are naturally cross ventilated, complying with Objective 4B-1 of the ADG.*
- *Articulating the eastern façade, reducing the length of the wall which minimises the bulk and scale of the building as viewed within the development.*

It is agreed that the extrusion outside the approved building envelopes promotes internal residential amenity. The buildings have been designed to maximise the potential amenity of the internal spaces by maximising access to light and where possible, to views. The habitable rooms with generous views to the east will receive excellent light, solar access and views to the internal landscaped podium, while the habitable rooms to the south will have optimised views of the bushlands located south of the development site.

The stepped design of the side (eastern) façade to Building B is generally consistent with the 12m internal separation and building footprint requirement under the Concept Plan. The variation is localised to portions of the development, with a maximum breach of 1.7m outside the approved building envelope. It is agreed that a positive amenity outcome achieved by the proposed variation allows for 9 bedrooms across 6 apartments to have an outlook towards the bushland.

Environmental planning grounds

The applicant states that the following are environmental planning grounds that justify the alternative building envelope:

- *Improved built form through the provision of a stepped side (eastern) façade to Building A, which provides visual articulation.*
- *Privacy retained to residents as all parts of the side (eastern) façade which encroaches into the setback zone are designed to include privacy screens and solid walls.*
- *Improved outlook and amenity from the living rooms and bedrooms, with the areas protruding outside the approved building envelope being designed to increase the views and vistas of the adjoining bushlands to the south of the landscaped areas to the north.*
- *Control 1 in Condition A1 and Control 1 in Condition B1 of the Concept Plan permits future development to be 'generally consistent' with the approved plan. The development*

remains to be substantially located within the approved envelope and remained to be 'generally' consistent with the approved plans.

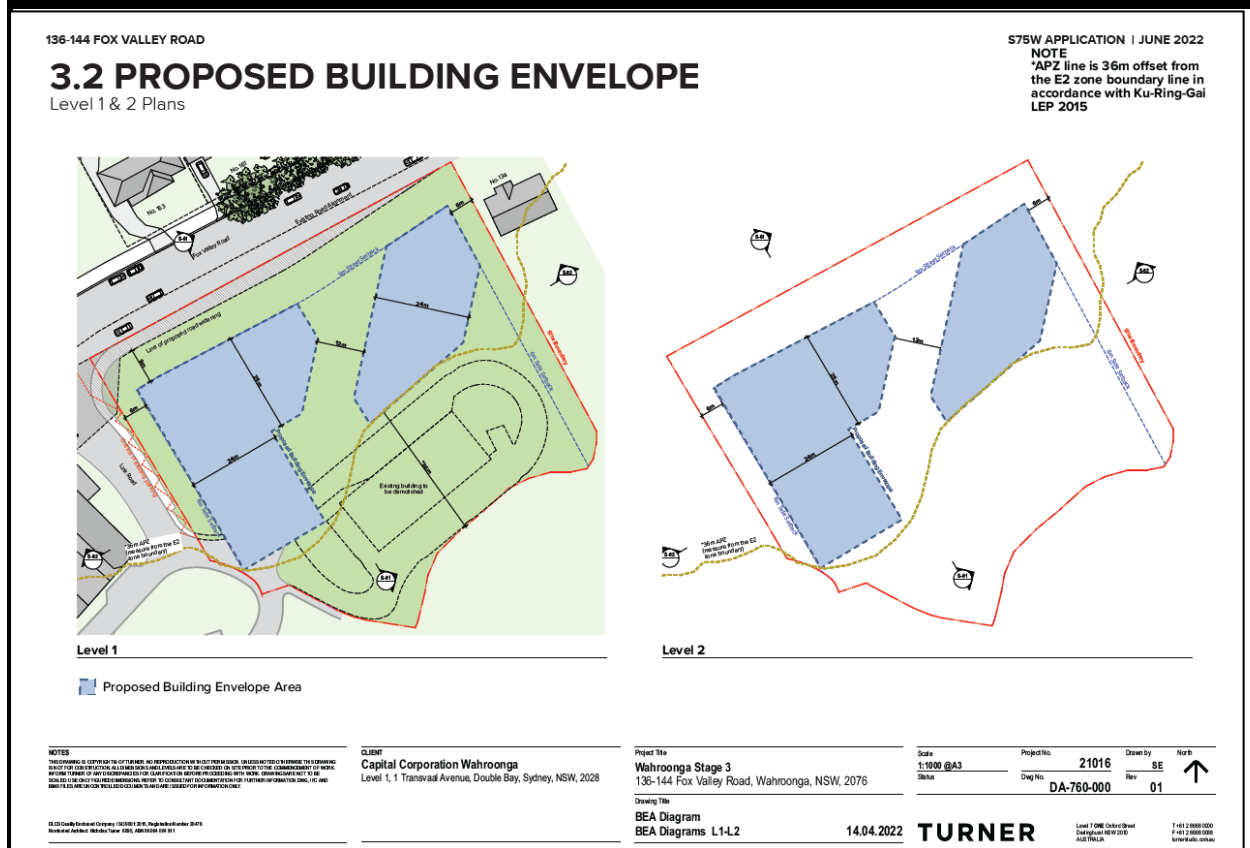
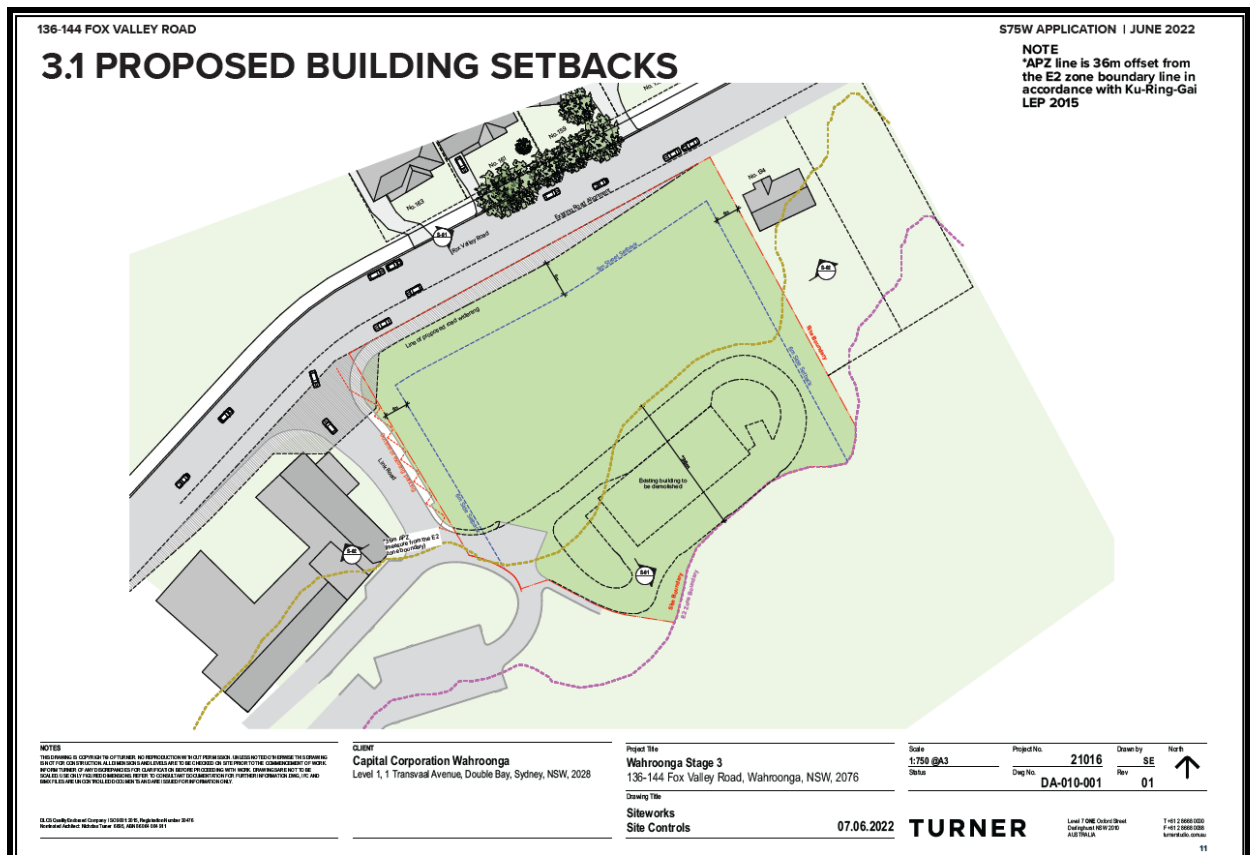
- The eaves, which protrude outside the approved building envelope, provide residential amenity, in accordance with the privacy and solar access objectives of the ADG. The eaves provide shelter whilst allowing daylight to penetrate interior spaces, balancing privacy and environmental performance.*
- The Level 4 roof protrusion outside the approved building envelope improves the streetscape. The cantilevered roof form creates a dynamic and varied streetscape, whilst enhancing the aesthetic appeal of the development and offers a more engaging experience for pedestrians and residents.*
- The building elements which exceed the prescribed envelope have been designed to minimise the impacts on the public. The variations do not overshadow the public domain or adjacent properties, preserve amenity nor does it result in unnecessary bulk or scale impacts to the street.*
- Overhead elements including balconies and slab projections are limited to 2 to 2.4 metres from the glazing line, providing shelter while allowing daylight to penetrate interior spaces, balancing privacy and environmental performances.*

For the following reasons it is agreed that the grounds advanced by the applicant have planning merit:

1. The variation facilitates positive environmental performance outcomes. The overhead elements demonstrate good sustainable design by providing shading and shelter, whilst allowing adequate solar access into interior spaces.
2. The variation results in positive amenity outcomes for residents. The buildings have been designed to optimise outlook, by maximising opportunity to address and enjoy the views and vistas of the bushlands to the south of the development site. The areas of variation have been designed to mitigate privacy impacts through the incorporation of screens and walls. Additionally, the variation provides a high level of amenity through appropriate room dimensions and functional layouts, particularly along the rear (southern) and side (eastern) habitable spaces of Building A.
3. The variation positively contributes to the surrounding environment. On Building A, the staggered wall plane along the eastern façade and the roof projection at Level 4 add visual interest and articulation to the public domain, while ensuring adequate solar access is maintained to the street and adjacent properties.

Asset Protection Zone

Per Condition A2, Point 1(f), the approved AZP line under the Concept Plan is identified in **Figures 17 and 18**, below.

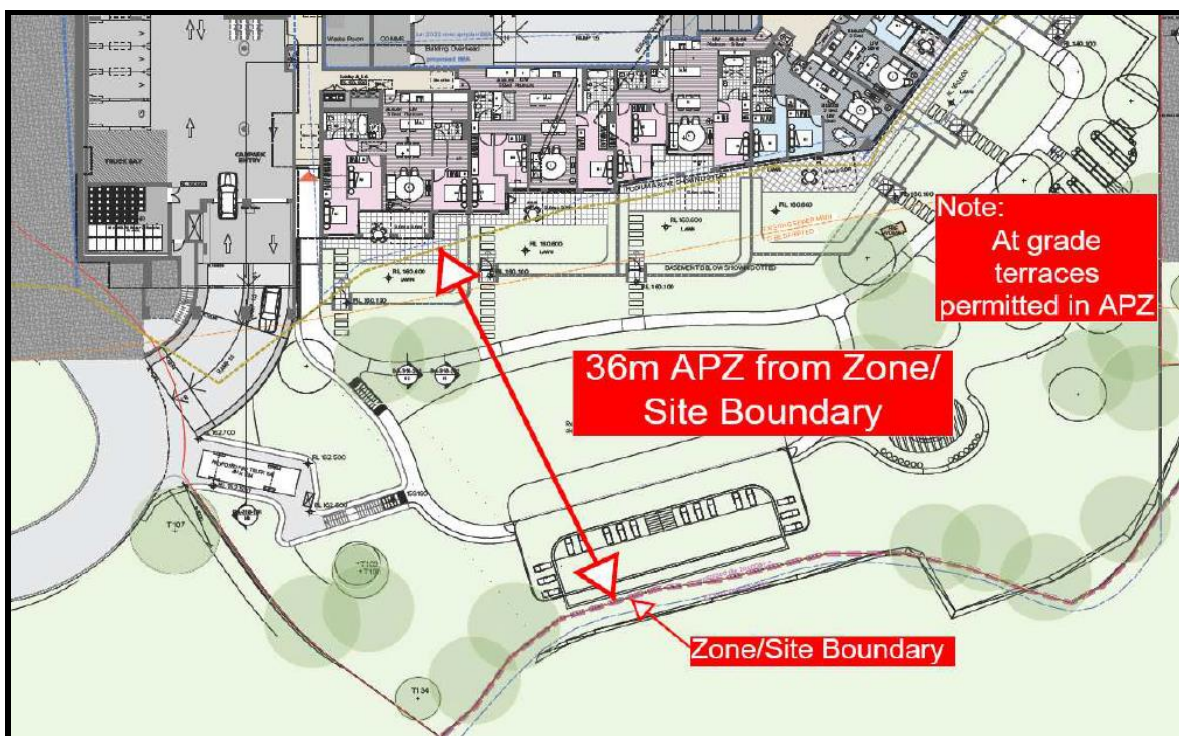
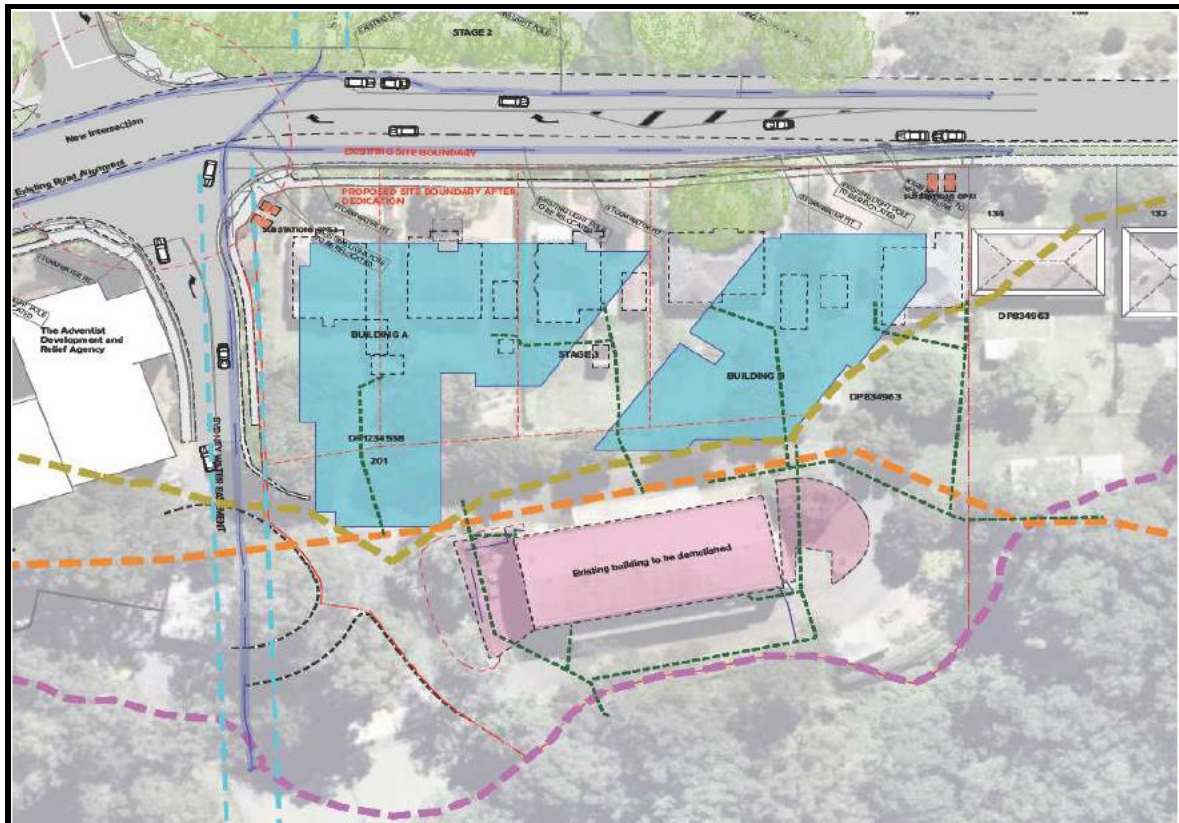


Figures 17 and 18: APZ, boundary, setback, building separation lines (Source: Ethos Urban, dated 9 June 2022)

The proposal seeks to modify the approved APZ line, with the applicant justifying the variation on the basis that the APZ line in the approved Concept Plan was incorrectly plotted.

The approved plans supporting the Concept Plan (Mod 9) contained the following errors:

- The boundary of the E2 Environmental Conservation (now designated as the C2 Environmental Conservation Zone) was inaccurately plotted;
- As a result, the APZ line was also incorrectly shown as being 36 metres from the misaligned E2 zone boundary.



Figures 19 and 20: Site Plan and Lower Ground Floor Plan detailing proposed AZP from zone and site boundary (Source: Updated Bushfire Protection Assessment, Issue date 08.05.2025; Prepared by Australian Bushfire Protection Planners Pty Ltd)

As detailed in **Figure 20**, the site boundary to the south is represented by a dashed red line, which aligns with the C2 Environmental Conservation zone, represented with a thick dashed purple line. The proposed amended APZ line is offset from the accurate site boundary and the C2 zone boundary by 36 metres.

The private open space of the lower ground floor apartments in Building B encroaches into the amended APZ line. The updated Bushfire Consultant Report (Updated Bushfire Protection Assessment, Issue date 08.05.2025; Prepare by Australian Bushfire Protection Planners Pty Ltd) supports the encroachment, subject to the following restrictions being met:

- 1. Dividing walls (fences) must be masonry.*
- 2. Pergolas are not permitted unless they are 6 meters from the building and non-combustible.*

If the proposal was recommended for approval, the subject restrictions would form part of the recommended conditions and the updated Bushfire Protection Assessment report would be listed in Condition 1.

The applicant satisfactorily demonstrates that by correcting the APZ, the variation will result in a superior urban outcome, while remaining 'generally consistent' with the terms of approval and intent of the approved Concept Plan, as required by Conditions A2(1) and B1(1) of the Concept Plan (as modified) and Section 3B (Provisions applying with respect to approval of concept plans), Control 2(d) Schedule 2 in the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (2018 SI 67).

B1 Urban design

- (2) Buildings are to be sited to avoid critically / endangered ecological communities, achieve balance between cut and fill, minimise earthworks, provide adequate solar access and minimise impacts on privacy and overshadowing of residential uses within and surrounding the site, in accordance with SEPP 65 (State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development) and the Residential Flat Design Code.*

The proposal meets the requirements of Housing SEPP, the design criteria contained with the ADG and is accompanied by a Design Verification Statement.

- (4) Buildings with frontage to Fox Valley Road must have an active street frontage and provide a setback of at least 10 metres from the street front boundary.*

The active street frontage of the RFB allows internal and external physical and visual connections and access. This has been achieved through the foyer entrances, glazed doors and windows. The active street frontage encourages surveillance of the street and of the front setback, aligning with the crime prevention design.

Transport for NSW (TfNSW) required road widening works associated with the new school, that has resulted in the boundary adjustments post-original Concept Plan approval. The front boundary of the subject site has been adjusted, resulting in a setback of 9 metres from the front (northern) boundary/ proposed site boundary after the road dedication works. The proposal is consistent with the approved plans supporting the Concept Plan, which requires a 9 metre setback from the proposed road widening. The departure to the numerical front setback

requirement is accepted for the following reasons:

- the breach of Condition B1, Part 4, is a result of TfNSW road widening requirements;
- modifying the proposal to achieve compliance may result in encroachment into the APZ which is not acceptable;
- the proposed front setback provides adequate landscaping within the public interface, softening the development and mitigating bulk and scale impacts.
- the building envelope, particularly within the frontage of the site, is 'generally consistent' with the Concept Plan's approved building footprint, as required by Part 4 of the Act.

B4 Biodiversity

(1) A Biodiversity Management Plan is to be prepared by the Proponent and approved by DEWHA prior to determination of the first project or development application. The Plan is to include:

- (a) Vegetation Management Plan*
- (b) Pest and Weed Plan*
- (c) Hydrology and Nutrient Management Plan*
- (d) Habitat Corridor and Linkages Management Plan*
- (e) Fire Management Plan*
- (f) Management Plan outlining public access and impacts on the conservation land (E2 Environmental Conservation zone)*
- (g) Ownership, management, maintenance and monitoring responsibilities for conservation land (E2 Environmental Conservation zone) and funding arrangements.*

Council's Ecological Assessment Officer is satisfied that the impact of the proposal is outside lands identified as having biodiversity conservation status. The proposal is consistent with the approved Biodiversity Management Plan.

B5 Bushfire protection

(1) All Asset Protection Zones are to be located outside of the conservation land as shown in the approved Concept Plan unless required for development constructed prior to the date of this instrument, or unless required for the School following the changes to the School APZ required by Further Assessment.

(2) Uses constituting 'Special Fire Protection Purposes' as defined in Planning for Bushfire Protection 2006 2019 are to be undertaken in consultation with the NSW Rural Fire Service.

(3) All Asset Protection Zones and other bushfire protection measures are to comply with Planning for Bushfire Protection 2006 2019, as amended.

(5) Future development in Precinct D: Fox Valley Road East is to demonstrate compliance with Planning for Bushfire Protection 2019, as amended. If necessary, building footprints shown on the plans approved under MOD 9, are to be reduced to ensure compliance with APZ requirements.

The proposal seeks to modify the approved APZ line, with the applicant justifying the variation on the basis that the APZ line in the approved Concept Plan was incorrectly plotted. The proposed modification seeks to correct the error by ensuring a consistent 36 metre setback from the C2 Environmental Conservation Zone boundary at all points. The variation was endorsed by the applicant's Bushfire Consultant, subject to the following requirements, which would be conditioned if the proposal was recommended for approval:

- 1. Dividing walls (fences) must be masonry.*

2. Pergolas are not permitted unless they are 6 meters from the building and non-combustible.

The proposal has been referred to the NSW Rural Fire Service (RFS) for assessment. Conditions were recommended by the RFS to ensure the APZ and other bushfire protection measures comply with *Planning for Bushfire Protection 2006 2019*. The proposal satisfies Condition B5.

B6 Car parking

- (1) Residential car parking rates are to be determined having regard to the rates specified in the Preferred Protect Report, with the exception of residential car parking rates for the Residential Flat Buildings within the Central Church Precinct and Fox Valley Road East Precinct which are to be as follows:*
 - (a) 1 bedroom apartment: a maximum of 1 space per dwelling*
 - (b) 2 bedroom apartment: a maximum of 1.25 spaces per dwelling*
 - (c) 3 bedroom apartment: a maximum of 2 spaces per dwelling*
 - (d) visitor parking: 1 visitor space per 4 dwellings*
 - (e) car share spaces: a minimum of 1 car share space per 90 dwellings or part therefore*
- (2) Residential car parking is to be provided at grade or below ground level within the footprint of the building.*

The proposal provides 138 car parking spaces and all residential parking is provided below ground level, within the building envelope. The proposal satisfies Condition B6.

B10 Aboriginal heritage

(1) The consent authority is to consider during assessment of future project or development applications any measures that should be put in place for development in the Coups Creek corridor should Aboriginal sites be uncovered during construction activities.

If the application were to be recommended for approval, a condition could be imposed for protection measures should there be a suspected discovery of an Aboriginal object or place.

B11 Stormwater management

- (1) A Stormwater Management Plan is to be submitted for approval with all project and development applications for building works as relevant and is to demonstrate that water sensitive urban design measures have been integrated into the development.*
- (2) The consent authority is to consider Ku-ring-gai Council's DCP 47 – Water Management and Hornsby Councils Sustainable Water DCP during the assessment of development applications.*

Council's Development Engineer advised that the Stormwater Management Plans are unacceptable for the following reasons:

- (a) The proposed pump-out tank does not demonstrate compliance with the storage requirements for the 100-year 2-hour storm as specified under Part 24B.5 of the Ku-ring-gai DCP. The rising main from the pump out system will need to be connected to the on-site detention system.*
- (b) No supporting hydraulic calculations have been submitted to demonstrate compliance with Part 24C.3-4 of the Ku-ring-gai DCP that requires rainwater retention and re-use to be provided to achieve a 50% reduction in runoff days. A*

water balance model has not been submitted.

- (c) No clarification has been provided as to the purpose of the proposed rainwater tank given that a retention component would also be required.
- (d) The stormwater management plan fails to provide design details of the dispersal trench to confirm sizing and functionality of the system.

The proposal fails to meet Condition B11 of the Concept Plan.

B12 Geotechnical issues

- (1) The consent authority is to be satisfied that future project or development applications incorporate high quality engineering design and that appropriate construction techniques are employed for development in the north-eastern portion of the site on land with gradients in excess of 10 degrees.*
- (2) The consent authority is to be satisfied that future project or development applications demonstrate that filled areas (especially along the northern edges of the car parks associated with the hospital) have been reviewed for stability.*

Council's Development Engineer advised that the submitted Geotechnical Report and Dewatering Management Plan satisfactorily address the requirements of Condition B12, by demonstrating that the proposed basement excavation, extending to 7 metres deep, is supported by detailed subsurface investigations, including borehole drilling and groundwater monitoring. The report confirms that appropriate engineering design and construction techniques will be used in areas with gradients exceeding 10 degrees, and that stability of filled areas, particularly near the hospital car parks, has been reviewed. Measures such as excavation support, vibration monitoring, and dilapidation surveys of nearby structures further ensure geotechnical integrity throughout the project.

B13 Contamination

- (1) A Phase 2 Detailed Site Contamination Assessment in accordance with State Environmental Planning Policy No 55 – Remediation of Land and associated guidelines is to be submitted for approval with the first project or development application for development in or adjacent to potentially affected areas identified in the Phase 1 Contamination Assessment.*
- (2) Contaminated spoil should be treated and disposed of using best practice techniques.*
- (3) Uncontaminated fill is to be reused rather than land filled.*

A Preliminary Site (Contamination) Investigation (PSI) report (prepared by Douglas Partners; dated April 2025) was submitted.

Part 14 (Conclusion and Recommendations) of the PSI states that the sites is generally suitable for the proposed residential development. The report however notes that the investigations were limited. Consequently, the PSI recommends further investigation around BH03 due to the presence of deeper, variated fill and reported asbestos. Broader test pitting across the site post-demolition is required to assess asbestos risk more comprehensively.

The report recommends the following supplementary investigations:

- *A hazardous building materials survey of the existing buildings be undertaken prior to any disturbance / demolition. The results will identify potential contaminants (e.g. asbestos, lead, PCBs) that may be present and could be released during the demolition*

process resulting in contamination of surface soils;

- Clearance of the buildings by a qualified occupational hygienist / licensed asbestos assessor following the removal of identified hazardous materials, and subsequently of the building footprints and surrounds following demolition; and*
- Following demolition of existing buildings, a supplementary investigation is undertaken targeting the sub soils beneath the demolished structures, and areas not adequately covered by the field component of this PSI. The total sampling numbers (including those undertaken as part of this PSI) should comply with the NSW EPA (2022) sampling guidelines (i.e. 20 sampling locations) as a minimum. The supplementary investigation should be undertaken using test pits to enable a better assessment of post-demolition asbestos risk and should also inform a formal waste classification for disposal of surplus material during excavation.*

The PSI states that the findings from the supplementary investigation may identify additional contamination within the site. Recommendations from the supplementary investigation will inform whether such findings will require active remediation or management. Should remediation be warranted, a remediation action plan would be recommended. The investigation also recommends consideration of the appropriate management of any extracted groundwater prior to disposal, which should be outlined in a dewatering management plan.

Should the proposal be recommended for approval, a condition requiring further investigation as per the PSI, prior to the issue of the Construction Certificate, would be recommended. The PSI is acceptable and meets the requirements of Condition B13 of the Concept Plan.

B14 Construction management and staging

- (1) A Construction Management Plan addressing impacts on traffic, local amenity, noise, vibration, sediment and erosion control is to be submitted for approval with all project and development applications.*
- (2) A Staging Plan including details of proposed bulk earth works is to be submitted for approval with the first project or development application for building works in each precinct.*

The Construction Management Plan (prepared by Capital Corporation; dated 08/05/25) contains limited information. If the proposal were to be approved, it is recommended that a condition be imposed requiring the submission of a revised Construction Management Plan prior to the issues of a Construction Certificate. The updated plan should detail the 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 required tree protection fencing.

A satisfactory Staging Plan has been provided. Subject to condition, the proposal is capable of satisfying Condition B14, Part 1 and 2.

STATUTORY PROVISIONS

State Environmental Planning Policy (Planning Systems) 2021 (“Regs 2021”)

Pursuant to Clause 2.19(1) of the SEPP, development that is specified in Schedule 6 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 Sydney North Planning Panel is the consent authority for this application.

Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017

Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 sets out the applicable planning framework where a Part 3A Concept Approval is approved and in force. These provisions allow for development consents approved under Part 3A to remain active and outlines the future approval pathway for detailed applications resulting from Part 3A Concept Approvals. As detailed earlier within this report, the site is the subject of Concept Approval – Major Project No. 07_0166.

Schedule 2, Clause 3B of this Regulation applies to development for which a concept plan has been approved under Part 3A, before or after the repeal of Part 3A.

3B Provisions applying with respect to approval of concept plans

- (1) This clause applies to development (other than an approved project) for which a concept plan has been approved under Part 3A, before or after the repeal of Part 3A, and so applies whether or not the project or any stage of the project is or was a transitional Part 3A project.*
- (2) After the repeal of Part 3A, the following provisions apply to any such development (whether or not a determination was made under section 75P(1)(b) when the concept plan was approved)—*
 - (a) if Part 4 applies to the carrying out of the development, the development is taken to be development that may be carried out with development consent under Part 4 (despite anything to the contrary in an environmental planning instrument),*
 - (b) if Part 5 applies to the carrying out of the development, the development is taken to be development that may be carried out without development consent under Part 4 (despite anything to the contrary in an environmental planning instrument),*
 - (c) any development standard that is within the terms of the approval of the concept plan has effect,*
 - (d) a consent authority must not grant consent under Part 4 for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the concept plan,*
 - (e) a consent authority may grant consent under Part 4 for the development without complying with any requirement under any environmental planning instrument relating to a master plan,*
 - (f) the provisions of any environmental planning instrument or any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan,*
 - (g) this clause applies instead of section 75P(2), but any direction, order or determination made under section 75P(2) in connection with the concept plan continues to have effect.*
- (3) If a determination was not made under section 75P(1)(b) in relation to the project (or any stage of the project) when any such concept plan was approved and the project (or that stage) can no longer be approved under Part 3A, Part 4 is taken to apply to the carrying out of the development in relation to the project (or that stage) for the purposes of subclause (2) (unless an environmental planning instrument provides that it is development that may be carried out without development consent or it is exempt development).*
- (4) For the purposes of determining whether development to which Part 4 applies is State significant development, a provision of this clause that permits the development to be carried out with development consent under Part 4 is taken to be a provision of an environmental planning instrument.*
- (5) This clause does not apply to development that is State significant infrastructure.*

- (5A) Subclause (2)(f) does not apply to the provisions of State and Environmental Planning Policy (Transport and Infrastructure) 2021, Chapter 6.
- (6) The amendments made to this Schedule by the Environmental Planning and Assessment Amendment (Transitional) Regulation 2016 extend to things done before the commencement of those amendments.

The proposal is generally consistent with the terms of the approval of the Concept Plan but for the variations to the building footprints and APZ which are considered acceptable.

State Environmental Planning Policy (Resilience and Hazards) 2021

The provisions of Chapter 4 require Council to consider the potential for a site to be contaminated. Clause 4.6 states:

4.6 Contamination and remediation to be considered in determining development application

- (1) A consent authority must not consent to the carrying out of any development on land unless—
- (a) it has considered whether the land is contaminated, and
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.
- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.
- (3) The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.
- (4) The land concerned is—
- (a) land that is within an investigation area,
 - (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,
 - (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—
- land—
- (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and
 - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

The Preliminary Site (Contamination) Investigation (PSI) (prepared by Douglas Partners; dated April 2025) has identified the following potential sources of contamination and associated contaminants of potential concern:

- *S1: Imported Fill: Associated with leveling within the site.*
 - *COPC include metals, TRH, BTEX, PAH, OCP, OPP, PCB, phenols and asbestos.*
- *S2: Market gardens, orchards (nearby) and landscaping.*
 - *COPC include heavy metals, organochlorine pesticides (OCP), OPP and herbicides.*
- *S3: Previous (if any present prior to 1930) and current buildings at the site.*
 - *COPC include asbestos, synthetic material fibres (SMF), PCBs and lead*

The PSI states “the site can be suitable from a contamination perspective for the proposed residential development” however requires the following supplementary investigations:

- *A hazardous building materials survey of the existing buildings be undertaken prior to any disturbance / demolition. The results will identify potential contaminants (e.g. asbestos, lead, PCBs) that may be present and could be released during the demolition process resulting in contamination of surface soils;*
- *Clearance of the buildings by a qualified occupational hygienist/ licensed asbestos assessor following the removal of identified hazardous materials, and subsequently of the building footprints and surrounds following demolition; and*
- *Following demolition of existing buildings, a supplementary investigation is undertaken targeting the sub soils beneath the demolished structures, and areas not adequately covered by the field component of this PSI. The total sampling numbers (including those undertaken as part of this PSI) should comply with the NSW EPA (2022) sampling guidelines (i.e. 20 sampling locations) as a minimum. The supplementary investigation should be undertaken using test pits to enable a better assessment of post-demolition asbestos risk, and should also inform a formal waste classification for disposal of surplus material during excavation.”*

The supplementary investigation may identify additional contamination within the site that requires remediation or management, including beneath and around existing buildings, and in fill containing building rubble and other anthropogenic materials such as asbestos. The recommended supplementary investigation will inform either active remediation of such finds, or management under a waste classification exercise and / or an unexpected finds protocol. If remediation is considered to be warranted, preparation of a remediation action plan (RAP) will be recommended.

Furthermore, consideration must be given to appropriate management of any extracted groundwater prior to disposal, and this should be outlined in a dewatering management plan.

The report concludes that there is potential for the site to be contaminated, and the supplementary investigations will inform whether the site requires active remediation or management. Should remediation be warranted, a remediation action plan will be required. Were the proposal recommended for approval, a condition for further investigations to be carried out prior to the issue of any Construction Certificate as per the PSI would be recommended. The proposal satisfies Clause 4.6 of the SEPP.

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 not been submitted and the proposal is inconsistent with commitments identified in the certificate. Council's Senior Landscape and Tree Assessment Officer raised the following concerns:

- a) The Basix certificate number BSX-25218M_02 dated 5 May 2025 is inconsistent with the plans.
- b) The landscape plans do not indicate the requirements of the BASIX.
- c) Landscape area for Unit A406 not indicated in BASIX Certificate.
- d) Area of indigenous/low water use planting (3055.59m²) is to be identified on the Landscape Plan as required under the BASIX. Areas of low water use cannot consist of a mix of low water with high water plants. Due to the high quantity of low water plants proposed in certificate, plans may prefer to identify the areas that aren't low water (e.g. with hatching), stating remaining is low water in accordance with BASIX.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 6 Water catchment

The provisions of Clause 6.6 'Water quality and quantity', Clause 6.7 'Aquatic ecology' and Clause 6.8 'Flooding' have been considered in the assessment of the proposal.

The proposed stormwater system is inconsistent with Clause 6.6 of the SEPP and not acceptable to Council's Development Engineer. The proposed pump-out tank does not meet the storage requirements for a 100-year, 2-hour storm event, and the rising main has not been shown to connect to the on-site detention system. Additionally, no hydraulic calculations or water balance model have been provided to demonstrate the required 50% reduction in runoff days or clarify the function of the proposed rainwater tank. The plan also fails to include design details or sizing for the dispersal trench.

The proposal is found to be consistent with the requirements of Clause 6.7 as it is unlikely to impact on aquatic ecology and appropriate erosion and sediment control measures are proposed. Council's Ecological Assessment Officer has raised no objection to the proposal with regard to Clause 6.7 of the SEPP.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Fox Valley Road is identified as a classified Road.

Clause 2.119 of SEPP Transport and Infrastructure states:

2.119 Development with frontage to classified road

- (1) *The objectives of this section are—*
 - (a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
 - (b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*
- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*
 - (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
 - (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

An inadequate Construction Management Plan has been submitted. Limited information has been provided to ascertain whether during the construction phase the new development will compromise the effective and ongoing operation and function of Fox Valley Road. The proposal fails to meet Objective 1(a) and provisions 2(b) in Clause 2.119 of the SEPP. If the application was recommended for approval, a condition would be imposed requiring a Construction Traffic Management Plan to be submitted prior to the issue of the construction certificate showing the 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. The purpose of the condition is to ensure the development does not affect the safety, efficiency or ongoing operation of the classified road.

The proposal is appropriately located to ameliorate potential noise and emission impacts. If the application was recommended for approval, the submitted Acoustic Report (prepared by Koikas Acoustics Pty Ltd, dated 8 May 2025) could be included in Condition 1.

State Environmental Planning Policy (Housing) 2021

Chapter 4 Design of residential apartment development

Clause 144 – Application of chapter

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 (reviewed by James McCarthy of Turner (Registered Architect: 10759) in accordance with Schedule 9 of the SEPP has been submitted. The SEPP also requires consideration of the matters contained in the Apartment Design Guide (ADG). As such, the following consideration has been given to the requirements of the SEPP and Apartment Design Guide.

Clause 148 – Non-discretionary development standards

COMPLIANCE TABLE	
Non-discretionary development standards for residential apartment developments – the Act, s 4.15	Compliance
Control 2(a) The car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide.	YES 138 car parking spaces provided, comprising of 118 residential parking spaces, 18 visitor parking spaces, 1 car share space and 1 dedicated car wash bay, per Condition B9 of the Concept Plan.

COMPLIANCE TABLE	
Non-discretionary development standards for residential apartment developments – the Act, s 4.15	Compliance
Control 2(b) The internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide.	YES
Control 2(c) The ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.	YES 2.89m floor-to-ceiling height and 3.2m floor-to-floor height proposed, satisfying the 2.7m requirement

Apartment Design Guide

Pursuant to Section 147 of the SEPP (Housing) 2021, the consent authority is to take into consideration the design principles for residential apartment development set out in Schedule 9 and the Apartment Design Guide (ADG).

The assessment against each design principle under Schedule 9 of the SEPP has been addressed under the Urban Design referral.

The following table is an assessment of the proposal against the relevant guidelines provided in the ADG.

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
Objective 3B-1 Building types and layouts respond to the streetscape and site while optimising solar access within the development	YES
Objective 3B-2 Overshadowing of neighbouring properties is minimised during mid-winter	YES No overshadowing to the eastern neighbours and >3 hours to the western.
Objective 3C-1 Transition between private and public domain is achieved without compromising safety and security	YES
Objective 3C-2 Amenity of the public domain is retained and enhanced	YES

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 The principal private open space is located towards the rear of the development and within the central landscaped podium.
Design criteria		
1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)		YES >50% of the site is communal open space.
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 100% of the principal usable space receives 2 hours solar access.
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 The communal open space features playgrounds, seating areas, a pool, and barbeque facilities.
Objective 3D-3 Communal open space is designed to maximise safety		YES
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 Inadequate deep soil zone provided to the side (western) boundary.
Design criteria		
Deep soil zones are to meet the following minimum requirements:		YES >6m dimension 48.2% (3,956m ²)
Site area greater than 1,500m ² with significant existing tree cover	Minimum dimensions 6m	Deep soil zone (7% of site area) 574.35m ²
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: <table> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> <tr> <td>up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> </table> 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 space when measuring privacy separation distances between neighbouring properties		Building height	Habitable rooms and balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storeys)	9m	4.5m	YES All setbacks >9m.
Building height	Habitable rooms and balconies	Non-habitable rooms									
up to 12m (4 storeys)	6m	3m									
up to 25m (5-8 storeys)	9m	4.5m									
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-2 Parking and facilities are provided for other modes of transport		YES									

ADG COMPLIANCE TABLE	
Guideline	Compliance
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 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 70.4%
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	N/A
3 A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	YES 14% (10 apartments)
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
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	NO Within Building B, not all units achieve natural cross ventilation.

ADG COMPLIANCE TABLE		
Guideline		Compliance
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	YES 60.5% (43 apartments)
2	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	YES
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		
Habitable rooms	2.7m	Proposal 3.2m YES
Non-habitable	2.4m	2.85m (balconies) 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: <table> <tr> <th>Apartment type</th><th>Minimum internal area</th><th>Proposal</th></tr> <tr> <td>Studio</td><td>35m²</td><td>N/A</td></tr> <tr> <td>1 bedroom</td><td>50m²</td><td>54-60m²</td></tr> <tr> <td>2 bedroom</td><td>70m²</td><td>79-93m²</td></tr> <tr> <td>3 bedroom</td><td>90m²</td><td>99-136m²</td></tr> <tr> <td>4 bedroom</td><td>102m²</td><td>N/A</td></tr> </table> 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.	Apartment type	Minimum internal area	Proposal	Studio	35m ²	N/A	1 bedroom	50m ²	54-60m ²	2 bedroom	70m ²	79-93m ²	3 bedroom	90m ²	99-136m ²	4 bedroom	102m ²	N/A	YES YES	
Apartment type	Minimum internal area	Proposal																		
Studio	35m ²	N/A																		
1 bedroom	50m ²	54-60m ²																		
2 bedroom	70m ²	79-93m ²																		
3 bedroom	90m ²	99-136m ²																		
4 bedroom	102m ²	N/A																		
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	YES																			
2 In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	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																			

ADG COMPLIANCE TABLE		
Guideline		Compliance
Objective 4E-1 Apartments provide appropriately sized private open space and balconies to enhance residential amenity		YES
Design criteria		
All apartments are required to have primary balconies as follows:		YES
Dwelling type	Minimum area	Minimum depth
Studio apartments	4m ²	-
1 bedroom apartments	8m ²	2m
2 bedroom apartments	10m ²	2m
3+ bedroom apartments	12m ²	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 15m ² and a minimum depth of 3m		
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		NO 10 units off the circulation core in Building A.
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

ADG COMPLIANCE TABLE												
Guideline		Compliance										
Design criteria												
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><td>Dwelling type</td><td>Storage size volume</td></tr><tr><td>Studio apartments</td><td>4m³</td></tr><tr><td>1 bedroom apartments</td><td>6m³</td></tr><tr><td>2 bedroom apartments</td><td>8m³</td></tr><tr><td>3+ bedroom apartments</td><td>10m³</td></tr></table> At least 50% of the required storage is to be located within the apartment		Dwelling type	Storage size volume	Studio apartments	4m ³	1 bedroom apartments	6m ³	2 bedroom apartments	8m ³	3+ bedroom apartments	10m ³	YES
Dwelling type	Storage size volume											
Studio apartments	4m ³											
1 bedroom apartments	6m ³											
2 bedroom apartments	8m ³											
3+ bedroom apartments	10m ³											
Objective 4G-2 Additional storage is conveniently located, accessible and nominated for individual apartments												
Objective 4H-1 Noise transfer is minimised through the siting of buildings and building layout												
Objective 4H-2 Noise impacts are mitigated within apartments through layout and acoustic treatments												
Objective 4J-2 Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission												
Objective 4K-1 A range of apartment types and sizes is provided to cater for different household types now and into the future		YES 1 bedroom (14%) 2 bedrooms (27%) 3 bedrooms (59%)										
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										

ADG COMPLIANCE TABLE	
Guideline	Compliance
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	NO Communal landscaping is not proposed on the roof level due to height limits restricting lift overruns and lobbies above Level 4 (Building A) and Level 3 (Building B). Notwithstanding, sufficient communal open space provided on the landscaped podium level and to the rear of the site (>4,000 square meters).
Objective 4N-3 Roof design incorporates sustainability features	YES
Objective 4O-1 Landscape design is viable and sustainable	YES
Objective 4O-2 Landscape design contributes to the streetscape and amenity	NO Insufficient deep soil is provided to the western boundary.
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. Adaptable housing should be provided in accordance with the relevant council policy.	YES

ADG COMPLIANCE TABLE	
Guideline	Compliance
Objective 4Q-3 Apartment layouts are flexible and accommodate a range of lifestyle needs	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 4V-2 Urban storm water is treated on site before being discharged to receiving waters	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
Objective 4X-2 Systems and access enable ease of maintenance	YES
Objective 4X-3 Material selection reduces ongoing maintenance costs	YES

Objective 3E - Deep soil and 4O - Landscape Design

- Objective 3E-1 of the ADG requires deep soil zones to be provided in 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.
- Objective 4O-2 states that landscape design is to contribute to the streetscape and amenity.

An insufficient deep soil zone has been provided within the side (western) boundary for the planting of tall trees, which is not acceptable. The development fails to provide adequate high quality landscape outcomes and residential amenity. Similarly, the development fails to respond to the landscape setting of the surrounding locality. The proposal fails to meet Objective 3E-1 and Objective 4O-2.

4B – Natural ventilation

Objective 4B-3 states the number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents. Design Criteria 2 for this objective requires the overall depth of a cross-over or cross-through apartment to not exceed 18m, measured glass line to glass line.

Within Building B, not all units achieve natural cross ventilation. This is a result of the skewed geometries; openings in walls with aspects 90 degrees and greater; and with the flow path deep into the floor plan. Were the proposal to be supported, this issue could be addressed by a condition requiring the installation of ceiling fans within the subject units.

4F – Common circulation and spaces

Objective 4F-1 states that common circulation spaces are to achieve good amenity and should properly service the number of apartments. Design Criteria 1 of this objective states that the maximum number of apartments off a circulation core on a single level is 8.

In Building A, 10 apartments are off the circulation core on Levels 1 to 3. Despite the variation, the common circulation provides adequate amenity and safety to the subject apartments by being spacious, adequately lit and promoting social interaction between residents.

Ku-ring-gai Local Environmental Plan 2015 (“KLEP 2015”)

Zoning and permissibility

The site is zoned part R4 High Density Residential and C2 Environmental Conservation (southeastern corner). The proposed development is defined as a ‘residential flat building’. The proposed buildings are located within the R4 zoned part of the site and is a permissible form of development with consent.

The objectives of the R4 High Density Residential zone are:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for high density residential housing close to public transport, services and employment opportunities.*

The proposed development is consistent with the objectives of the R4 High Density Residential zone for the following reasons:

- The proposed works are associated with the residential flat building, which contributes to the housing needs of the community.
- The proposed residential flat building provides a variety of housing types which includes a mix of one, two and three bedroom apartments, catering to the needs of the community.
- The proposed residential flat building provides a mix of one,
- The proposal will facilitate the day to day needs of residents.
- The site is located within proximity to the Sydney Adventist Hospital, Wahroonga Adventist School, 500m from basic shops, services, communal facilities and bus services which provide access to railway stations.

Dispersion trench

The proposed dispersion trench is located on the adjoining property to the rear (southern)

boundary, which is zoned C2 Environmental Conservation (**Figure 21**). The objectives of the C2 zone are:

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

Stormwater drainage works are a prohibited form of development within the C2 Environmental Conservation zone. Pursuant to section 4.3 'Development that is prohibited' of the Environmental Planning and Assessment Act 1979 and the zoning table for the C2 zone in KLEP 2015 consent for prohibited development cannot be granted.

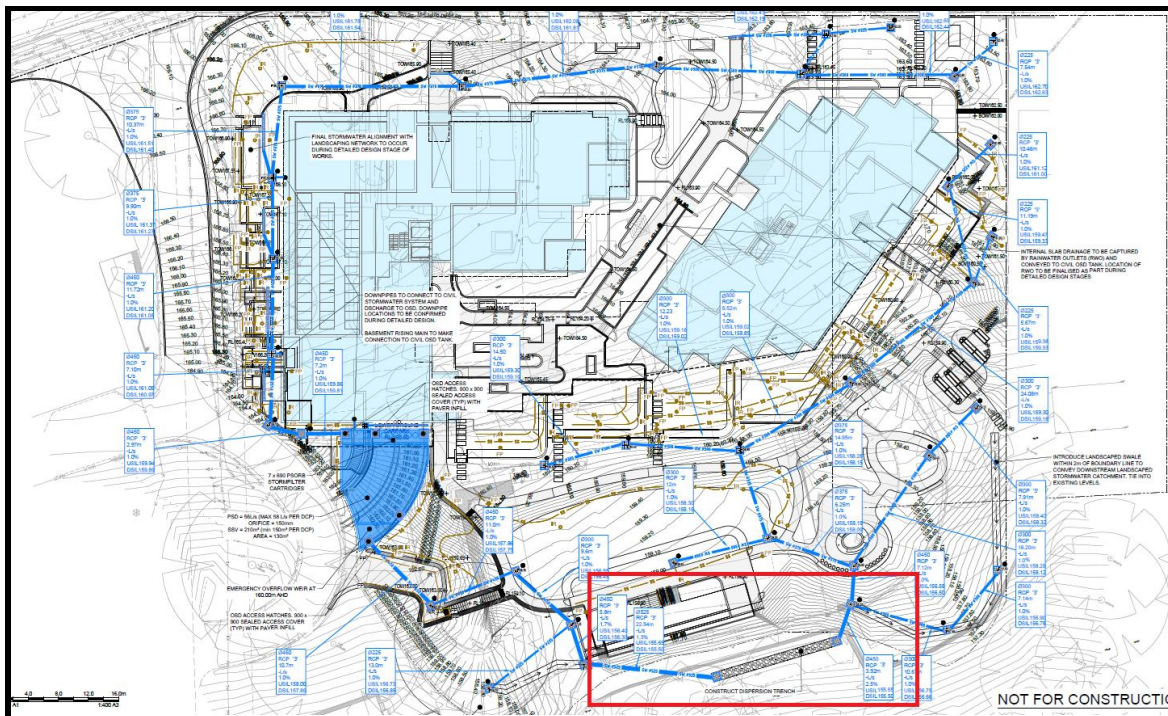


Figure 21: proposed dispersion trench is located on the adjoining property, which is zoned C2 Environmental Conservation

Parts 4, 5 and 6 of the KLEP 2015

Parts 4, 5 and 6 of the KLEP 2015 would ordinarily apply to the site. The site is, however the subject of a Concept Plan Approval. Schedule 2, Clause 3B of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 applies to development for which a concept plan has been approved under Part 3A, before or after the repeal of Part 3A. Clause 3B (f) of the Regulations make it clear that *“the provisions of an Environmental Planning Instrument or any Development Control Plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan”*.

The building Height of 14.5m and the floor space ratio of 1.3:1 specified under Clauses 4.3 and 4.4 in KLEP 2015 and that would ordinarily apply to the site are inconsistent with the Concept Plan Approval. These provisions in KLEP 2015 therefore have no effect. The maximum building height and maximum dwelling number under Conditions A3, A4 and A8 are discussed earlier within this report.

The site is a heritage item (148 Fox Valley Road (Item No. 1929) - Seventh-Day Adventist administrative building and front garden) and within 100m of heritage items No. 118 and 145 Fox Valley Road, Wahroonga. The property is not within a heritage conservation area. Council's Heritage Advisor has not raised any concerns with the application.

The proposed development has been designed to minimise impacts on the diversity and condition of native vegetation, fauna and habitat as per the requirements of the KLEP 2015.

With regard to earthworks, the proposed development will not restrict the existing or future use of the site, adversely impact on neighbouring amenity, the quality of the water table or disturb any known relics. Additionally, the fill to be removed will be disposed of appropriately.

Clause 6.5 – Stormwater and water sensitive urban design

The objective of Clause 6.5 of the KLEP 2015 is to avoid or minimise the adverse impacts of urban stormwater on the land on which development is to be carried out, adjoining properties, native bushland, waterways and groundwater systems. Subclause (2) of this clause states:

(2) Before granting development consent to development on any land to which this Plan applies, the consent authority must be satisfied that—

- (a) water sensitive urban design principles are incorporated into the design of the development, and*
- (b) riparian, stormwater and flooding measures are integrated, and*
- (c) the stormwater management system includes all reasonable management actions to avoid any adverse impacts on the land to which the development is to be carried out, adjoining properties, native bushland, waterways and groundwater systems, and*
- (d) if a potential adverse environmental impact cannot be feasibly avoided, the development minimises and mitigates the adverse impacts of stormwater runoff on adjoining properties, native bushland, waterways and groundwater systems.*

For the following reasons the proposal fails to provide water sensitive urban design measures per the objectives expressed in Subclause (1) and therefore fails to meet the precondition to the granting of development consent as expressed in Subclause (2):

- The proposed pump-out tank does not demonstrate compliance with the storage requirements for the 100-year 2-hour storm.
- The rising main from the pump out system has not been shown to be connected to the on-site detention system, which is required prior to the discharge to the public discharge system.
- No supporting hydraulic calculation have been submitted to demonstrate rainwater retention and re-use to be provided to achieve a 50% reduction in runoff days. A water balance model has not been submitted.
- No clarification has been provided as to the purpose of the proposed rainwater tank given that a retention component would be required.
- The stormwater management plan fails to provide design details of the dispersal trench and its sizing.

Except for the concerns raised with regards to stormwater, the proposal is generally satisfactory in terms of the KLEP 2015.

Ku-ring-gai Development Control Plan (“KDCP”)

The provisions of a Development Control Plan do not have any effect to the extent they are inconsistent with the terms of the approval of the concept plan. Consideration is given in the

table below to those controls in Parts 2, 3 and 7 of the Ku-ring-gai DCP that are not covered by the Conditions of the Concept Plan.

Part 2: Site analysis

A site analysis, which identifies the existing characteristics of the development site and the surrounding area, has been provided. The site analysis is considered to satisfy the objectives of this part of the DCP.

Part 3: Land consolidation and subdivision

The table below addresses the assessment criteria contained under Section A, Part 3 - Land Consolidation and Subdivision.

COMPLIANCE TABLE		
Development control	Proposed	Complies
Part 3 land Consolidation and Subdivision		
3A – General Controls for Consolidation and Subdivision		
3A.1 Lot Shape, Orientation and Design		
1. The lot shape, orientation and design of consolidated and subdivided lots is to demonstrate the following:		
i. Ability for the lot to support the land use permitted under the zoning.	The lot will be able to support an RFB.	YES
ii. <i>Protection of habitat and distinctive environmental features including:</i> - <i>Cliffs and rock outcrops</i> - <i>Remnant bushland and trees</i> - <i>Tree hollows</i> - <i>Natural watercourses</i>	The proposal will not have an adverse impact on habitat and distinctive environmental features.	YES
iii. Sharing of views.	The subject site does not feature any significant views that would require them to be protected or shared.	YES
iv. Avoiding the location of development on steep lands.	The location of the building footprint is consistent with the concept plan and avoids steep lands.	YES
v. Protection and enhancement of the amenity, solar access, privacy, open space and views of the neighbouring lots.	The proposed subdivision does not affect the amenity, solar access, privacy, open space or views of neighbouring lots.	YES
vi. Minimisation of impacts of the development (including any asset protection zones required) on riparian or Greenweb lands.	The proposal will not impact upon mapped vegetation.	YES
vii. Incorporation of the principles of water sensitive urban design.	The proposal does not incorporate the principles of water	NO

COMPLIANCE TABLE		
Development control	Proposed	Complies
	sensitive urban design.	
viii. Easements and servicing requirements.	Suitable easements are shown on the draft plan of subdivision.	YES
ix. Vehicular, pedestrian and bicycle access.	Vehicular, pedestrian and bicycle access will be readily available from Fox Valley Road and the existing private road to, located towards the western boundary.	YES
2. The block width, dimension, orientation and layout are to consider the existing subdivision pattern of the locality.	The proposed subdivision is not inconsistent with the subdivision pattern of the locality, which includes allotments which are rectilinear and irregular in shape, with varying site areas and dimensions.	YES
3. New lot/s created are to be such that each lot with street frontage allows for the siting of a development which will address the street.	Satisfactory	YES
3A.3 Building Footprint		
The building footprints applicable to the subject site are per Condition B1 (1) (Urban Design) of the Concept Plan. Part 3A.3 of the KDCP is not applicable.		
3A.4 Trees and Vegetation		
1.Any subdivision or consolidation proposal must demonstrate that the location and design of: i. building footprints; ii. access ways; iii. roadways, including perimeter roads or trails; iv. services; v. inter-allotment drainage easements; and vi. asset protection zones maximises the retention of and minimises impacts on existing significant trees and vegetation on or adjacent to the site.	The proposal maximises the retention of and minimises impacts on existing significant trees and vegetation on or adjacent to the site.	YES
3.Where a site is particularly constrained a more detailed layout of the potential development may be required	An adequate layout of the development has been provided.	YES
4.Street trees are to be planted where new roads are proposed or where the likely	Adequate street tree planting has been provided.	YES

COMPLIANCE TABLE		
Development control	Proposed	Complies
location of driveway crossings will result in loss of existing street trees.		
3A.5 Access		
Each lot must provide access from a constructed or dedicated public road. Where access is proposed to a section of constructed public road, the newly created lot will need to provide lawful, constructed access to Council's satisfaction.	Vehicular access to the lot is available to the roadway.	YES
Access for service vehicles, emergency vehicles and waste collection vehicles must be available. Note: If access is to be provided from a main road it must be in compliance with Transport for NSW requirements.	Access for emergency and service vehicles is available. Truck bay for waste collection is located on the ground level.	YES
Movement areas are to incorporate convenient, obvious and safe pedestrian and bike links from the lot to public transport services and local facilities.	The proposed subdivision will maintain access to existing transport and facilities.	YES
The design and location of footpaths and driveways are to provide opportunities for surveillance and allow safe movement of residents and visitors.	Satisfactory	YES
3A.6 Infrastructure		
All lots shall be provided services such as electricity, gas, town water supply, sewerage and communications. Such services must be located underground where new road construction occurs, and in bush fire prone lands. Services are to be located in accordance with Figures 3A.6-1 & 3A.6-2 of the DCP.	Services can be readily provided to the proposed new lot.	YES
Water management facilities, such as: • interallotment drainage for low level lots; • on site detention for new roads and driveways; • rain gardens or bio retention basins; are to be provided as required by Part 24 of the DCP.	The submitted stormwater plan fails to adequately address water management facilities, as outlined in the 'Recommendations' section of this report.	NO
3B Land Consolidation		
1. Land consolidation is to increase the width of the street frontage and avoid irregular lot configuration.	The width of the street frontage is increased, whilst the new lot has an irregular shape this is consistent with the approved concept plan	YES
2. Where development is proposed to cross lot boundaries, consolidation of	Lot consolidation is proposed.	YES

COMPLIANCE TABLE		
Development control	Proposed	Complies
the subject lots will be required.		
3. Within an Employment zone, Medium density and High density residential zone, sites are to be consolidated to avoid isolating an adjoining site or sites. In particular potential redevelopment of the adjoining site or sites in accordance with its zoning must not be compromised.	Complies.	YES
4. Lot consolidation is to avoid creating: i) a primary street frontage less than that required by KLEP; ii) a lot size less than that required by KLEP; and/or iii) a highly constrained site. Note: 4 (i) and (ii) only apply to some zones and development types	Complies	YES

Part 7: Residential Flat Buildings

The table below addresses the assessment criteria contained under Part 7 – **Residential Flat Buildings**

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.	The proposed residential flat building has been designed by Nicolas Turner (NSW Architects Registration 6695).	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.	Trees provided to the north, east and south are provided where possible, in accordance with the AZP requirements. Inadequate deep soil provided within the western side setback to allow the provision of additional tall trees.	NO
Design components of new development are to be based on the existing predominant and high quality characteristics of the local neighbourhood.	The design components are consistent with the predominant visual character of the neighbourhood.	YES
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.	The design of the proposal maintains the local visual character. The scale, layout and design respond to and reflect the existing streetscape.	YES
The predominant and high quality characteristics of the local neighbourhood are to be identified and considered as part of the site analysis.	The prominent and high quality characteristics of the neighbourhood have been identified and considered during the site inspection and assessment of supporting plans and documentation.	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.	i. appropriate scale when viewed from the street, public domain and adjoining properties; ii. the proposal minimises overshadowing of surrounding sites; iii. inadequate deep soil within the western side boundary to allow integration of built form and landscaping.	YES YES 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; ii. response of building development in maintaining site characteristics within the subject site, such as topography, vegetation, significant trees, any special features, etc. iii. building separation and internal layouts of buildings that respond to (i) above and be consistent with the requirements of the DCP. iv. limited apartments with no direct sunlight.	The proposed layout of the buildings is generally consistent with the Wahroonga Estate Concept Plan (MOD 9). The proposed departures to the approved building footprint are acceptable for the reasons stated elsewhere in this report.	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.	A Design Verification Statement, inclusive of compliance table relating to Part 3 and 4 of the ADG, has been submitted, in accordance with Section 29 of the Environmental Planning and Assessment Regulations 2021.	YES
Any building with a frontage to the street is to address that street.	The building addresses the street.	YES
Soft landscaping, including tall trees, is to be provided between onsite buildings, fences and courtyard walls.	The landscape plans propose a range of soft landscaping with varying materials and planting throughout the site. An inadequate deep soil zone has been provided to the side (western) boundary to allow the provision of tall trees. Refer to Parts 7A.1 and 7A.6.	YES NO
Hard landscaping is to be minimised and to maximise opportunities for landscape planting	Insufficient deep soil zone within the western side boundary. Refer to Parts 7A.1 and 7A.6.	NO
Long straight driveways are not permitted, except where necessary for battle-axe sites. Driveways are to be	Complies.	YES

designed to be of minimal visual impact.		
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.	Pedestrian entry points are provided from the street.	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.	>3 hours solar access received to residential dwellings on adjoining properties.	YES
Overshadowing should not compromise the development potential of the adjoining yet to be redeveloped sites.	Complies	YES
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.	Complies	YES
7A.3 Building Setbacks		
The proposed setbacks of the buildings are generally in accordance with the Wahroonga Estate Concept Plans (MOD 9). The building envelopes approved under the Concept Plan prevail over the DCP provisions.		
7A.4 Building Separation		
The building footprints approved under the Concept Plan prevail over the KDCP provisions. Variations to the approved building footprint, which include projections outside the footprint and parts of the approved footprint that have not been utilised, have been addressed under the 'Concept Plan for Wahroonga Estate – Major Project No. 07_0166' section of this report.		
7A.5– Site coverage		
The proposed site coverage is generally in accordance with the Concept Plan. The building envelopes approved under the Concept Plan prevail over the DCP provision. Notwithstanding, the proposed development covers 29% of the site which is below the 30% maximum site coverage control.		
7A.6– Deep Soil Landscaping		
A minimum deep soil landscaping area of 40% for a site area less than	43.4% (3,562m ²)	NO

1800m ² and 50% for a site area of 1800m ² or more. Site area: 8,205m ² 50% deep soil = (4135.655m ²)		
Deep soil zones are to be configured to retain healthy and significant trees on the site and adjoining sites, where possible.	Deep soil zones allow the retention of the following significant trees on the development site: Trees 104, 105, 107, 108, 109 and 134 and the retention of the following trees on the neighbouring properties: Trees 121 and 126.	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.	Small to medium trees within the western setback with inadequate deep soil zone to allow for tall canopy trees. Refer to Parts 7A.1 and 7A.6.	NO
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.	Western and southern courtyards extend into deep soil and insufficient total area of deep soil is proposed. Refer to Parts 7A.1 and 7A.6.	NO
Driveways are not to dominate the street setback area. Deep soil landscaping areas in the street setback are to be maximised.	The driveway does not dominate the street setback area and the deep soil within the front setback area, addressing Fox Valley Road, is satisfactory.	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. 1200m ² or less – 1 tall tree per 400m ² or part thereof ii. 1201m ² – 1800m ² – 1 tall tree per 350m ² or part thereof iii. 1801m ² + - 1 tall tree per 300m ² or part thereof	40 trees proposed.	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.	>50% of all tree plantings are locally occurring trees.	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.	27 trees provided to the Fox Valley Road street frontage.	YES
7B – Access and Parking		
7B.1 – Car Parking provision		
All residential flat developments are to provide on-site car parking within basements.	On-site car parking is provided within 1.5m basement levels. The part of the basement which protrudes more than one metre above ground level is acceptable in terms of this control as it is at the driveway entrance.	YES
Basement car park areas are to be consolidated under building footprints.	The basement is within the building footprint.	YES
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 the DCP and will be included in the floor space ratio calculation as well as any control based on the number of storeys.	Complies	YES
Direct and continuous internal pedestrian access from basement car park is provided to each level of the building	A central lift provides access from the basement to all levels above.	YES
Car park entry is to be integrated within the building and located behind the building line.	The car park entry is located behind the building and integrates within the building.	YES
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.	Compliance is achievable with Conditions.	YES
FOR DEVELOPMENT THAT IS SUBJECT TO SEPP 65 Car parking rates for residential flat developments on sites within 800m	The proposal provides a total of 138 parking spaces, including 118 residential	YES

walking distance of a railway station entry:	<table><tr><th>Type</th><th>Minimum</th><th>Maximum</th></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). 118 (max) and 82 (min) residential parking spaces and 17.75 (min) visitor parking spaces (including one accessible space) are required to be provided.	Type	Minimum	Maximum	One bedroom	0.6 spaces	1 space	Two bedrooms	0.9 space	1.25 spaces	Three or more bedrooms	1.4 space	2 spaces	spaces and 18 visitor parking spaces.	
Type		Minimum	Maximum												
One bedroom		0.6 spaces	1 space												
Two bedrooms		0.9 space	1.25 spaces												
Three or more bedrooms		1.4 space	2 spaces												
<table><tr><th>Type</th><th>Minimum</th><th>Maximum</th></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>	Type	Minimum	Maximum	One bedroom	0.6 spaces	1 space	Two bedrooms	0.9 space	1.25 spaces	Three or more bedrooms	1.4 space	2 spaces			
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Visitors: 1 per 6 units (at least one is accessible).															
118 (max) and 82 (min) residential parking spaces and 17.75 (min) visitor parking spaces (including one accessible space) are required to be provided.															
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 3.5m x 6m; ii) a minimum manoeuvring area 7m wide.	Signage can be complied with by way of conditions. Truck bay provided with a dimension of 7m x 4.8m.	YES													
One visitor parking bay is to be provided with a tap, to make provision for on-site car washing.	Capable of complying with conditions.	YES													
<i>Parking areas are to be designed and constructed so that electric vehicle charging points can be installed.</i>	Capable of complying with conditions.	YES													
7B.2 – Bicycle Parking 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 = 15 required; and ii) 1 bicycle parking space (in the form of a bicycle rail) per 10 units for visitors in the visitor car park area.	i) 21 bicycle spaces provide. ii) Capable of complying with conditions.	YES YES													
All on-site bicycle parking spaces and storage are to be designed to AS2890.3.	Capable of complying with conditions.	YES													

7C Building Design and Sustainability		
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 ADG compliance table.	PARTIAL COMPLIANCE
7C.2 Communal Open Space		
At least 10% of the site area must be provided as communal open space (COS), being 842.9m ² in this instance. Each parcel of communal open space is to have a minimum dimension of 5m.	52.4% of the site area is provided as COS. The dimensions of the COS exceed 5 metres.	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.	One single parcel of COS is provided which exceeds 80m ² in area and has a minimum dimension of 8 metres.	YES
The Primary communal open space is to be directly accessible from the internal common circulation areas.	The primary COS is accessible from internal common circulation areas, being the lower ground floor level.	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.	The primary COS is located at the rear of the building.	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.	An accessible path is provided from the lower ground level basement to the primary COS.	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,	The location and design of the COS is acceptable and does not result in unreasonable amenity impacts on adjoining properties.	YES

and maintain the privacy of residents on adjoining sites zoned differently for lower density residential development sites.		
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 21 st June.	> 50% of the COS receives at least 2 of hours sunlight on 21 st June.	YES
Communal open space is to be integrated with any significant natural feature(s) of the site and soft landscaping areas.	COS has been incorporated into the landscape design.	YES
The communal open space is to have surveillance from at least two onsite apartments for safety reasons.	More than two apartments overlook both the primary and secondary COS.	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.	No entrapment areas are included in the design of the COS. Were the application to have been recommended for approval, a condition could be included requiring external lighting to be installed in accordance with Australian Standards and to not cause nuisance to adjoining properties.	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.	Shared facilities, including barbeque, dining areas, shade structures, swimming pool and communal gardens, are within the communal open space.	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.	Capable of complying, subject to conditions.	YES
7C.3 Ground Floor Apartments		
Ground floor apartments are to be separated from noise sources such as common areas, communal open	Ground floor apartments are adequately separated from neighbouring noise sources	YES

space and the public domain.	and common spaces by means of setbacks, fencing and landscaping treatment.	
A gate is to be provided from each ground floor apartment private open space into common areas where practical.	A gate is provided to the lower ground floor apartments to access the common areas.	YES
No subterranean rooms to any part of any apartment	No subterranean rooms are proposed.	YES
No ground floor apartments created as a result of excessive excavation.	Excessive excavation is not proposed to accommodate the ground floor 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.	No apartments are in direct contact with soil or rely on any form of tanking. Tanking can be conditioned.	YES 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.	Tanking can be conditioned.	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 0.9m below existing ground level at the building line.	No part of the lower ground floor apartment is located below ground level.	YES
7C.4 Apartment Mix and Accessibility		
Range of apartment sizes (one, two, three bedroom) included within the development	A range of one, two and three bedrooms is proposed.	YES
Mix of 1, 2 & 3 bedroom apartments located on the ground level.	A mix of one, two and three bedrooms is provided on the lower ground floor level.	YES
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.'	15 (21 %) of 71 apartments will be of Platinum Level design. All remaining 56 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	Compliance is demonstrated.	YES

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.		
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	Lift access provided between basement levels and habitable levels.	YES
7C.5 Building Entries		
The residential flat building entry is to be clearly expressed using appropriate architectural elements.	Building entries have achieved more direct, accessible and inviting sequence from the street to each of the building entry lobbies	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.	Building A and Building B are directly accessible from Fox Valley Road via a single level pedestrian pathways.	YES
Entry foyers are to be no more than 1m 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.	The entry foyer is less than one metre above ground level.	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.	Buildings A and B have a separate lift core, which is accessed via the main entry into each of the buildings. If the application was recommended for approval, way-finding signs, integrated	YES

	into the external circulation pathway systems, could be required.	
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.	Building entries have been designed to be accessible and inviting from the street. A clear and direct sequence of pedestrian paths connects the street to each entry point, making them easily identifiable.	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.	The lobbies are well designed to prevent concealment and entrapment. If the application was recommended, a condition could be included requiring all communal areas to be well lit but without causing light spill.	YES
Lifts are to be directly visible from the building entry doorway.	The lift is not directly visible from the building entry.	NO
Lockable mailboxes 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.	Letterboxes for all units are in the lobby of Building B on the ground floor level.	NO
Building entry paths are to be minimum 1.2m wide and located within the common area with a minimum dimension of 1.2m 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.	The building entry path width for Building A is 2.7m and for Building B is 1.6m. Landscaping is provided on either side of the pathways. At the building entries of both A and B, the path is 2.68m, allowing easy passing between pedestrians.	YES
All common circulation corridors are to be at least 1.5m wide, and the area outside lifts is to be at least 1.8m wide.	The dimensions of the common circulation corridors for Building A is 2.9m and for Building B is 2.34m. The areas outside the lift for Building A is 2.2m and for Building B is 2.34m.	YES YES
7C.6 Building Form and Facades		
All building facades at ground level are to be designed to avoid the creation of entrapment areas.	There are no entrapment areas at ground level.	YES

No single wall plane is to exceed 81m ² in area.	No single wall plane exceeds the maximum 81m ² in area.	YES
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.	All facades include breaks in wall planes, a variety of materials and finishes and different window types.	YES
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.	Apartments are orientated to maximum outlook and passive surveillance of the street, common areas and COS.	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.	All building elements are sufficiently integrated with the overall design of the façade.	YES
Telecommunication structures are to be located within roof structures or basements and not be visible from any road or public domain area.	Telecommunication structures would not be visible from the public domain.	YES
Screening between adjacent apartments is to be integrated into the overall building design.	Screening between adjacent apartments is sufficiently integrated into the overall building design.	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. Council's Urban Design consultant is satisfied with the design and proposed external materials.	YES
<i>Facade Articulation</i>		
All building facades are to be articulated with wall planes varying in depth by not less than 0.6m, and supplemented with architectural elements.	All facades include walls of varying depth providing adequate articulation.	YES

Facade articulation is to be well composed with attractive proportions and coherent rhythms and integrated into the building form and structure.	The proposed facades comprise a variety of wall depths, material types and finishes, window/balcony openings and screening integrated within the design. Council’s Urban Design consultant has not raised concerns with eda0516/24he façade articulation.	YES
Blade walls are not to be the sole element used to provide articulation.	A variety of design methods are included to achieve articulation.	YES
All developments are to utilise shading/glare control devices to articulate the facade and contribute to the streetscape.	Sufficient shading measures are proposed.	YES
Building Length		
The continuous length of a single building on any elevation is not to exceed 36m.	No unbroken elevation exceeds 36 metres in length.	YES
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.	The rear balconies include sliding shading/privacy devices which are not long enough to enclose the balconies.	YES
Balconies		
Balconies that run the full length of the building facade are not permitted.	The proposed balconies do not run the full length of the façade.	YES
Continuous transparent or translucent balustrades are not permitted to balconies or terraces.	Continuous transparent or translucent balustrades are not proposed.	YES
Balconies are not to project more than 1.5m from the outermost wall of the building facade.	Building A: Southern balconies project 2.9m	NO
7C.7 Building Storeys		
		N/A
Maximum building height	Maximum number of storeys	
11.5m	3	
14.5m	4	
17.5m	5	
20.5	6	

23.5m	7		
Note: The 1 st storey is measured from a maximum 1m above the existing ground level. Also see figure 7C.7-1 in the DCP.			
7C.8 TOP STOREY DESIGN AND ROOF FORMS			
The upper storeys of residential buildings are to be articulated with differentiated roof forms, maisonettes or mezzanine penthouses and the like.	The upper storeys of the residential buildings are adequately articulated with differentiated roof forms	YES	
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.	The lift overrun and air conditioning units are the service element located at roof level. These elements would be adequately screened by a 2m vertical metal screen and will not be visible from the public domain or surrounding development.	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 0.6m	While the proposed building has a flat roof, the building still achieves solar access and contains appropriate window shading.	YES	
Where solar panels are provided they are to be integrated into the roof line or elevation.	Solar panels are proposed to be integrated into the roof line.	YES	
Lightweight pergolas, sun screens, 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 the bulk of the building, create visual clutter or impact on significant views from adjoining properties.	2m vertical metal screen is located on part of the roof on both buildings. The structures are integrated with the building and will not result in significant adverse bulk impacts to the building. The purpose of the screen is to shield the air condenser units, therefore minimises visual clutter when viewed from the street or public domain. The structures will not impact on significant views enjoyed from adjoining properties.	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.	All apartments have access to a private balcony or terrace for the purpose of clothes drying.	YES	

All external air clothes drying areas are to be screened and not be visible from any public domain area.	Applicant to demonstrate compliance through the provision of partial solid brick balustrades or L-shaped balustrades which effectively restrict views from the street into private spaces, ensuring that the clothes drying areas are screened from the public domain.	YES
Storage volume calculation within laundries is to exclude the space required to accommodate a washing tub, washing machine and dryer.	Storage volume calculation excludes these items.	YES
7C.10 FENCING		
Hedges and shrub planting are preferred to the street frontage, but no higher than 1.2m along the entire front boundary, or 1.8m on a site fronting a busy road.	Hedges and shrub planting generally no higher than 1.2 metres are proposed along the street frontage.	YES
External finishes for fencing are to be robust and graffiti resistant.	Proposed fencing materials for the ground floor terraces are metal and robust.	YES
Ground floor private open space, courtyard and terrace wall and fence heights are not to exceed i) 1.2m to any street frontage ii) 1.8m to any side or rear boundary with a maximum 1.2m high solid component and a minimum 30% transparent component above.	Street frontage: 1.8m high palisade fences to ground floor units facing Fox Valley Road. Side and rear boundaries: Eastern elevation fencing for private open space is 1.8m (900mm solid brick base and 900mm palisade) Western elevation fencing for private open space is 1.5m – 2.35m (maximum height of 1m solid brick base and 1.35m palisade) Southern elevation fencing is 1.8m high (1m solid brick base and 800mm palisade).	NO YES
7C.11 ACOUSTIC PRIVACY		
Noise levels associated with air conditioning, kitchen, bathroom, laundry ventilation, other mechanical ventilation systems and other plant are to comply with the requirements in Part 23.8 of the DCP.	Were the application recommended for approval, a condition could be included requiring all mechanical equipment to comply with the maximum permitted noise levels stipulated in Part 23.8 of	YES

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

7A.1 – Local character and streetscape

In accordance with Control 2, Part 7A.1 of the KDCP, 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. Control 6(iii), Part 7A.1 of the KDCP requires development to integrate with surrounding sites by 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 these controls include:

1. *To improve the design quality of residential flat buildings.*
2. *To ensure that the development contributes to the greater Ku-ring-gai landscaped character of buildings within a landscaped garden setting and surrounded by tall trees.*
3. *To ensure the development is sensitive to, and conserves and enhances the existing built environment, landscape setting, environmental conditions and established character of the street and locality with particular reference to integration of.*
 - i) *architectural themes;*
 - ii) *building scale and setbacks; and*
 - iii) *landscape themes.*
4. *To ensure development provides a positive contribution to the public domain and all areas shared by the community.*
5. *To ensure that the visual, scenic and environmental qualities on visually prominent sites are maintained.*

The development provides insufficient deep soil along the western side boundary to support the planting of tall trees. As a result, the proposal fails to achieve a building within a garden setting and does not adequately integrate built form with soft landscaping, thereby undermining the landscaped connection between the public and private domain. The proposal therefore fails to achieve Objectives 1-5.

7A.6 - Deep soil landscaping

In accordance with Control 1, Part 7A.6 of the KDCP, the subject site requires a minimum of 50% (4135.6m²) deep soil area. A non-compliant deep soil area of 43.4% (3,562m²) is proposed.

The objectives of the control include:

1. *To ensure landscape areas contribute to the garden character and canopy of the Ku-ring-gai locality.*
2. *To provide consolidated deep soil zones of adequate area in all residential development sites through quality planning and building design.*
3. *To provide landscaped areas that are appropriate to the scale and context of the development.*
4. *To retain areas that provide habitat for native indigenous plants and animals and contributes to biodiversity in the area.*
5. *To create high quality landscaped areas through retention and/or planting of tall and medium sized trees particularly at the street frontage.*
6. *To ensure that deep soil landscaping is within common areas.*
7. *To ensure spaces between buildings provide deep soil landscaping that can sustain large trees that contribute to Ku-ring-gai's garden character.*
8. *To ensure that deep soil is provided to allow infiltration of rain water to the*

water table and to reduce stormwater runoff.

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 and to soften the built form, contrary to Objectives 1, 2, 3, 4, 5, 6 and 7 and Controls 1, 3 and 4.
- The proposal provides insufficient deep soil area to the western boundary, which fails to accommodate the provision of tall trees and residential amenity; and
- the proposal does not provide landscaping that is appropriate to the scale and context of the development.

7C.5 Building entries

The objectives of Part 7C.5 of the KDCP are as follows:

1. *To ensure the building entry and address is a clear and identifiable element in the street and is safely accessible to all.*
2. *To ensure the building entry contributes positively to the streetscape and building facade design.*
3. *To provide direct legible, safe and pleasant entry to internal circulation spaces.*
4. *To provide adequate common circulation spaces to allow for the easy removal of furniture and to satisfy access and egress.*
5. *To ensure mail boxes are appropriately located.*
6. *To soften the impact of hard landscaping within the site.*

Location of lifts

Control 7, Part 7C.5 of the KDCP states that lifts are to be directly visible from a building entry doorway. The lifts in both Buildings A and B are not directly visible from the building entry. Notwithstanding, both buildings have a single direct corridor from the front entries to the lifts, therefore wayfinding is considered acceptable. There are no concealment or entrapment areas. The lift and lobby area have been designed to enable a window for natural light in accordance with the ADG. The proposed lift location is acceptable and meets Objectives 3 and 4.

Location of mailboxes

Control 8, Part 7C.5 of the KDCP requires lockable mailboxes to be: i) provided close to the street; ii) be at 90 degrees to the street and to Australia Post Standards; and iii) to be integrated within front fences or building entries.

The mailboxes for all units are securely located in the lobby of Building B, on the ground floor level, where the entry interfaces with the street, facilitating easy access for mail delivery. The mailboxes are positioned at 90 degrees to the building frontage and are equipped with a window, allowing visibility of the mailboxes from the approach along the street leading to the building entry. The purpose of locating the mailboxes within the confinement of the entry lobby to Building B is for security and shelter. The proposal meets Objective 5, which requires mailboxes to be appropriately located.

7C.6 Building form and facades

Control 20, Part 7C.6 of the KDCP states that balconies are not to project more than 1.5m from the outermost wall of the building façade.

The objectives of Part 7C.6 aim to ensure buildings are of high architectural quality and contribute positively to the desired local character. They promote well-articulated three-dimensional built forms with appropriate setbacks to reduce bulk and scale, limit unarticulated

building lengths, and encourage environmentally responsive facades. The objectives seek integration of building elements and sustainable design features into the overall form, ensuring architectural detail aligns with the urban character of Ku-ring-gai. Facades and openings are to relate to the street and landscaped areas, while private open spaces should be well-integrated without compromising internal amenity or liveability.

The southern balconies of Building A project approximately 2.9m from the outermost wall of the building façade. The departure is accepted for the following reasons:

- The subject balconies address the bushlands located to the rear (southern) boundary of the site and will not be visible from the public domain.
- The balconies are well designed and of high architectural quality.
- The balconies articulate the bulk and scale of the building.
- The balconies provide sufficient shading to enhance liveability of the internal areas.

7C.10 Fencing

Control 7, Part 7C.10 of the KDCP states ground floor private open space, courtyard and terrace wall and fence heights are not to exceed

- i. 1.2m to any street frontage
- ii. 1.8m to any side or rear boundary with a maximum 1.2m high solid component and a minimum 30% transparent component above.

The objectives of this provision are:

1. *To ensure fencing design responds to the character of the streetscape in terms of:*
 - i. *open landscape character;*
 - ii. *visibility and security;*
 - iii. *materials selection;*
 - iv. *solid or transparent qualities;*
 - v. *height;*
 - vi. *vertical and horizontal composition of the materials; and/or*
 - vii. *location of entries and gates.*
 - viii. *noise sources*
 - ix. *topography*
2. *To ensure that fencing does not detract from the overall visual amenity and character of the area.*
3. *To ensure on site fencing and courtyard walls are integrated with the built form and provide separation and privacy to the private open areas.*

The following fencing is proposed to the ground floor private open space areas:

- street frontage to Fox Valley Road: 1.8m high palisade fencing
- side and rear boundaries:
 - Eastern elevation fencing for private open space is 1.8m (900mm solid brick base and 900mm palisade)
 - Western elevation fencing for private open space is 1.5m – 2.35m (maximum height of 1m solid brick base and 1.35m palisade)
 - Southern elevation fencing is 1.8m high (1m solid brick base and 800mm palisade).

The departure from Council's fencing provision is accepted as the structures meet the objectives of the applicable controls as follows:

1. The fencing responds to the streetscape by incorporating a design that is visually

compatible with the development. It does not result in visual dominance as the fencing maintains adequate transparency, supporting an open landscape frontage while still delineating the private domain.

2. The partially transparent nature of the fencing allows for passive surveillance of the public domain and communal open spaces, thus providing safety for residents and visitors.
3. The materials of the fencing are of high quality and are compatible with the proposed building form and the surrounding streetscape character. A combination of solid and transparent material provides visual interest and reduces bulk impacts.
4. The height of the fencing, particularly along the side (western) elevation, responds appropriately to the site levels, while maintaining a consistent appearance.

Ku-ring-gai Development Control Plan

Section B

Part 15 – Land contamination

The Preliminary Site (Contamination) Investigation (PSI) (prepared by Douglas Partners; dated April 2025) concludes that the site is generally suitable for the proposed residential development, however, it recommends further supplementary investigations to identify additional contamination within the site. Recommendations from the supplementary investigation would inform whether such findings would require active remediation or management. The PSI is acceptable, subject to further investigation, which would be required prior to the issue of a Construction Certificate. Were the proposal be recommended for approval, further investigations would be recommended by way of consent and the PSI would be listed in Condition No. 1.

Part 18 – Biodiversity

The land is mapped as comprising biodiversity significant land.

Council's Ecological Assessment Officer is satisfied that the proposed development will not result in a significant detrimental impact contrary to the objectives of these provisions in relation to the diversity and condition of native vegetation, fauna and habitat, subject to conditions.

Part 19 – Heritage items and heritage conservation areas

The site is a heritage item (148 Fox Valley Road (Item No. 1929) - Seventh-Day Adventist administrative building and front garden) and within 100m of heritage items at Nos. 118 and 145 Fox Valley Road, Wahroonga. The property is not within a heritage conservation area.

Council's Heritage Advisor has not raised any concerns with the application.

Ku-ring-gai Development Control Plan

Section C

Development Control	Proposed	Complies
Part 21 General Site Design		
21.1 – Earthworks and slope		
Development is to be accommodated within the natural slope of the land. Level changes across the site are to be primarily resolved within the building footprint. This may be achieved by: i) stepping buildings down a site; and ii) locating the finished ground floor level as close to existing ground level as practicable.	The proposed development is located as close as possible to existing ground level and interpolated ground level.	YES
Development is to minimise earthworks on steeply sloping sites. Sites with a slope in excess of 15% may require certification from a geotechnical engineer as to the stability of the slope in regard to the proposed design	An adequate Geotechnical Report was submitted.	YES
Landscape cut or fill should not be more than 600mm above or below natural ground line. Note: Landscape cut or fill means cut or fill not required to accommodate building works such as footprints, driveways, swimming pools and the like.	Rear lawn filled up to 1.5m is acceptable to create a useable lawn area on a sloped area that previously was occupied by a building. Cut and fill is required to northern and western boundaries to meet new road and driveway levels is acceptable.	NO
A minimum 0.6m width is required between retaining walls to provide adequate soil area and depth to ensure that they do not read as a single level change, and for the viability of landscaping.	Complies	YES
Existing ground level is to be maintained for a distance of 2m from any boundary.	Complies	YES
Fill and excavation is to be avoided within sensitive environments, such as riparian lands, bushland, vegetation or natural rock outcrops.	Complies	YES
Retaining walls, excavated and filled areas are to be located and constructed to have no adverse impact on: i) structures to be retained on the site; ii) structures on adjacent public or private land; iii) trees and vegetation to be retained on site or on adjoining sites.	Complies	YES

Excavated and filled areas are to be constructed so as not to redirect or concentrate stormwater or surface water runoff onto adjoining properties.	Complies. Suitable inlet pits and grated drains are proposed to capture any surface runoffs and direct to the approved stormwater disposal system to minimise any water runoff onto adjoining properties.	YES
The design of the proposal is to consider the impacts of altered subsurface/groundwater flows or direction on groundwater dependent ecosystems or species.	Complies.	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		
Applications for development, other than single dwellings, are to demonstrate how access to and within developments meets the requirements of the Disability Discrimination Act 1992 (DDA) and the Disability (Access to Premises – Buildings) Standards 2010.	The submitted BCA and Access Reports are acceptable.	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 - 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 Fox Valley Road to Link Road and generally satisfies these controls.	YES
22.3 – Basement car parking		
Logical and efficient basement design AS2890.1	Vehicular access is provided from Fox Valley Road and generally satisfies these controls.	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	Inadequate detail is provided to determine compliance.	NO

Basement is fully tanked	Compliance is achievable with Conditions.	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	Compliance is demonstrated.	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
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	Compliance is demonstrated.	YES
Bicycle access paths have a minimum width of 1.5 metres	Compliance is demonstrated.	YES
Part 23 – Building Design and Sustainability		
23.1 – Social Impact		
Proposals are to consider the impacts of the development on nearby residents and users of the site.	Compliance is demonstrated.	YES

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
23.6 – Building Services		
Services and related structures are appropriately located to minimise streetscape impact	The air conditioning units have been appropriately located and will not be visible from the street.	YES
Air-conditioning units are well screened and do not create adverse noise impacts.	Compliance is demonstrated.	YES
23.7 – General 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.	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

Part 24 Water Management		
Council's Development Engineer is not satisfied that the proposed development has been designed to manage urban stormwater as per the requirements of Part 24 KDCP.		
Part 25 Waste Management		
Council's Development Engineer is not satisfied that the proposed development has been designed to meet the waste management requirements of Part 25 of the KDCP.		
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 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.	Compliance is demonstrated.	YES
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.	Complies.	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.	Inadequate information is provided to demonstrate compliance.	NO

The Waste Management Plan (WMP) is to describe how the waste management system is to be managed and who is responsible for each stage of the process.	Waste and recycling collection for residential development is to be undertaken by Council's Waste Services.	YES
Part 25A.4 Construction of Waste and Recycling rooms		
The proposal has been assessed against the controls in this part and is generally compliant or capable of compliance through the imposition of conditions.		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 are located within the basement and lower ground level.	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 entire length of travel required within the development	Inadequate information is provided to determine compliance.	NO
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	Garbage would be stored and collected from within the basement.	YES

1997.		
Part 25B 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 be screened and not be visible from the street or any public area outside the basement; and not be accessible to the general public.	Bulky goods waste storage room is to be located in the basement/ lower ground	YES
Min 6m ² bulk goods storage area	17.5m 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 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.	A condition can be imposed to achieve compliance.	YES

Ku-ring-gai Contributions Plan 2023

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

Housing and Productivity Contribution

A condition requiring payment of a Housing and Productivity 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 recommended for approval.

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, refuse development consent to eDA0516/24 for demolition works, tree removal, subdivision, lot consolidation and construction of a residential apartment development, including basement, landscaping and associated works at 136 - 144 and 148 Fox Valley Road, Wahroonga, for the following reasons:

1. Permissibility

Stormwater drainage works are a prohibited form of development within the C2 Environmental Conservation zone.

Particulars:-

- a) The dispersion trench is proposed to be located on the adjoining property to the rear (southern) boundary known as Lot 1102 in DP 1293107, which is zoned C2 Environmental Conservation under the KLEP 2015.
- b) Pursuant to Section 4.3 'Development that is prohibited' of the Environmental Planning and Assessment Act 1979 and the zoning table for the C2 Environmental Conservation zone in KLEP 2015, consent for prohibited development cannot be granted.

2. BASIX certificate

The BASIX Certificate has not been submitted in accordance with SEPP (Sustainable Buildings) 2022.

Particulars:-

- a) The proposal is inconsistent with Division 1 (Making development applications – the Act, ss 4.12 and 4.64), Section 27(1)(b) of the Environmental Planning and Assessment Regulation 2021, which requires that a development application for BASIX development be accompanied by all matters specified in the relevant BASIX Certificate.
- b) The BASIX Certificate number BSX-25218M_02, dated 5 May 2025, is inconsistent with the Landscape Plans which do not indicate the requirements of the BASIX.
- c) Landscape area for Unit A406 is not indicated in BASIX Certificate.
- d) An area of indigenous/low water use planting (3055.59m²) is not identified on the Landscape Plans as required under the BASIX.

3. Deep soil

The proposed development fails to provide a sufficient area of deep soil.

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 dimensions in common open space is approximately 3562m² (43.4%). The 50% deep soil required for a site area of 8205m² is 4135.6m². Currently approximately 573.6m² additional deep soil is required
- b) The deep soil is calculated incorrectly on the Landscape Masterplan Deep Soil at 3956m² (48.2%) as the following areas that have been included are not included per the deep soil definition:
 - areas within private open space,
 - paths wider than 1.2m,
 - areas less than 2m in width.

4. Bushfire

A bushfire consultant has not certified that the Landscape Plans are compliant with the requirements of Planning for Bushfire Protection 2019.

5. Landscape design

The landscape proposal fails to satisfy the relevant objectives and controls under Parts 7A.3, 7A.6, 21.2 and 23.5 of the KDCP.

Particulars:-

An amended landscape plan must be submitted to resolve the following issues:

- a) Planting details and a planting schedule for Level 4 Planter boxes has not been provided.
- b) Areas of low water/ indigenous planting required by the BASIX Certificate are to be indicated on plans.

6. Location of stormwater dispersion trench

The stormwater dispersion trench is located on the adjoining property to the rear (southern) boundary (Lot 1102 in DP 1293107) .

Particulars:

- a) The adjoining property to the rear (southern) boundary has not been identified as being part of the development site.
- b) The adjoining property to the rear (southern) boundary is zoned C2 Environmental Conservation. Stormwater drainage works are a prohibited form of development within the subject zone.

7. Environmental site management plan

An adequate Environmental Site Management Plan has not been submitted in accordance with Part 23.1 of the KDCP. The Plan is to add trees and tree protective fencing to plans and ensure proposed works and structures are located outside of the Tree Protection Zone.

8. Vehicle access

The proposal lacks sufficient information to demonstrate compliance with relevant vehicular access requirements, potentially resulting in safety and operational issues.

Particulars:-

- a) No visual splays (sight line triangles of 2m x 2.5m) have been provided at the property boundary on either side of the driveway, as required by Figure 3.3 of AS2890.1:2004. Accordingly, adequate safety of the driveway entry has not been demonstrated.
- b) The driveway longitudinal section shown on the architectural plans (DA310-501/D) does not start from the centreline of the public road to the basement carpark entry. The driveway gradient is to show a maximum 20% grade along the main access ramp to the basement entry as required under Control 17 in Part 25A.5 as well as demonstrating that there will be a driveway gradient of 5% for the first 6m as per AS2890.1:2004.
- c) An intersection upgrade has been approved as part of the precinct development. No civil plans have been submitted to show how the proposed driveway crossing connects with the approved design for the footpath and nature strip per the Part 3A Concept Approval.

9. Waste management

The proposal does not comply with the waste collection requirements under Part 25A of the KDCP.

Particulars:-

- a) No plans have been submitted to demonstrate sufficient headroom clearance of 2.6m along the driveway and throughout the basement car park along the entire path of travel to the waste collection bay.

10. Water management

The proposal fails to provide water sensitive urban design measures to achieve the objectives of Part 6.6 of SEPP (Biodiversity and Conservation) 2021, Clause 6.5 'Stormwater and water sensitive urban design' of the KLEP 2015 and the requirements of Part 24 of the KDCP.

Particulars:-

- a) The proposed pump-out tank does not demonstrate compliance with the storage requirements for the 100-year 2-hour storm as specified under Part 24B.5 of the KDCP.
- b) The rising main from the pump out system has not been shown to be connected to the on-site detention system.
- c) No supporting hydraulic calculation have been submitted to demonstrate compliance with Part 24C.3-4 of the Ku-ring-gai DCP that requires rainwater retention and re-use to be provided to achieve a 50% reduction in runoff days. A water balance model has not been submitted.
- d) No clarification has been provided as to the purpose and use of the proposed rainwater tank given that a retention component would be required as outlined in Particular C, above.
- e) The Stormwater Management Plan fails to provide design details of the dispersal trench and its sizing, which is required to ascertain whether the system functions correctly.
- f) The proposed stormwater management is inconsistent with Part 6.6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021, Clause 6.5 of the KLEP 2015 and Part 24 'Water Management' of the KDCP.

11. Connection to services

The proposal fails to provide plans to show utility services in particularly the sewer main/ line in accordance with relevant service providers authorities i.e. Ausgrid, Sydney Water, Jemena, Telstra etc. that would be required to service the proposed development.

12. Public interest

The proposal is not in the public interest.

Particulars:-

- a) Approval of the application would be inconsistent with the public interest as it would result in an adverse outcome contrary to the aims of the *Environmental Planning and Assessment Act 1979*.
- b) The proposal results in adverse water management impacts thus failing to meet Objective (e) in Section 1.3 of the Act which aims to protect the environment.
- c) The stormwater design does not provide appropriate water management measures to avoid or minimise the adverse impacts of urban stormwater on adjoining properties, thus failing to meet Objective (g) in Section 1.3 of the Act which aims to promote good design and amenity of the built environment.

- d) The proposal does not provide adequate deep soil zones across the site and within the side (western) boundary thus failing meet Objective (g) in Section 1.3 of the Act which aims to promote good design and amenity of the built environment.