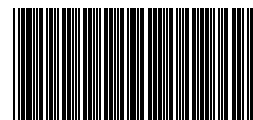




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Statement of Facts and Contentions

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2025/00215807

TITLE OF PROCEEDINGS

First Applicant	BWSLD KILLARA II PTY LTD ACN 682262291
First Respondent	KU-RING-GAI COUNCIL ABN 86408856411

FILING DETAILS

Filed for	KU-RING-GAI COUNCIL, Respondent 1
Legal representative	CATHERINE LOUISE MORTON
Legal representative reference	
Telephone	02 9373 3555
Your reference	KUR955-00220

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Statement of Facts and Contentions (Council's SOFAC - BWSLD.pdf)

[attach.]

STATEMENT OF FACTS AND CONTENTIONS

COURT DETAILS

Court	Land and Environment Court of New South Wales
Class	1
Case number	2025/00215807

TITLE OF PROCEEDINGS

Applicant BWSLD KILLARA II PTY LTD

Respondent **KU-RING-GAI COUNCIL**

FILING DETAILS

Filed for	Ku-ring-gai Council , Respondent
Legal representative	Catherine Morton, Sparke Helmore Lawyers
Legal representative reference	KUR955-000216
Contact name and telephone	Catherine Morton, (02) 9260 1447
Contact email	Catherine.Morton@sparke.com.au

PART A – FACTS

The Respondent (**Council**) says that the facts relevant to the determination of development application number eDA0157/25 (**Development Application**) are as follows:

THE PROPOSAL

1. This is an appeal against the deemed refusal of the Development Application which seeks development consent for the demolition of existing structures, lot amalgamation and construction of a residential flat building with basement parking at 23-25 Lorne Avenue, Killara (the **Site**).
2. The Development Application, seeks consent for the following (**Proposed Development**):
 - a) Lot amalgamation to consolidate Lot 4 in DP 547371 and Lot 103 in DP 1135940, which would result in a total site area of 2150.6m².
 - b) Demolition of the existing residential dwellings and ancillary structures as shown on the demolition plan.
 - c) Construction of a residential flat building over part 3 – part 5 basement levels including:
 - i. 55 units comprising:
 - 3 x 1 bedroom units
 - 11 x 2 bedroom units

- 35 x 3 bedroom units
 - 6 x 4 bedroom units
 - Affordable housing: 15% (GFA) as affordable for 15 years and 2% (GFA) as affordable in perpetuity.
- ii. building height and form:
- 1 building of part 8 and part 9 storeys
 - flat roofs
 - materials and finishes consist of glass, a variety of cladding and brickwork
- iii. car spaces:
- 83 x Residents (includes 8 accessible + 1 service bay)
 - 11 x Visitors (includes 1 accessible + 1 shared with car wash)
 - bicycles and motorbike spaces are also provided
- iv. plant located on the rooftop and within the basement
- v. garbage rooms, storage for resident use, and services are also located within the basement
- vi. access and parking
- carparking located in basement levels 1, 2 and 3 and the lower ground floor level
 - primary pedestrian access is via a bridge from the Lorne Avenue frontage
 - a 6.6m wide two-way driveway to Lorne Avenue
 - service bay adjoining the waste collection point on the lower ground level
- d) landscaping works
- i. communal open space is located within the rear, front and eastern side setbacks,
 - ii. removal of 13 trees,
 - iii. landscape works include built landscape structures and planting.
- e) stormwater works
- i. The stormwater plans show runoff from all roof areas to be collected and conveyed to a combined detention and retention tank of 48m³ and 27,500L respectively located within the lower ground floor area.
 - ii. The overflow from the detention system is directed to a proposed headwall with rip-rap structure to avoid erosion and slow down outflows from the Site which will flow into an open channel that traverses the downstream properties and is connected

into Council's trunk drainage system further downstream.

THE SITE

3. The Site is legally described as:
 - (a) Lot 4 in DP 547371, 23 Lorne Avenue, Killara
 - (b) Lot 103 in DP 1135940, 25 Lorne Avenue, Killara
4. The Site, will have a combined area of 2150.6m² (based on the current survey), comprising:
 - Lot 4 - 834.6m²
 - Lot 103 - 1316m²
5. The Site is bound by Lorne Avenue to the south with single storey dwellings and a public park opposite, two single storey residential dwellings and a residential flat building to the north and residential flat buildings to the east and west.
6. The Site has a natural crossfall of 6.5m from the high point at its south-western corner to the low point at the north-east. The Site is irregular in shape with a width of 32.3m at the frontage and a maximum length of approximately 84.125m. The rear boundary is skewed. There are current easements and restrictions along the western boundary of the Site relating to a right of carriageway, easements to drain water and a restriction on the use of land.
7. No. 23 Lorne Avenue to the southeast, accommodates a single dwelling with vehicular access from Lorne Avenue.
8. No. 25 Lorne Avenue is a battle axe allotment with the handle aligning the western side of 23 Lorne Avenue. The site accommodates a single dwelling with a swimming pool within the rear setback.
9. Pedestrian access to each dwelling is also via Lorne Avenue.
10. An aerial image of the Site is provided in **Figure 1** below.



Figure 1 – Aerial Map of the Site highlighted (Source: Geocortex Viewer)

11. The Site is zoned R4 High Density Residential under the KLEP 2015. Residential flat buildings are permissible therein, with development consent.
12. An extract of the Council's Land Zoning Map showing the zoning of the Site and immediate surrounds is provided at **Figure 2** below.

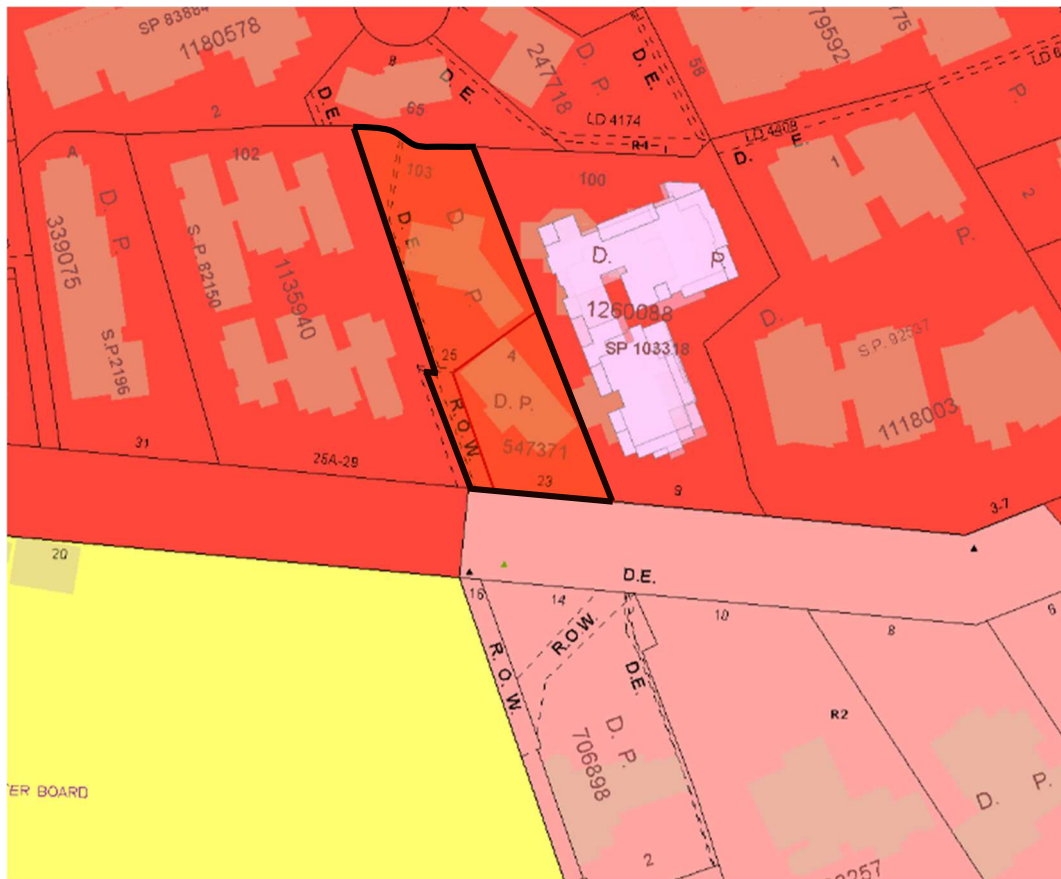


Figure 2 – Extract from the land use zoning map (Source: KLEP 2015)

13. To the south of the Site is the Marian Street Conservation Area - C24 (**Figure 3**).

14. The Site is located within 100 metres of 6, 8, 10 and 14 Lorne Avenue and Regimental Park - 20 Lorne Avenue, all of which are listed as items of local heritage significance under Part 1 of Schedule 5 to the KLEP 2015. An extract of the Council's heritage map showing the Site and surrounding heritage items is provided in **Figure 3** below.

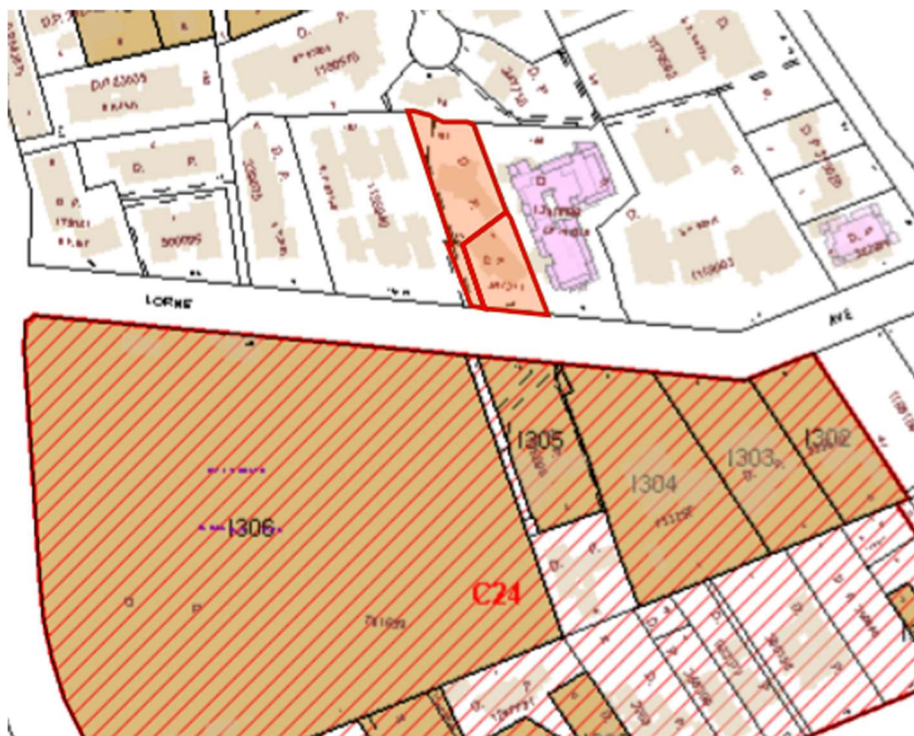


Figure 3 – Extract from the heritage map with the Site highlighted in red (KLEP 2015)

THE LOCALITY

15. The properties that adjoin the Site are developed as follows:
- a) Surrounding development includes a range of zones including R4 high density, to the east, west and north of the Site. To the south is R2 and SP2 zoned land.
 - b) 25A-29 Lorne Avenue to the west, 9 Lorne Avenue to the east and 5 Wallaroo Close to the north, currently accommodate residential flat buildings. These adjoining buildings are modern in design and have a height of up to 6 storeys. To the north and north east are part single / part two storey dwelling houses.
 - c) As detailed in Figure 3, opposite the Site is the Marian Street Conservation Area which includes a row of heritage items at 6, 8, 10 and 14 Lorne Avenue. The cluster of 4 heritage items forms the gateway to the Marian Street Conservation Area (**HCA**). No. 20 Lorne Avenue, opposite the Site, is a heritage listed public park and water reservoir owned by Sydney Water.

- d) Within the visual catchment of the Site, there is no consistent subdivision pattern of development (**Figure 1**). Allotments are rectilinear and irregular in shape, with varying site areas and dimensions.

16. The Site is nominated as Transport Orientated Development (**TOD**) as detailed in **Figure 4** below.

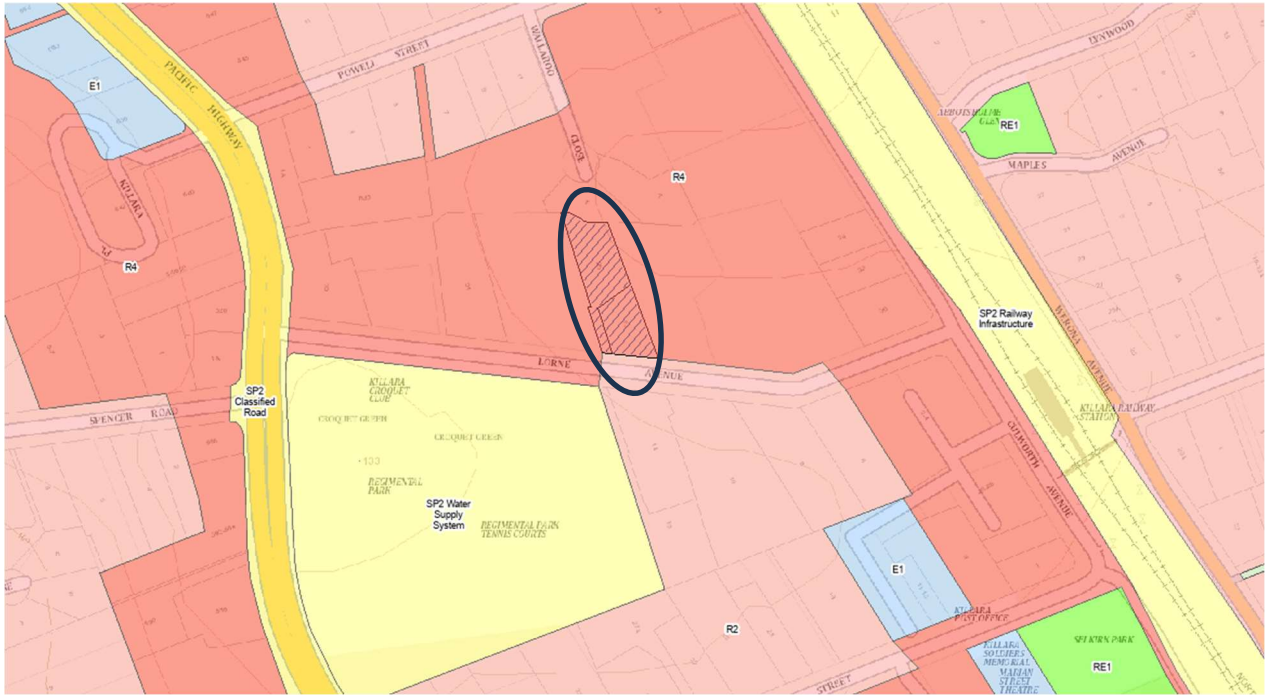


Figure 4: Extract of Transport Orientated Development Sites Map as referenced in Chapter 5 of the SEPP (Housing) 2021. Blue hatching representative of the TOD Area. The Site is the only TOD site in the immediate locality.

17. On 13 June 2025 Department of Planning, Housing and Infrastructure (**DPHI**) turned off the TOD for new development applications.
18. On 19 June, DPHI published updated maps under the [Ku-ring-gai Local Environmental Plan \(Housing\) \(Map Amendment No 1\).\(PDF, 704KB\)](#). These maps identify the locations where local development applications and state significant development applications have been 'saved' and the TOD controls still apply, see **Figure 4** above.
19. The adopted TOD alternative planning controls would affect the Site and surrounding sites as follows:

- Building height: 18.5 metres
- Floor Space Ratio (FSR): 1.3:1
- Zoning: No change the R4 High Density Residential zoning remains

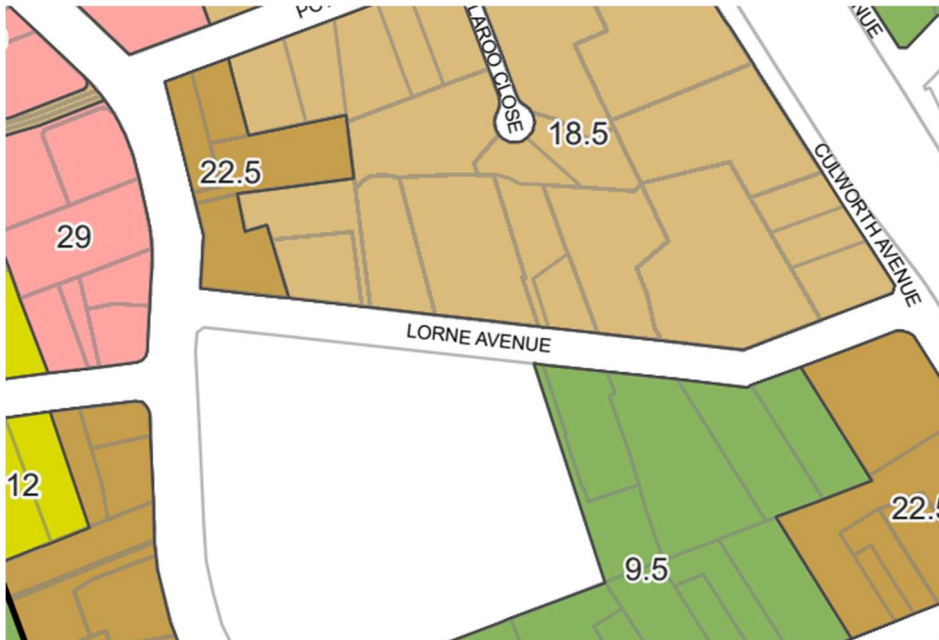


Figure 5: Extract of adopted TOD alternative building height map

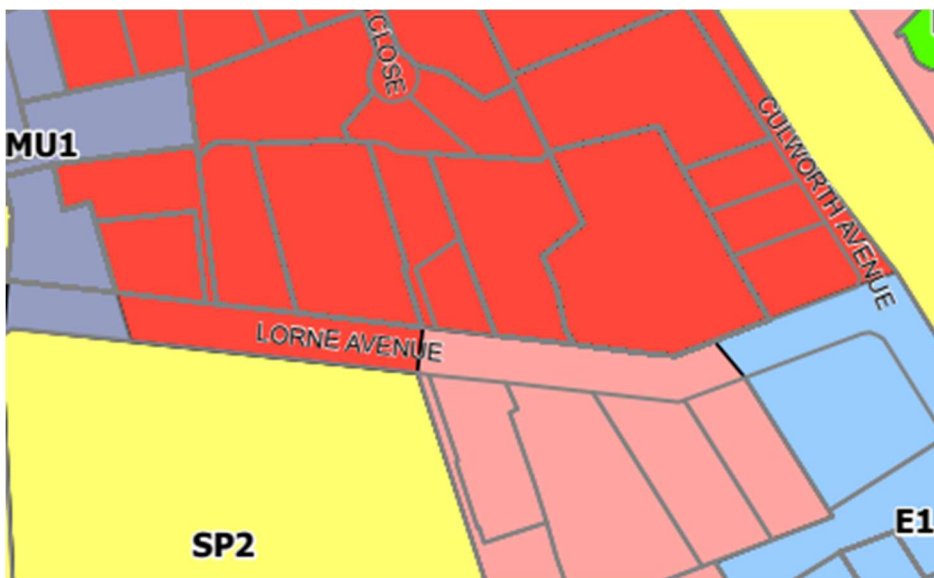


Figure 6: Extract of adopted TOD alternative zoning map

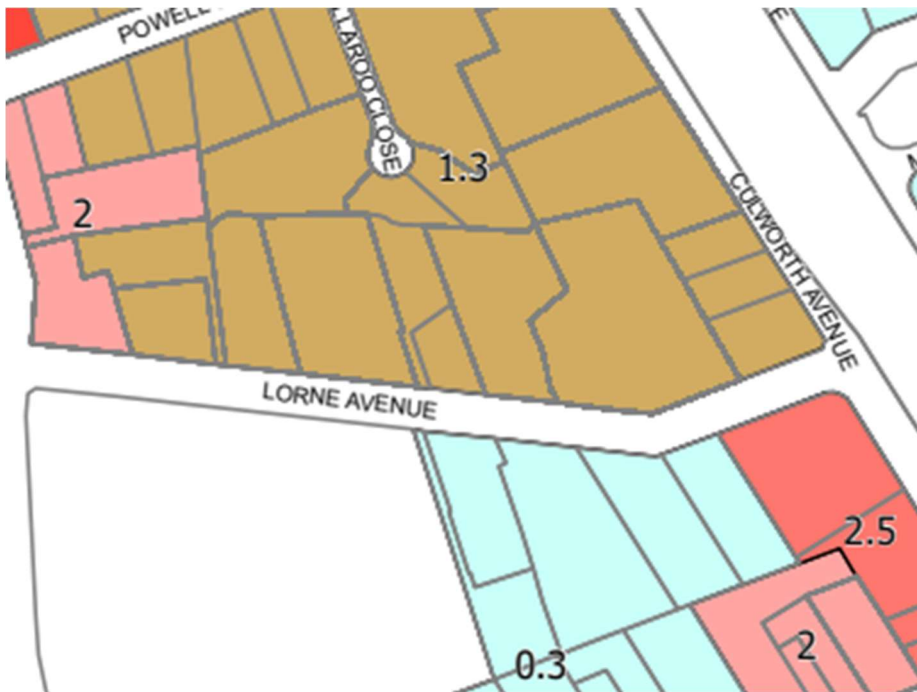


Figure 7: Extract of adopted TOD alternative FSR map

THE STATUTORY CONTROLS

20. The statutory controls and policies that apply to the assessment of the Development Application are as follows:
- a) *Environmental Planning and Assessment Act 1979 (EPA Act)*
 - b) *Environmental Planning and Assessment Regulation 2021 (EPA Regulation)*
 - c) *State Environmental Planning Policy (Housing) 2021 (SEPP Housing)*
 - d) *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
 - e) *State Environmental Planning Policy (Sustainable Buildings) 2022*
 - f) *State Environmental Planning Policy (Resilience and Hazards) 2021*
 - g) *Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015)*
 - h) *Ku-ring-gai Development Control Plan (KDCP)*
 - i) *Ku-ring-gai Community Participation Plan*
 - j) *Apartment Design Guide*, published by NSW Department of Planning and Environment dated July 2015 (**ADG**)
 - k) *Ku-ring-gai Contributions Plan 2010*
 - l) *Housing Productivity Contribution Ministerial Planning Order*
 - m) *Ku-ring-gai Council Alternate TOD Controls*

ACTIONS OF THE RESPONDENT CONSENT AUTHORITY

21. The Development Application was accepted by Council and lodged on 17 April 2025 (**PAN-523595**).

22. The Development Application was notified in accordance with the Ku-ring-gai Community Participation Plan for a period of 30 days commencing on 7 May 2025. In response 132 submissions were received. The objections to the Proposed Development raised the following key issues:
- a) Insufficient setbacks to the front, rear and sides
 - b) Incompatible building height, bulk and scale in relation to streetscape character, neighbouring developments and heritage items
 - c) Impacts to low density heritage conservation area and heritage items
 - d) Insufficient building separation to adjoining apartments and associated privacy and amenity impacts
 - e) Impacts upon views
 - f) Impacts on solar access, loss of natural light and energy consumption
 - g) Tree impacts and tree removal
 - h) Impacts to landscape character and vegetation
 - i) Acoustic impacts from roof mounted A/C units, exhaust fan, residents, access to and use of communal open space
 - j) Traffic and parking impacts
 - k) Geotechnical/structural risks due to depth of excavation
 - l) Contamination risks arising from results of preliminary site investigation
 - m) Drainage impacts inadequate stormwater infrastructure, flooding, erosion
 - n) Impact on quality of life and health
 - o) Concerns in relation to floor space ratio and overdevelopment of the site
 - p) Insufficient deep soil areas
 - q) Noise and vibration impacts from construction, construction pollution and use of the building
 - r) Potential wind and microclimate issues
 - s) Precedent for overdevelopment of sites
 - t) Negative impact on property values
 - u) Concerns in relation to affordable housing
 - v) Legality of TOD SEPP with pending legal challenge
 - w) DA should not be determined until the alternate TOD scheme is resolved and planning controls resolved
 - x) Longevity of buildings
 - y) Concerns in relation to infrastructure
 - z) Safety of pedestrians and vehicles
 - aa) Insufficient and misleading information
 - bb) Lack of construction management plan
 - cc) Concern in relation to increased illegal dumping and uncleanness
 - dd) Concern regarding service vehicles and access to waste storage area

- ee) Concern regarding how the rules have changed
- ff) Construction impacts
- gg) Shadow diagrams only demonstrate impacts at mid winter
- hh) Affordability of affordable housing
- ii) Concern regarding the long term provision of affordable housing
- jj) Location of air conditioning condensers and impacts
- kk) Amalgamation with 7 and 8 Wallaroo Crescent
- ll) Non compliant open-space (balconies); private open space for ground level apartments
- mm) Non compliant drive-way setback within the street frontage setback;
- nn) Basement encroachment;
- oo) Encroachment of street-facing terrace.
- pp) Lack of infrastructure to support the proposal
- qq) Not reasonable to bypass Council, Council must be more involved and provide more information and guidance to residents
- rr) Concern in relation to light spill
- ss) Justification of non compliances is inadequate
- tt) Non compliant site coverage
- uu) Concerns in relation to natural cross ventilation and reliance on mechanical ventilation
- vv) Impact on cross ventilation and air quality of adjoining properties.
- ww) Development is at odds with achieving a net zero emission by 2050
- xx) Concerns about surface flooding, erosion, and runoff to neighbouring sites.
- yy) The proposal is inconsistent with the TOD preferred scenario and local planning controls
- zz) Inconsistent with the ADG
- aaa) Incompatible with the environmental constraints of the site
- bbb) Tree removal undermines Ku-ring-gai's urban forest strategy
- ccc) Impacts on biodiversity and natural environment
- ddd) Impacts to water pressure
- eee) Adverse social impacts
- fff) Lack of meaning communal open space
- ggg) Precedent for future development
- hhh) Privacy concerns and inadequate privacy measures
- iii) Impact to future installed solar energy
- jjj) Impacts from reflected heat from the building
- kkk) Opportunities to amalgamate
- lll) Insufficient balcony sizes/private open space
- mmm) inadequate information to undertake assessment

23. The Class 1 Application was filed with the Land and Environment Court (**Court**) on 11 June 2025.

24. A briefing to the Sydney North Planning Panel was undertaken by Council on 18 June 2025.

PART B - CONTENTIONS

The Respondent contends that the following facts, matters and circumstances require or should cause the Court, in exercising the functions of the consent authority, to refuse the Development Application.

B1 – CONTENTIONS THAT CONSENT MUST BE REFUSED

1. Owner's consent has not been provided as required by Section 23(1) of the Environmental Planning & Assessment Regulation 2021 (Regulation).

Particulars:

- a) Section 23(1) of the Regulation requires the written consent of the owner(s) of the land to which the development application relates.
- b) Boundary fencing, rock mattress and retaining wall structures are shown on or over the common boundary with No. 25A-29 and the adjoining properties to the east and north at No. 9 Lorne Avenue and No. 8 Wallaroo Close, Killara (respectively) (see on drawings D04, revision C, 14/3/2025 prepared by Smart Structures Australia, DA, 100, 100a, 101, 101a, DA310, 311 revision A, 14/03/2025, prepared by BKA Architecture and LP01, LP02 revision A, 18/03/2025, prepared by Conzept Landscape Australia).
- c) It is also proposed to remove Tree 33 Cordyline australis, which is located upon No. 8 Wallaroo Close, Killara.
- d) As the works proposed under the Development Application propose works on adjoining properties at No. 9 Lorne Avenue and No. 8 Wallaroo Close, Killara, owners' consent is required to be provided from the owners of each such property, pursuant to Section 23(1) of the Regulation.
- e) It is unclear whether demolition of fencing is proposed on the common boundaries of the Site and the retaining wall / fence structure within 8 Wallaroo Close.

2. The gross floor area of the development is unclear.

Particulars:

- a) The maximum floor space ratio is 2.5:1 as specified in Chapter 5, Section 15 (4) of SEPP Housing (**SEPP**). Section 16 of the SEPP provides for Affordable housing requirements for additional floor space ratio (**FSR**) and specifies at s16(1) that the maximum FSR for such development, "is the maximum permissible floor space ratio for the development on the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2)". In this case the maximum FSR for the Site is 3.25:1 (including the affordable housing bonus').
- b) The GFA / FSR is shown on DA002, issue A, as 6989m² / 3.25:1, which is 15% In-fill Affordable housing (chapter 2) and 2% Affordable Housing (chapter 5).
- c) Accordingly, the proposed GFA and allowable FSR of the proposed development is unclear. The Applicant should provide GFA diagrams (that comply with the definition for GFA under the KLEP) that include such details as::

- i) The thickness of walls to common vertical circulation such as lifts and stairs (where not external) and the thickness of walls to risers, which should be included in the calculation GFA.
 - ii) A survey is to be overlayed onto the floor plans to demonstrate that the areas that are excluded from the GFA calculation are classified as “basement” areas and where the ground floor level is 1m or more above existing ground level. For example the storage area on the western elevation of the LGF is close to this threshold.
 - d) A plan has not been provided which delineates what portion of each floor of the building is allocated to the affordable housing component under Chapter 2 and Chapter 5 of the SEPP. The Applicant must also confirm the affordable housing calculations on the Site Calculation plan.
 - e) Insufficient information has been provided to determine the full extent of GFA, however it would appear that the proposed development exceeds the allowable GFA.
 - f) A variation request under Clause 4.6 has not been provided to excuse compliance with the GFA development standards, so the Development Application cannot be approved.
- 3. The proposal is inconsistent with the desired future character, contrary to section 20(3) of SEPP Housing.**

Particulars:

- a) Section 20(3) of SEPP Housing provides that ‘development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with... for precincts undergoing transition, the desired future character of the area’ [Council’s emphasis]
- b) The Council’s draft alternative planning controls for the TOD areas, which have been adopted by Council and forwarded to the Department of Planning for endorsement (**TOD Alternative Scheme**), envisage a future character similar to the existing character which permits a maximum building height of 18.5m and FSR of 1.3:1. Currently under KLEP 2015 a maximum building height of 17.5m and FSR of 1.3:1 are permitted on the Site. Notwithstanding the TOD Alternative Scheme is in draft form, they should be taken into consideration in the assessment of the Development Application.
- c) The architectural analysis prepared by BKA Architecture (Figure 8) describes the proposed development in the context of existing and future development. Future developments have been extrapolated by the Applicant to show future TOD developments based on the TOD controls pursuant to SEPP Housing rather than the TOD Alternative Scheme, so this is not reflective of the future character of the area.

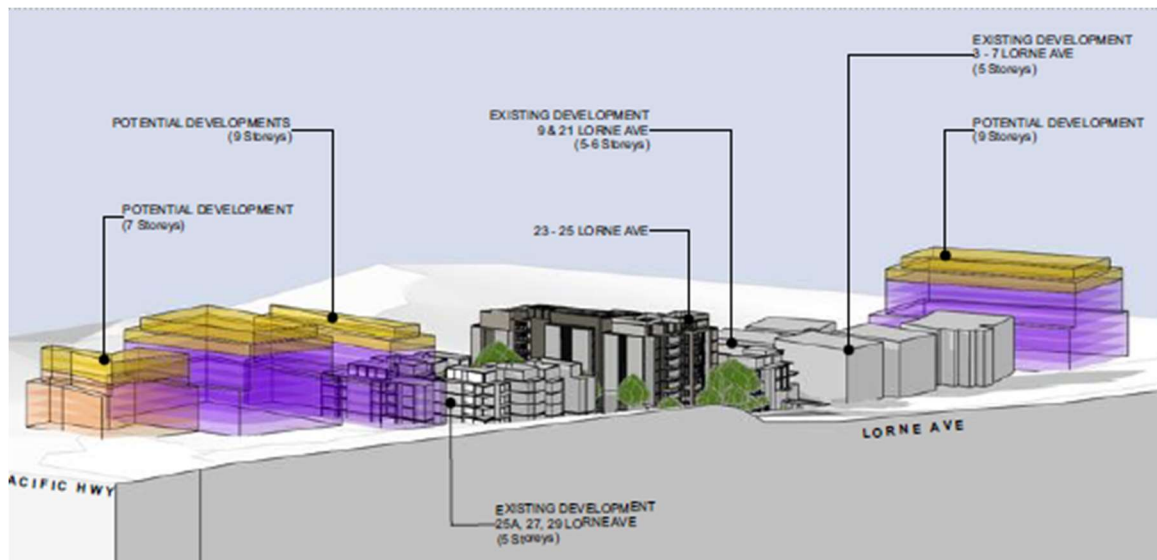


Figure 8: Extract Architectural analysis Future Character prepared by the applicant based on TOD policies.

- d) The proposal under the Development Application fails to achieve consistency with the desired future character because:
- i) The Site is surrounded by R4 High Density, R2 low density zones and the HCA. Under the proposed TOD Alternative Scheme, the adjoining sites to the south retain their R2 zoning, and HCA / heritage item status, in order to retain and maintain the character and low density scale on the southern side of Lorne Avenue. As such, the Site abuts a zone interface to the south.
 - ii) The Marian Street HCA includes dwellings with single detached houses from the Federation, Inter-war and Post-war periods. These buildings make an important contribution to the character and significance of the HCA as they have a key historical layer, most are true to an architectural type, style or period and some are substantially intact including their garden setting.
 - iii) While a higher-density and larger-scale development is permitted on the Site via the TOD, due to its interface with the adjoining HCA and R2 Low Density Residential zoned land and the TOD Alternative Scheme, the maximum potential indicated by the applicable development standards may not be able to be achieved.
 - iv) The proposed 8-9 storey residential flat building, which has insufficient landscaping and setbacks and non-compliant FSR would be juxtaposed with the existing residential character and the future desired character as espoused by the TOD Alternative Scheme. The scale of the proposed building is further exacerbated by the use of light coloured brick work.
 - v) Deep soil landscaping is significantly less than that of other sites in the locality with limited landscaping proposed and insufficient space for canopy tree planting in scale.
- e) As stated above, section 20(3) of SEPP Housing requires the consent authority to consider whether the “design of the residential development is compatible with (a)... (b) for precincts undergoing transition, the desired future character of the precinct” [Council’s emphasis].
- f) The Proposal is inconsistent with the planning principle established in *Seaside Properties v Wyong Council* (2004) 136 LGERA 111 at [25] (**Seaside Planning Principle**).

4. Failure to provide required information

The Council or the Court on appeal, cannot undertake a fulsome assessment of the Development Application as further information is required to be provided. Council reserves its position in respect of matters which may arise upon the provision of the necessary information.

Particulars:

- a) A new stormwater pipeline is required to be provided with an associated drainage easement over the downstream property of No. 9 Lorne Avenue. Owners' consent is required to be provided from all burdened properties (which are all the subject of strata schemes).
- b) The survey plan shows that the Site is burdened by rights of carriageway, an easement to drain water (which benefits Lots 1, 2 and 4 in DP547371) and a restriction on the use of land. T. There is no documentation to confirm whether the easement and restrictions have been extinguished and whether owners' consent is required for these to be extinguished.

5. Water management

The works proposed under the Development Application will not avoid, minimise or mitigate adverse impacts to adjoining properties, contrary to clause 6.5 'Stormwater and water sensitive urban design' of the KLEP. As such, development consent cannot be granted by the Court on appeal. In the alternative, the Development Application is not accompanied by sufficient particulars to enable an assessment against clause 6.5 of the KLEP. .

Particulars:

- a) Clause 6.5 of the KLEP provides that, before granting development consent to development on any land to which the KLEP applies, the consent authority must be satisfied that, relevantly:
 - i. *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*
 - ii. *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.*
- b) The proposal is to discharge stormwater from the Site via a headwall, to connect into an existing open channel within the neighbouring property of 9 Lorne Avenue. As such, any uncontrolled flows will not be able to be captured and conveyed to a legal point of discharge. A private easement must be created through the downstream property of No. 9 Lorne Avenue to connect into Council's existing trunk drainage system.
- c) There is insufficient information to enable assessment of the inter-allotment drainage design proposed through No. 9 Lorne Avenue, including but not limited to civil design of the pipeline and any potential impacts on trees and vegetation on No. 9 Lorne Avenue and upon any other adjoining properties. A survey including location of existing trees and a report from a

suitably qualified arborist is required, should there be any identified impacts to trees and vegetation.

- d) A detailed survey has not been carried out to show the accurate location of the headwall which is proposed to connect with Council's trunk drainage system. It is not clear as to the exact location of the headwall according to Council GIS mapping system. This location will define the location of any private easement required for this development.



- e) The condition of the pipeline within Council's Easement (in 7 Wallaroo Close; LD4174) has not been verified through a report prepared by a licensed plumber. The proposed drainage design does not demonstrate that the existing pipe, within 7 Wallaroo and downstream drainage pipe network is functional and in good working condition. There is no CCTV footage or any accompanying report demonstrating the current condition of the pipeline.

6. The site analysis has not adequately identified or considered the Site and its surrounds.

Particulars:

- a) The Site analysis has not been prepared to comply with Part 3A of the ADG or Part 2.1 of KDCP.
- b) The Site analysis fails to adequately describe the Site's surrounding urban context, and does not adequately consider the site character and amenity of future users of the Site or current occupants of adjoining properties. The Site analysis fails to adequately demonstrate that the design response proposed in the Development Application is well founded and responsive to the specific site context contrary to KDCP Part 2.1, Objectives 2, 5, 7 and 8:
- i) The site analysis does not include an understanding of connected natural systems – water and canopy with topography.
 - ii) The proposal does not include studies of the streetscape including setbacks and deep soil more widely within the local context.
 - iii) The provided *Architectural Analysis* has focused on the immediate neighbours but is silent on the wider streetscape implications expected to demonstrate a sensitive design approach and heritage response.

- iv) Site analysis should include alternative testing scenarios of arranging building form on the site in response to specific site context and conditions including achieving Ku-ring-gai's deep soil landscape character.

Accordingly, the proposed Site layout does not provide a clear conceptual design strategy in response to the opportunities and constraints of the specific site conditions. In particular, the accompanying drawings and documentation do not adequately demonstrate how the proposed arrangement of building mass has responded to the Site analysis, contrary to KDCP Part 7A.2, Control 1 and 2 and Objectives 1, 3, 6, 7 8.

- c) For the reasons set out above, the proposal fails to identify and respond to the attributes and constraints of the Site and the surrounding area. This results in a proposed development, which has an unsatisfactory relationship with neighbouring sites to the west, the adjoining HCA, and heritage items, and does not satisfactorily address the perceived bulk of the proposed development and its visual impact. The proposal thus fails to satisfy aims i, ii, iii, iv, v of Part 7 of KDCP.

7. Excessive building bulk

The non-compliances with the applicable FSR and building setback controls under 7A.3 of KDCP and Part 3F.1 of the ADG, will result in a development of excessive building bulk when viewed from Lorne Avenue and from .25A-29 Lorne Avenue. The excessive building mass and bulk are further accentuated by the blank walls, lack of deep soil and canopy trees.

Particulars:

- a) The minimum setbacks to Lorne Avenue are 6 metres at ground floor, 7.9 metres at first floor and 7.2m from the second floor and above. Control 1 ii) in Part 7A.3 in KDCP requires a street setback of 10 metres and does not comply. The Ground Floor egress stair (below the Site boundary ground line) impacts on landscaping within the front setback resulting in a separate First Floor level entry bridge, driveway and additional basement egress.
- b) The proposed development does not comply with the side and rear setbacks detailed in Part 7A.3 of KDCP and Part 3F.1 of the ADG:

Building height	ADG requirement (Part 3F-1)	KDCP (Part 7A.3)	Proposal (Minimum)
Basement		Basements are not to encroach into the street, side and rear setbacks	Eastern (side): Basement and LGF floor: 3m Western (side): 700mm (min) Northern (rear): 5.2m (min)
Up to 12m (4 storeys)	6m (hab rooms/balconies) 3m (non hab)	6m	Eastern: GF – level 3: 3m (min) Western (side): -LGF-GF: 2.279m (min)

			-level 1: 1m (min) -Level 2-2.279m (min) -Level 3: 2.315m (min) Northern (rear) LGF – level 2: 4.7m (min)
Up to 25m (5-8 storeys)	9m (hab rooms/balconies) 4.5m (non hab)	9m (5 th storey and above)	Eastern (Side): Levels 4-7: 3m (min) Western (side): Levels 4-7: 2.315m (min) Northern (rear): Levels 3 – 6: 8.5m (min)
Over 25m (9+ storeys)	12m (hab rooms/balconies) 6m (non hab)		Eastern: Level 8:6m (minimum) Western (side): Level 8: 3.665m Northern (rear): Level 7 – 8: 11.3m (min)

- d) The proposed non-compliant front setback accentuates the built form adjoining the zone interface and HCA to the south. The proposed setbacks and structures within the front setback do not provide adequate space between the landscaping and the building to achieve a landscape setting which is characteristic of the area and as such, is contrary to Part 7A.3, objectives 1, 2, 3, 4, 7, 9, 10, 14 and 15 of KDCP.
- e) The proposal results in unacceptable building setbacks with no meaningful landscaping along the western and eastern Site boundaries. This results in impacts to the built form interface (and amenity) with reliance on blank walls along the western boundary and the lack of meaningful deep soil landscaping around the perimeter of the Site.
- f) The aim at subparagraph (b)(ii) of section 150 of Chapter 5 of SEPP Housing is to deliver residential apartment buildings that “*are of appropriate bulk and scale*”. Objectives 1, 2, 3 4, 7, 11, 12, 13, 14, 15 and 16 of Part 7A.3 ‘Building Setbacks’ in KDCP seek to ensure that there are suitable setbacks to enable appropriate massing and spaces between buildings, to protect trees and allow for deep soil landscaping (including tall and medium trees), so as to maintain the character and minimise impacts to neighbouring development. In particular:
- The building bulk is excessive and not appropriate for this Site.
 - The proposed arrangement of the building form on the Site is inefficient and contributes to setback non-compliances. For instance, locating lift, egress and service cores along the proposed building perimeter in combination with unit configurations with large areas with little to no direct natural daylight and ventilation results in units with poor amenity and inadequate setback and deep soil layered planting around the perimeter of the site, and a reliance on blank walls as the western interface character which exacerbates the visual impact.

- iii) The Level 8 footprint is not rationalised and results in large, uninterrupted walls along the western and eastern boundaries of the Site. For example, the terrace length and extent of the wall for Unit 8.01 and extension of the wall from LG level to Level 8 of Unit 8.02 will contribute to the excessive scale of the built form.
 - iv) The proposed top storey does not step in 2.4m from the outer face of the floors below, contrary to control 2 and objectives 1 and 4 of Part 7C.8 of KDCP.
 - v) The large expanse of painted rendered wall finishes proposed along the western and eastern facades and light coloured brick work add to the visual dominance of the built form, which is inconsistent with Part 23 of KDCP.
 - vi) The proposed building is not situated within a garden setting that is dominated by tall trees. The garden character of the area is not preserved on the Site under the Development Application. There are insufficient building setbacks proposed in conjunction with basement encroachments and ancillary structures within the northern, western, eastern and southern sides of the Proposed Development, which limit viable deep soil landscaping to create the required garden setting. This therefore increases the perception of building bulk when viewed from the public domain and neighbouring properties.
- g) The Proposed Development fails to achieve a bulk that is appropriate to the existing or future character of Lorne Avenue. The bulk is excessive, and this is evident by the FSR and building setback non-compliances. This bulk reduces opportunities for the establishment of an appropriate garden setting which is inconsistent with the context and character of Lorne Avenue. The Proposed Development is therefore inconsistent with design principles 1, 2, 5 and 6 in Schedule 9 of SEPP (Housing) 2021.

8. Adverse Impacts to the HCA and heritage items in the vicinity of the Site

The proposed development is a dominant structure with vertical proportions and materials which adversely impact on the heritage significance of the Marian Street HCA and heritage items within the vicinity of the Site.

Particulars:

- a) The Site is located within the immediate vicinity of the HCA– C25 and 5 heritage listed items at: 20 Lorne Avenue, 14 Lorne Avenue, 10 Lorne Avenue, 8 Lorne Avenue and 6 Lorne Avenue, all of which are prescribed under Schedule 5 of KLEP 2015.
- b) The Proposed Development, uses extremely large vertical areas of smooth pale render resulting in a development that will visually dominate the nearby HCA and all 5 heritage items.
- c) The proposed pale render in extremely large vertical areas of 8 storeys or 30 m in height will have adverse impacts on the heritage significance of the HCA and the 5 heritage items in the vicinity of the Site, contrary to:
 - i. Clause 5.10 (1) (a) and (b) of KLEP 2015, and
 - ii. Objective 5 in 19F.1 in KDCP '*To ensure that new development does not visually dominate the adjoining or nearby HCA*'; and

- iii. Control 2 in 19F.1 in KDCP *'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) *materials and colours'.*
- iv. Control 2 in Part 19F.1 in KDCP *'Development on sites that either directly adjoin or are in the vicinity of a Heritage Item or an HCA is to have regard to:*
 - ii) *dominant architectural language such as horizontal lines and vertical segmentation'*
- v. *Objective 1 in Part F.2 to ensure new work in the vicinity of a Heritage Item or HCA respects and contributes to the established streetscape patterns through careful siting of new buildings.*
- vi. *Objective 2 in Part F.2 To ensure new development provides an interface of scale and bulk to preserve the amenity to the adjacent Heritage Item or building within a HCA.*
- vii. *Objective 3 in Part.2 To ensure new medium and high density development does not visually dominate the Heritage Item or building within the HCA.*

9. Design and Location of Building Entries

The main entry to the proposed building is not clear nor identifiable from Lorne Avenue .

Particulars:

- a) The main building entry is proposed over a bridge at the First Floor. The pedestrian entry point at the street is clear, although the main entry to the building is tucked to the side of the vestibule with little entry presence or clear visual cues to or from the street and inconsistent with ADG objective 3G-2.
- b) The movement sequence beyond the main entry is long with indirect sightlines.
- c) The building entry design is non-compliant with controls 4, 7, 10 and inconsistent with objectives 1, 2, 3 and 6 in Part 7C.5 in KDCP.
- d) The building entry is inconsistent with design quality principle 7 in Schedule 9 of SEPP (Housing) 2021.
- e) The Ground Floor egress stair (below the Site boundary ground line) impacts on the landscape setting resulting with the separate First Floor level entry bridge, driveway and additional basement egress.

10. Housing diversity, apartment Mix and accessibility

Particulars:

- a) Proposed Platinum Level units should be representative of the unit mix being offered and their location should achieve equitable access to high amenity. Most units achieve this, however, Unit LG.06 is significantly subterranean, single aspect, has a deep footprint and set low within the natural ground plane across the site.
- b) Platinum Level clearances has not been demonstrated on the plans.
- c) An additional Platinum level unit is required to satisfy KDCP Part 7C.4(3) that requires a minimum of 15% of units to be Platinum Level.
- d) Further consideration of the apartment mix may be required to rationalise the built form to assist with addressing particulars at contention & 'Excessive Building Bulk'.

11. Solar access

There will be unacceptable solar access impacts for the proposed residents and on the adjoining property at No. 9 Lorne Avenue and an excessive number of proposed units receiving no solar access.

Particulars:

- a) Part 7A.2, control 10 of KDCP requires that 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; ii) residential development in adjoining lower density zones.
- b) Objective 3B.2 Orientation of the ADG requires that overshadowing impacts to neighbouring properties is minimised. Building separation should be increased beyond minimums contained in Part 3F Visual Privacy or other mitigation strategies consistent with guidance at Part 2F of the ADG is required to minimise overshadowing.
- c) The *Statement of Environmental Effects* prepared by Planning Ingenuity notes the following regarding existing solar performance of the neighbouring property at 9 Lorne Avenue:

31 of 46 units (67%) of units achieving solar access to main living and POS areas. Of the existing 15 non-compliant apartments, approximately 10 along the [subject site's] eastern boundary will be impacted... the sunlight hours to these units will be reduced between 15-45 minutes depending on the location. If these apartments (as existing) achieved compliant solar access, the overshadowing impact in the late afternoon would be inconsequential.
- d) The application is dependent on the acceptability of impacts to the neighbouring units at No 9 Lorne Avenue on the basis of a hypothetical scenario 'if' their solar amenity was already compliant, which it is not. The ADG at ADG 3B.2 requires a design to mitigate (if not avoid) impacts from a proposed development.

Part 4A.1 of the ADG specifies 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.

- e) Units to the east at 9 Lorne Avenue are significantly impacted by overshadowing after 1pm which is when they currently start to receive some solar amenity. Their poorer performance is a direct result of the bulk of the proposed development and arrangement of building mass on the site.
- f) Extrapolating from the *Eye of the Sun Diagrams* (1-hr increments) it appears will provide possibly 15mins to 30mins maximum solar amenity to the neighbouring units during winter months.
- g) *Eye of the Sun Diagrams* are to include the modelling of existing apartment developments to the north of the Site in the vicinity and TOD Alternative Scheme or current TOD undeveloped sites. This information is required to assess the solar amenity achieved for some units and the primary communal open space on the Site.
- h) The submitted solar access diagrams do not appear to accurately reflect development on site.
 - i. The accompanying SEE states that there are 46 units at 9 Lorne Avenue, however it appears that there are 32 units.
 - ii. The applicant is to verify the layout of the adjoining development via site survey or otherwise.
- i) ADG Part 4A.1 (3) permits a maximum of 15% of units to receive no solar access. The proposed development results in 25% of units on the site receiving no solar access.

12. Solar Shading and Glazing

There is insufficient information relating to solar shadowing and the proposed glazing design for balustrades.

Particulars:

- a) Objective 4A.3 of the ADG requires that the design incorporate shading and glare control design features.
- b) Solar shading is to be shown on all plans, sections and elevations. All unprotected glazing within the east-north-west range is to include operable external shading devices.
- c) Floor-to-ceiling glazing unprotected by external shading devices or deep balcony recesses is unacceptable as it increases heat loads and adversely impacts on the privacy of adjoining properties.
- d) The proportion of window to wall ratio is unacceptable as it will not reduce heat loads on the building and amenity of adjoining properties. This is also needed to avoid the use of tinted

glass types due to their impacts to streetscape/urban character, amenity for outlook and beneficial solar amenity in cooler months.

- e) The proposed winter gardens are unacceptable as they will increase the area of exposed glazing across eastern facades, will adversely affect amenity due to increased heat loads and are not required due to site constraints, such as exposure to busy roads or railway lines.

13. Apartment amenity

The proposal provides inadequate ventilation, natural daylight and functionality to the proposed units.

Particulars:

- a) The proposed development does not maximise natural ventilation and natural daylight opportunities inconsistent with objective 4A-1, 4B.1 and 4D.1(2) of the ADG.
 - i. Units LG. 01, G.01, 1.01, 2.01, 3.01, 4.01, 5.01 and 8.01 have large living areas set deep into the building with inadequate access to daylight and natural ventilation.
 - ii. Units 1.05, 2.06, 3.05, 3.01, 4.01, 5.01, 6.01 bedrooms would benefit with an additional opening onto the large balconies.
 - iii. Unit 1.07 layout should be reconsidered so natural daylight and ventilation of the bedroom(s) are not impacted by mitigating vehicle noise and headlights from the adjacent driveway.
- b) There appears to be further opportunities for providing increased windows to some kitchens and bathrooms on external walls.
- c) Units G.03 and G.04 include bedrooms and bathrooms that open directly into living rooms inconsistent with objective 4D.3 of the ADG.
- d) Unit G.05 snorkel bedroom provides poor amenity due to the combination of the awkward carpark ramp geometry and deep location of the bedroom from the building perimeter inconsistent with control 9 of Part 7C.6 of KDCP.

14. Safety

The building entry does encourage passive surveillance as it does not provide clear and unobstructed sightlines contrary to the CPTED Principles and ADG.

Particulars:

- a) CPTED seeks to ensure building entries and entry sequence demonstrates lobbies have clear unobstructed sightlines to provide adequate passive and active surveillance. The

entry sequence should achieve a direct path from the street to the lifts that avoids dog-legs and mitigates excessively long corridors for lifts deep into the building.

- b) While generally each lift lobby serves 4 units/floor, sightlines at the Ground Floor could be improved particularly the long corridors at the entry for consistency with ADG Part 3G.2.
- c) The western landscape area provides little opportunities for views into the space given the dominance of blank walls.

15. Subterranean rooms

The proposal includes "subterranean rooms" which creates poor amenity and long term maintenance concerns.

Particulars:

- a) The proposal includes Units LG.01 and G.06 with rooms that have a floor level located below the external finished ground level or planters above the internal floor level.
- b) The use of "subterranean rooms" should not form any part of a residential flat building, in accordance with Control 4, 5 and 6 of Part 7C.3 of KDCP.
- c) The use of "subterranean rooms" is also undesirable, as it inhibits the effective long-term maintenance and servicing of the units and does not assist with the prevention of water ingress into buildings. This is contrary to objectives Objective 5.
- d) The use of subterranean rooms creates poor amenity outcomes for future residents Part 7C.3, Objectives 1 and 5.

16. Communal open space

The communal open space is inadequate and does not relate to the lift lobbies.

Particulars:

- a) The primary COS is located at ground level at the lowest part of the site to the north and inconsistent with objective 3D-1 of ADG.
- b) The area provided appears inadequate for the scale of the development and has no relationship to the lift lobbies. Access is convoluted which further discourages its use inconsistent with objective 3D-1 of the ADG and Part 7C.2 objectives 1, 2, 3, 4, 5, 7 and controls (3), (4), (6), (7) of KDCP.

- c) In context of a development resulting in 25% of units receiving no solar access amenity, there is a greater need for all residents to have equitable opportunities to easily accessible and high quality communal open space.

17. Unacceptable Privacy Impacts to the Adjoining Property

The proposed development will result in unreasonable privacy impacts for the adjoining development.

Particulars:

- a) Full-height floor-to-ceiling glazing is unacceptable due to privacy impacts to-and-from habitable rooms towards 9 Lorne Avenue and 8 Wallaroo Close.
- b) Full-height glazed balustrading is inconsistent with the ADG objective 3F-2 and 4E.3 and Part 23.8 control 3 of KDCP.
- c) Fully glazed balustrading requires continuous maintenance/cleaning adding to lifecycle building costs.
- d) The lack of layered deep soil landscaping and tall canopy trees around the perimeter of the site results in inadequate landscape screening of the built form contrary to control 1 of Part 23.8 of KDCP.

18. Excessive Site Coverage

The Site coverage is excessive which is not consistent with the desired future and landscape character of the locality.

Particulars:

- a) By the applicant's calculations the proposed Site coverage is 1063sqm or 49.4%% and non-compliant with the maximum site coverage control of 30% specified in control 1 in Part 7A.5 in KDCP. However, the applicant has incorrectly excluded the area above the driveway, which should be included in the site coverage, as that term is defined under KLEP. This is because that area is not within a basement.
- b) The proposed Site coverage is excessive and fails to -
 - i. provide for viable deep soil landscaping within the development; and
 - ii. ensure consistency with the desired future landscape and built character of the area.
- c) The proposed Site coverage is inconsistent with objectives 1, 2, 3 and 5 in Part 7A.5 in KDCP.

19. Tree Impact

The proposal results in unacceptable impacts on trees contrary to Part 13 and AS4970-2009.

Particulars:

- a) Tree removal is not consistent between the plans with Trees 19, 33 and 35 shown as being retained on the Demolition plan and in the Arborist report. However those trees are indicated for removal on Landscape Plans. Trees 33 and 35 are indicated for retention and whether Tree 19 can be removed or retained, must be annotated consistently across plans.
- b) The tree numbering on the survey and architectural plans does not correspond with the Arborist and Landscape Plans. Tree numbering from the background survey or clearly should be deleted from the Architectural plans and tree numbering must be consistent with the corresponding references in the Arborist report. Note that Demolition Plan does indicate the correct tree numbering.
- c) Major encroachments will occur within Structural root Zone (SRZ) to neighbouring Tree 27 *Tristaniaopsis* (Water Gum) to the western boundary from the proposed retaining wall to the boundary. and stormwater works. The Applicant's Arborist has not assessed the stormwater proposal in the Arborist report.
- d) The retaining wall to the western boundary and proposed stormwater works are a major encroachment on neighbouring Tree 26 *Eucalyptus saligna* (Sydney Blue Gum) to the western boundary.
- e) The proposed stormwater drainage system will result in a major encroachment within SRZ of Tree 39 *Jacaranda mimosifolia* (Jacaranda) to the eastern Site boundary.
- f) The existing walling is to be retained or the proposed planter wall to be located along the line of existing wall adjacent to Tree 39 *Jacaranda mimosifolia* (Jacaranda) to the eastern Site boundary, to retain existing levels within the TPZ.
- g) Tree 33 *Cordyline australis* (NZ Cabbage tree) to the rear Site boundary is located within the neighbouring property (at the rear of 8 Wallaroo Close) and indicated for removal. Owner's consent has not been provided for the removal of that Tree.
- h) Tree 35 *Phoenix canariensis* (Canary Island Date Palm) is a significant tree that is not supported for removal. It could be retained with an amended stormwater design and compliant building setbacks for building in consultation with the Applicant's Arborist.

20. Deep Soil

The proposal fails to satisfy the relevant deep soil objectives and controls under ADG Objective 3E-1 and Part 7A.6 of the KDCP.

Particulars:

- a) The deep soil calculation is inconsistent across the plans and reports. The SEE and architectural Deep Soil Plan states that the proposal provides 217m² of appropriate deep soil planting, while the Hardscape Landscape plan indicates 250m². However, the Hardscape Plan calculation is incorrect as it includes the areas to the rear of the Site that are proposed to be covered by decks, contrary to the definition of 'Deep soil zones' which requires that such areas of soil are not covered by structures and only permits a total of 10% permeable structures to be included within the calculation.
- b) In addition, both plans include the area to the rear which is less than 6m in width due to the terraces and building within the 6m setback. The actual deep soil provided is limited to the front area of the Site, of approximately 116m² with a minimum dimension of 6m, which is only 5%. Due to the existing trees on Site and on neighbouring properties in the immediate vicinity of the Site boundaries plus the landscape character of the area, a minimum 15% (322.59m²) deep soil should be provided as required under the ADG.
- c) 50% deep soil (1075.3m²) with a minimum width of 2m has not been provided to comply with Part 7A.6 of the KDCP. Actual deep soil provided with minimum 2m width is approximately 407m². This is incorrectly stated on the Deep Soil plan as 540m² as it includes areas less than 2m in width due to walling or structures or paths wider than 1.2m., which results in a deep soil shortfall of 668.3m².
- d) There are insufficient deep soil zones to allow for planting of tall, medium and small tree and screen planting to western side boundary and tall trees to eastern boundary, contrary to Control 3 and 8 of Part 7A.6 of the KDCP.
- e) Insufficient setback widths and paths against boundaries do not allow for sufficient deep soil landscaping as a buffer between the Site and adjoining properties, to comply with Control 4 Part 7A.6 of the KDCP.
- f) A minimum of 7 trees capable of reaching 18m in height is required for a site with an area of 2150.6m². The proposal retains 3 trees and no additional trees capable of reaching 18m in height are proposed. The proposal does not comply with Control 7 of Part 7A.6 of the KDCP. .

21. Landscape Design

The proposal fails to satisfy the relevant objectives and controls under Objective 3F-2 of the ADG, Part 7A.6, 7C.2, 7C.5, 19F.3. 21.1, 21.2 and 23.9 of the KDCP. An amended architectural and landscape plan must be submitted to resolve the following issues:

Particulars:

- a) The proposal does not provide pergola or shading devices to communal open space to limit overlooking from rear units in accordance with Objective 3F-2 of the ADG and Part 7C.2 of the KDCP.
- b) A minimum of 7 trees capable of reaching 18m in height is required for a site with an area of 2150.6m². The proposal retains 3 trees and no additional trees capable of reaching 18m in height and does not comply with Control 7 of Part 7A.6 of the KDCP.
- c) A minimum of two tall trees have not been planted within the front setback in accordance with Control 9 of Part 7A.6.
- d) Insufficient setback, deep soil and paths against boundaries do not allow for sufficient landscaping as a buffer between properties contrary to Control 4 of Part 7A.6 and 19F.3 of the KDCP.
- e) Insufficient tree planting proposed to eastern and western boundary due to limited setback, contrary to control 8 and 9 of Part 7A.6 and 19F.3 of the KDCP.
- f) The Communal Open space does not provide sufficient facilities with only one table and BBQ area which is contrary to Part 7C.2 of the KDCP which requires shared facilities such as barbecue facilities, shade structures, play equipment and seating within the Primary communal open space.
- g) Building entry paths do not provide a minimum 1.2m of landscape planting either side of path in accordance with Part 7C.5 and 19F.3 of the KDCP. Steps and ramp should be consolidated to provide one entry and increase landscaping to frontage.
- h) Existing ground level has not been maintained for 2m from the boundary with a proposed wall and path to the western boundary, less than 2m basement setback to western boundary and proposed wall to steps to front setback 1m from front boundary, contrary to Control 5 of Part 21.1 of the KDCP.
- i) Access to rear lawn unresolved with existing Sewer Manhole RL set at 112.71 and adjacent path landing at RL 113.152.
- j) Planters to Level 8 adjacent Unit 8.01 are not incorporated into parapet and are movable free-standing planters that can be removed if plants are not maintained.
- k) Existing levels indicated on landscape plans do not correspond with existing levels on survey. Levels to be updated to reflect survey levels.
- l) An Environmental Site Management Plan has not been submitted in accordance with Part 23.9 of the KDCP. Plan to include tree protection and location of storage and facilities outside of the TPZ of trees to be retained.

22. Excessive excavation

The proposed development is inconsistent with the earthworks and slope requirements of Part 21.1 of the DCP.

Particulars:

- a) Landscape fill of up to 1.5m is proposed along the western Site boundary to accommodate the paths / stairs and cut of up to 2.35 within the front setback and does not comply with Control 3 and 5 and objectives 1, 7 and 9 of Part 21.1 of the DCP.
- b) The existing ground level will not be maintained for 2 metres from the southern and western boundaries with retaining walls and the basement along the western boundary and entry stairs within the front setback inconsistent with objectives 1, 7 and 9 and Control 5 of part 21.1 of KDCP

23. The proposed development does not comply with State Environmental Planning Policy (Resilience and Hazards) 2021

Particulars:

- a) A stage 1 preliminary site investigation was submitted with the application. The report makes the following conclusions and recommendations:

The site can be made suitable for the proposed development, subject to the following recommendations:

- Preparation of a Detailed Site Investigation (Phase 2 Environmental Site assessment) by a suitably qualified Environmental Consultant.
 - A hazardous materials assessment is recommended to be completed prior to the demolition of the site.
 - Any soil requiring removal from the site, as part of future site works, should be classified in accordance with the "Waste Classification Guidelines, Part 1: Classifying Waste" NSW EPA (2014).
- b) The report concludes that there is a potential for the Site to be contaminated and further assessment is required to determine if the Site is suitable for the proposed development and that remediation may be required.
- c) The proposal does not adequately demonstrate that the land is suitable for the proposed development, contrary to Clause 4.6 of the SEPP.
- d) A stage 2 Detailed Site Investigation (DSI) has not been provided. The consent authority cannot adequately determine the suitability of the proposed development and any required remediation.

24. Inadequate energy efficiency

The proposal does not adequately manage thermal performance and will increase energy costs.

Particulars:

- a) External clothes drying facilities are to be provided in accordance with objective 4A-2 of the ADG and Part 7C.9 control 1 of KDCP.
- b) Insufficient information has been provided in relation to sun shading to demonstrate compliance with ADG Objective 4U-2 (refer to contention 9).
- c) Over the long term the use of large expanses of painted render have been demonstrated to weather poorly, requiring more frequent maintenance and use of scaffolding, inconsistent with ADG objectives 4X.1, 4X.2 and 4X.3.
- d) A significant proportion of glazing is proposed and which is unprotected from solar loads during hotter months which results in poor long-term building performance.

25. Public interest

The Development Application is not in the public interest and should be refused.

Particulars:

- a) The Development Application is not in the public interest for the reasons outlined above.
- b) The cumulative adverse impacts outweigh any public or private benefits associated with the Development Application.
- c) The Development Application is also unsatisfactory pursuant to Sections 1.3(f) and 1.3(g) of the EP&A Act, as it does not promote good design and amenity of the built environment.

B2 – CONTENTIONS THAT COULD BE RESOLVED BY CONDITION OF CONSENT

N/A

B3 - CONTENTIONS THAT THERE IS INSUFFICIENT INFORMATION TO ENABLE ASSESSMENT

26. The height of the building is unclear.

Particulars:

- a) A roof plan is to be provided which includes ridge, pergola and balustrade heights overlayed with the survey detail (spot heights and contours). RLs for the floor levels of dwellings floor levels and finished levels of the base of the existing swimming pool are to be identified.
- b) A building height blanket is to be provided with RLs at ground level and roof elements to demonstrate the maximum height of the building.

27. Air conditioning condensers

Particulars:

- a) Updated floor plans must be submitted that display the location of all proposed air conditioning condensers. Air conditioning condensers must be located either:
 - i. within the basement; and or
 - ii. within the proposed lower ground plant room; and or
 - iii. within the roof structure of the upper most roof
- b) Where air conditioners are to be located within the roof structure, an updated acoustic report must be provided confirming the required enclosure or screening needed to meet Council's noise requirements. Plans must be updated to display the height and construction of any acoustic enclosure(s) required.
- c) Where air conditioners are to be located in the basement or within the proposed lower ground plant room certification from a mechanical engineer is to be provided confirming the nominated area/plantroom will be large enough to accommodate the number of proposed condenser units. This certification is also to indicate the likely required supply/extraction air flow within the plant room to demonstrate that ventilation requirements have been sufficiently incorporated into the design.
- d) Additionally, there is to be sufficient service ducting incorporated into the development so that the systems operate efficiently.

28. Floor to Floor heights

The proposed floor to floor heights should be reconsidered to address the requirements of the *Design and Building Practitioners Act*.

Particulars:

- a) The Proposed Development includes 3.1 metres (floor to floor height) that will comply with industry minimum requirements; however, 3.2 metres (floor to floor height) is more commonly seen as the new industry practice.
- b) Additional clearances should be accommodated both for conditions where wet areas are above habitable rooms of units below (implications for ziggurat building forms); and to deliver Ku-ring-gai's requirements for 15% Platinum Level units under the Liveable Housing Design Guidelines which need to accommodate flush threshold between internal and external areas.

29. Storage

Particulars:

- 30. Objective 4G.1 of the ADG specifies storage requirements for apartments in excess of storage in kitchens, bathrooms and bedrooms.
- 31. ADG minimum storage needs to be demonstrated in every unit. Locating storage will need to demonstrate Ku-ring-gai's requirement for the development to demonstrate 100% Liveable Housing Silver Level needs is satisfied.
- 32. An ADG compliance diagram is required that demonstrates minimum storage within each unit is accommodated.

28. Water Management

Insufficient information has been provided with respect to the terms of Council's drainage easement.

Particulars:

- a) Should No. 23 and No. 25 Lorne Avenue not benefit from Council's drainage easement, then the terms of the easement to allow private connection is to be provided.

29. Waste Collection

The Proposal does not comply with the waste collection requirements required by Part 25A.5 'Residential Buildings' of the Ku-ring-gai DCP.

Particulars:

- a) No swept paths analysis demonstrating that Council's current Waste Collection Vehicle of 6.7m Mitsubishi Canter can enter and depart the garbage/room recycle storage area in a forward direction.

30. Construction Management

A Construction Traffic Management Plan has not been provided.

Particular:

- a) No indicative construction traffic management plan (**CTMP**) has been submitted (required under Council's DA Guide). The CTMP is to show the largest vehicle to be used entering and exiting the site for the demolition, excavation and construction stages, stockpiles and all necessary tree protection fencing. Consultation with a consulting arborist is recommended in preparation of any CTMP.

31. Parking provisions and access

There is insufficient information regarding the proposed the parking provisions and vehicular access.

Particulars:

- a) The bicycle storage areas within enclosed garages present accessibility issues and are not supported. In these instances, parked vehicles would need to be moved to comfortably access the bicycle parking space. Access to bicycle parking/storage needs to be resolved.
- b) It has not been demonstrated that there is physically enough space to store a bicycle in the bicycle storage areas located within enclosed garages.
- c) Traffic signal controls visible from the street are not considered appropriate. The following options be thoroughly investigated and exhausted:
 - i) amend the access ramp layout
 - ii) provide a passing bay
 - iii) consider using on-site convex mirrors to overcome visibility issues.
- d) Resident car parking provision should be reduced towards the lower end of the Ku-ring-gai DCP range and supplemented with an on-site car share vehicle.
- e) The plans do not show at least 1 car parking space on the Lower Ground Floor is to be reserved for car share operation, with no charge to the car share operator to use the spaces.
- f) The plans do not demonstrate that the lifts, lobbies and hallways have been designed as a suitable size such that residents can transport their bicycles between their allocated storage areas and street level.

- g) The visitor bicycle parking spaces have not been designed in accordance with AS2890.3 and should be relocated to somewhere near the Entry Foyer.
- h) The basement plans do not show EV readiness is to be provided for all car parking spaces within the development.
- i) No on-site loading area has been provided. The position of which must not prevent access to and from the basement level car park, with at least one travel lane to be maintained at all times while loading/unloading takes place on the driveway. At least one on-site loading space which is at least 3.5m wide is to be provided to cater for a minimum 6.7 m long service vehicle. The loading space/s should be line marked and/or signposted as a designated loading area. The width of the driveway in the vicinity of the median would need to be modified to accommodate the on-site loading area.

32. Insufficient information

Particulars:

- a) A Design Response to Country should be included that expands on the general recognition in the *DA Architectural Design Report* prepared by Cortese.
- b) The design (verification) statement must combine the Part 3 and 4 ADG compliance tables with the submitted design intent document in accordance with section 29 of the EP and A Regulation.
- c) The substation is not identified in accordance with Part 23.6 of KDCP.
- d) The location of the clothes drying area for the apartments have not been identified.
- e) Details of any pool/spa structures are to be provided.
- f) The non trafficable roofs appear to be in some instances trafficable to enable servicing of planter boxes. Roof areas should not be accessible.
- g) Elevations including RLs of proposed fencing are required.
- h) It is unclear whether demolition of fencing on the common boundaries and the retaining wall / fence structure within 8 Wallaroo Close are proposed for demolition.
- i) All documentation must be consistent.

SIGNATURE

Signature of authorised officer of
respondent consent authority



Name of authorised officer

Belinda Newell

Capacity

Executive Assessment Officer, Ku-ring-gai Council

Date of signature

15/7/2025