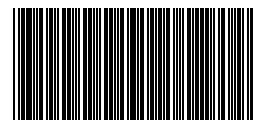




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Statement of Facts and Contentions

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2025/00388660

TITLE OF PROCEEDINGS

First Applicant	PLACE STUDIO AU PTY LTD ABN 87611292187
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	KUR955-00232

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 (SOFAC (Place Studio).pdf)

[attach.]

STATEMENT OF FACTS AND CONTENTIONS

COURT DETAILS

Court	Land and Environment Court of New South Wales
Class	1
Case number	2025/388660

TITLE OF PROCEEDINGS

Applicant	PLACE STUDIO AU 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	KUR955-00232
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 eDA0189/25 (**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 dwellings, consolidation of lots and construction of a 7-storey residential flat building with basement parking at 7-11 Pockley Avenue, Roseville (the **Site**).
2. The Development Application, seeks consent for the following (**Proposed Development**):
 - a) consolidation of 3 lots;
 - b) demolition of the 3 existing 1-2 storey residential dwellings and ancillary structures as shown on the demolition plan;
 - c) 3 levels of basement comprising:
 - i. 73 x resident parking spaces (including 9 x accessible spaces)
 - ii. 11 x visitor parking spaces (including 1 accessible space)
 - iii. 51 x bicycle parking spaces in bicycle storage room or racks (including 7 for visitors)
 - iv. Loading bay
 - v. Waste chute and waste storage rooms

- vi. resident storage areas
- vii. plant rooms
- viii. 2 x lifts
- ix. stairwell
- d) nine storeys of residential units (42 units in total), comprising:
 - i. 2 x 1 bedroom units
 - ii. 15 x 2 bedroom units
 - iii. 11 x 3 bedroom units
 - iv. 14 x 4 bedroom units
- e) building height and form:
 - i. 1 building of 7 storeys to a height of 23.92m
 - ii. 3 levels of basement parking
 - iii. flat roof
 - iv. materials and finishes consist of concrete, metal cladding and glass
- f) access and parking
 - i. carparking located in basement levels 1, 2 and lower ground level
 - ii. vehicular access is provided from the western end of Pockley via a 6.5m wide two-way driveway to Pockley Avenue
 - iii. 1.5m wide shared pedestrian/bicycle pathway adjoining the vehicular access
 - iv. pedestrian access to the lobby is via Pockley Avenue.
 - v. 2 units on the upper ground level have direct street access from Pockley Avenue
 - vi. loading bay within lower ground floor level basement in proximity to the waste storage rooms on the lower ground level
- g) landscaping works
 - i. 231.62 m² of communal open space on ground level
 - ii. 93.40m² communal open space on level 6 (roof terrace)
 - iii. removal of 16 trees
 - iv. landscape works include built landscape structures and planting
- h) stormwater works;
 - i. roof areas to be collected and conveyed to a combined detention and retention tank of 63.06m³ and 12,370L respectively located within driveway area, on two separate levels.
 - ii. overflow from the detention system is directed to the bottom of the existing swale drainage channel via a 225mm pipe in Pockley Avenue
 - iii. inlet pits within the landscaped area to capture surface water flows prior to connection into the stormwater system;

- iv. pump-out pit of 5m³ within basement to capture portion of driveway and basement perimeter.

- 3. The Development Application seeks consent for a residential flat building under Chapter 5 of the *State Environmental Planning Policy (Housing) 2021* (**SEPP Housing**).

THE SITE

- 4. The Site is legally described as the following –
 - (a) Lot 23 in DP 652725, 7 Pockley Avenue, Roseville NSW 2069
 - (b) Lot 22 in DP 8261, 9 Pockley Avenue, Roseville NSW 2069
 - (c) Lot 1 in DP 960352, 11 Pockley Avenue, Roseville NSW 2069
- 5. The Site will have a combined area of 3,099.5 m² (based on the current survey), comprising:
 - (a) Lot 23 in DP 652725 – 1011.6 m²
 - (b) Lot 22 in DP 8261 – 976.7 m²
 - (c) Lot 1 in DP 960352 – 1, 111.2 m²
- 6. The Site is a large trapezoidal shaped allotment with a frontage of 61m to Pockley Avenue; a rear boundary of 25.6m; an eastern (side) boundary of 77.015m; and a western (side) boundary of 72m.
- 7. The Site falls from a point midway on the eastern side boundary towards all corners of the Site. The steepest fall is 11.77m (19.9%) towards the south-western corner, with an overland flow path near the western portion of the Site.
- 8. The vegetation on the Site is consistent with plant community type (PCT 3136) Blue Gum High Forest which is listed as a Critically Endangered Ecological Community (CEEC) under the *Biodiversity Conservation Act 2016*.
- 9. Swale drains with piped crossings are located along the frontage of the Site as there is no kerb and gutter adjacent to the Site extending east (uphill) to approximately 25 metres west from the intersection of Pockley Avenue and Larkin Street.
- 10. The Site currently accommodates 3 dwelling houses (on 3 separate allotments) between 1 to 2 storeys in height. 11 Pockley Avenue also accommodates a patio and inground swimming pool in the rear yard.
- 11. An aerial image of the Site is provided in **Figure 1** below.



Figure 1 – Aerial Map of the Site highlighted and surrounding development

12. The Site is zoned R2 Low Density Residential under the *Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015)*.
13. An extract of the Council's Land Zoning Map showing the zoning of the Site and immediate surrounds is provided at **Figure 2** below.

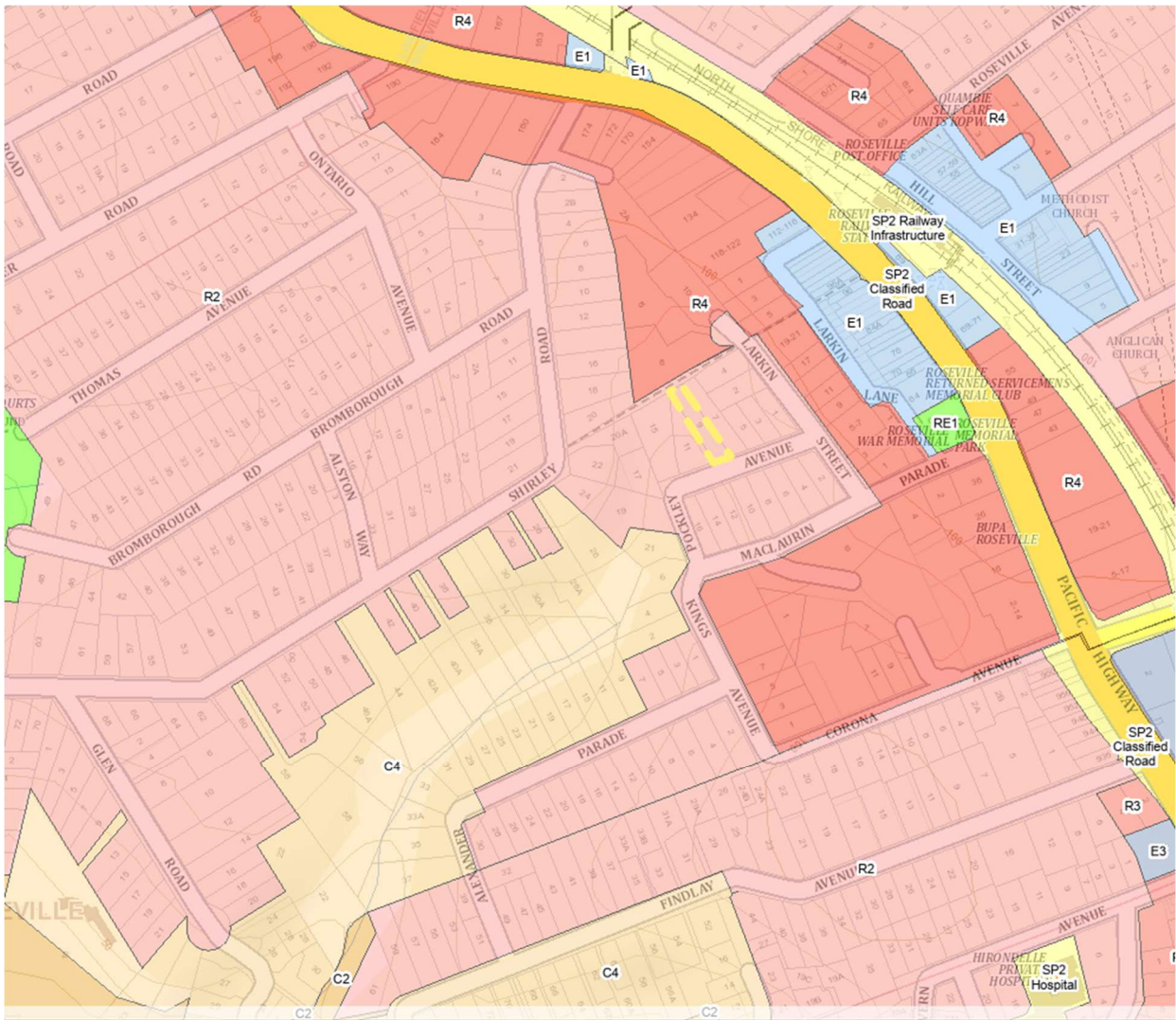


Figure 2 – Extract from the land use zoning map (part of the Site is represented by the yellow dashed line but the balance of the Site is also zoned R2 (Source: NSW Planning Portal Spatial Viewer)

14. The Site is identified as having a maximum Floor Space Ratio (FSR) of 0.3:1 under Clause 4.4(2) of KLEP (Figure 3). The Site has a maximum building height of 9.5m under Clause 4.4(2) of KLEP (Figure 4).

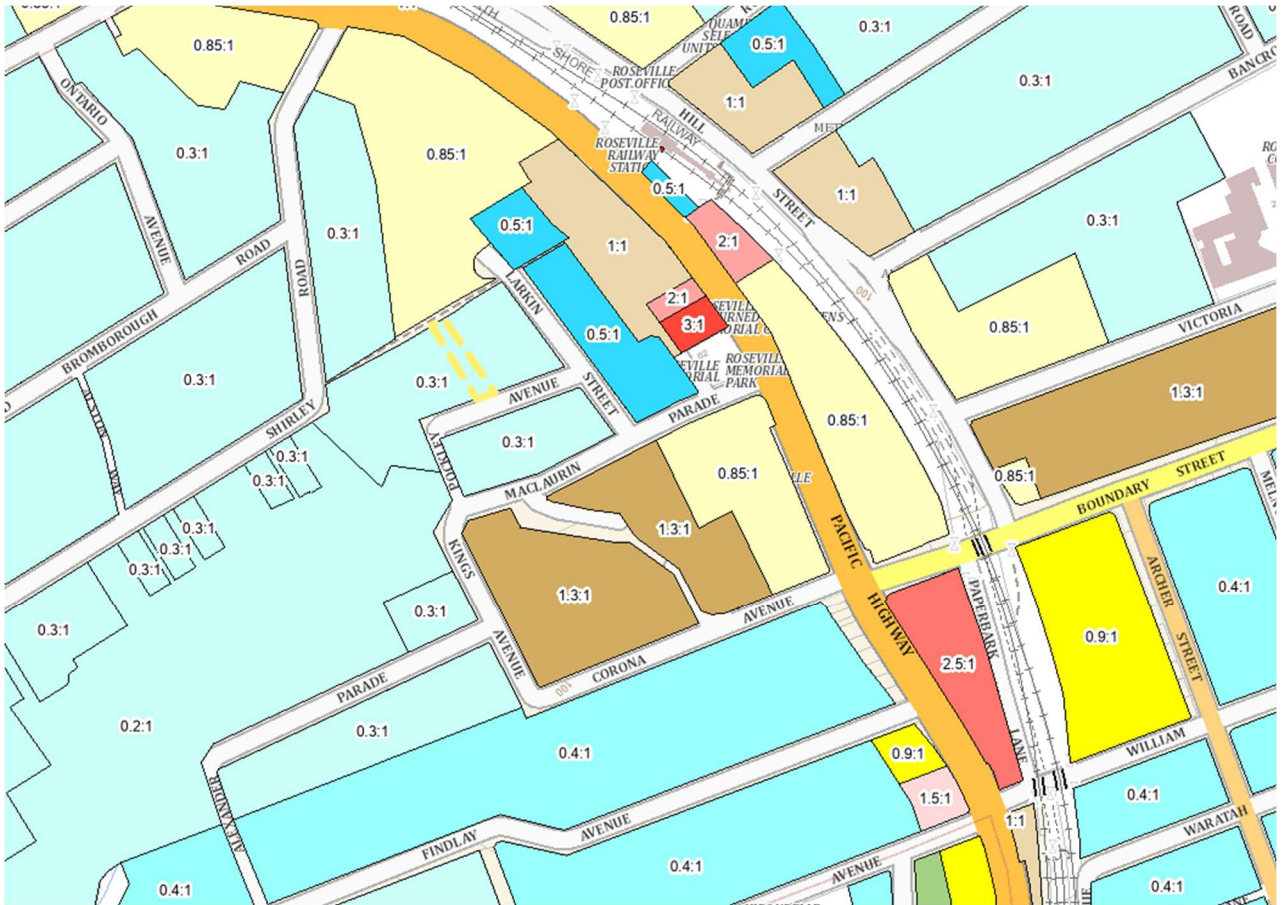


Figure 3 – Extract from the Floor Space Ratio map (part of the Site is represented by (the yellow dashed line but the balance of the Site also falls within the 0.3:1 overlay) (**Source: NSW Planning Portal Spatial Viewer**)

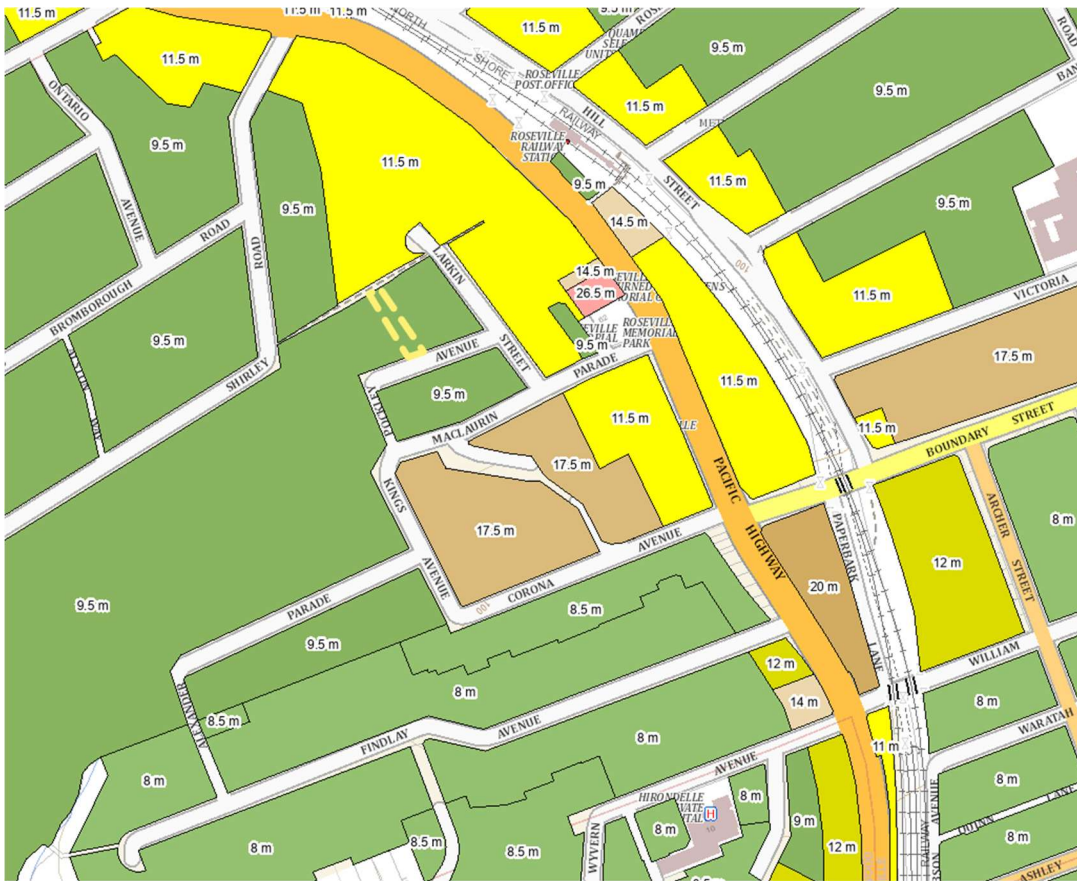


Figure 4 – Extract from the Height of Buildings map (part of the Site is represented by (the yellow dashed line but the balance of the Site also falls within the 9.5m height overlay) (**Source: NSW Planning Portal Spatial Viewer**)

15. The Site is identified on the “Transport Orientated Development Sites Map as per *Ku-ring-gai Local Environmental Plan (Housing) (Map Amendment No.1)* (see **Figure 5**) and residential flat buildings are permissible with development consent pursuant to s154 of SEPP Housing.

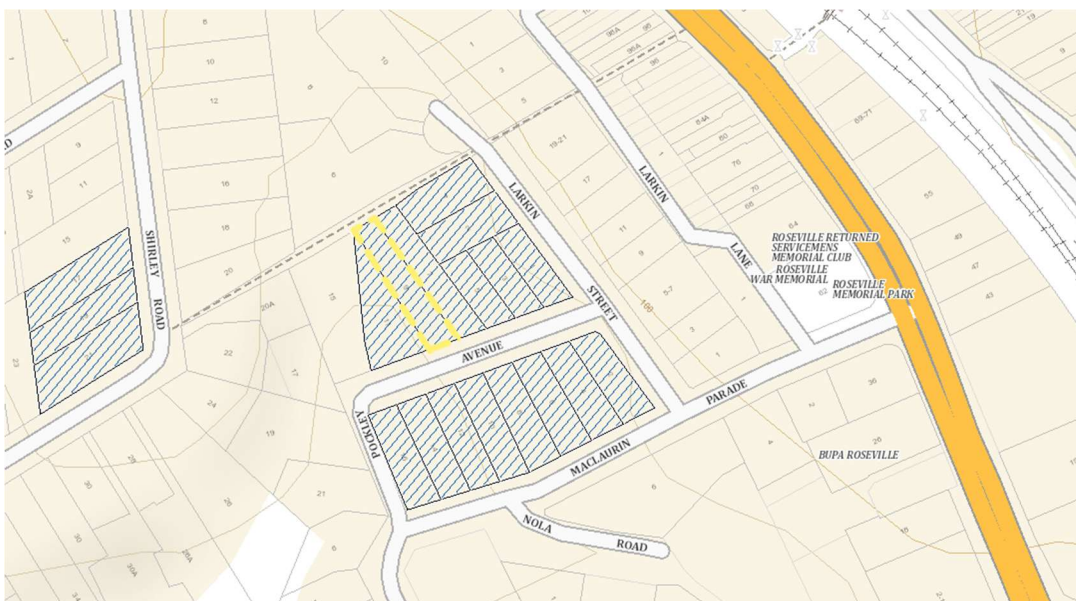


Figure 5 – Extract from Transport Orientated Development Sites Map (part of the Site is represented by the yellow dashed line. The balance of the Site is also hatched.) (**Source: NSW**

Planning Portal Spatial Viewer)

16. Under the SEPP Housing, the maximum building height on the Site is 22m, and the maximum floor space ratio is 2.5:1 provided that at least 2% of the gross floor area is used for affordable housing managed by a registered community housing provider in perpetuity.
17. Approximately 60% of the Site (towards the rear and west) is mapped as terrestrial biodiversity.

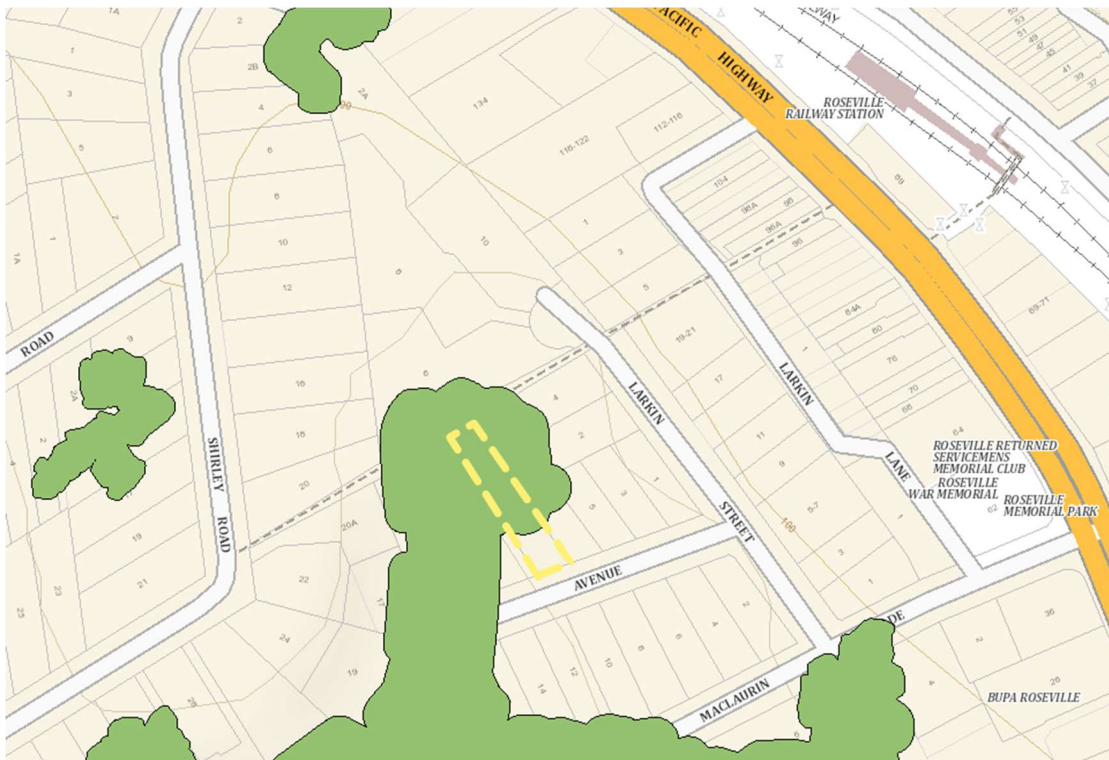


Figure 6 – Extract from the Terrestrial Biodiversity map (part of the Site is represented by the yellow dashed line) (Source: NSW Planning Portal Spatial Viewer)

18. The western edge of the Site is mapped as Category 3a riparian land.

THE LOCALITY

19. Surrounding development comprises of single and two storey residential dwelling houses on landscaped allotments. The surrounding zoning is predominantly R2 Low Density Residential except that the land surrounding the Roseville Railway Station is zoned R4, High Density Residential land, as shown within Figure 2.
20. The Site adjoins 'The Rifleway' (Lot 3 in DP 966421), at the rear, which is an elevated pedestrian walkway from the Pacific Highway.

21. To the east, the Site shares a side boundary with three properties, known as 5 Pockley Avenue, 2 Larkin and 4 Larkin Street, Roseville, which accommodate single storey dwellings.
22. To the west, the Site adjoins a lot (Lot 1 DP 960047), known as 15 Pockley Avenue, Turramurra, which accommodates a single storey dwelling, a drainage easement and extensive vegetation.
23. Further to the east of the Site, there is SP2 infrastructure (Roseville Railway Station and Pacific Highway), land zoned E1 Local Centre and RE1 Public Recreation, as shown within Figure 2.
24. Further to the west of the Site is a vegetation corridor of remnant Blue Gum High Forest, zoned C4 Environment Living which leads to the Blue Gum Creek which is zoned C2 Environment Conservation.
25. On 31 March 2025, Council held an Extraordinary Council Meeting to consider the TOD Alternative Planning Controls. At this meeting the Council voted unanimously to place the preferred scenario on public exhibition between 2 and 22 April 2025.
26. On 19 June 2025, the Department of Planning, Housing and Infrastructure (**DPHI**) published updated maps under the *Ku-ring-gai Local Environmental Plan (Housing) (Map Amendment No 1)* (see **Figure 5**). 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 5** above.
27. Council's adopted TOD Alternative Planning Controls (yet to be gazetted by the DPHI) would affect the Site (if it had not been 'saved') and surrounding properties as follows:
 - Building height: 29 metres (an increase from the current maximum TOD building height of 22 metres) (see Figure 7)
 - Floor Space Ratio (FSR): 1.8:1 (a decrease from the current TOD FSR of 2:5:1) (see Figure 8)
 - Zoning: R4 High Density Residential (as compared to the current R2 Low Density Residential) (see Figure 9)
28. Under the TOD Alternative Planning Controls, the lots directly to the west of the Site will be re-zoned as RE1 Public Recreation. The surrounding lots are R4 High Density Residential.

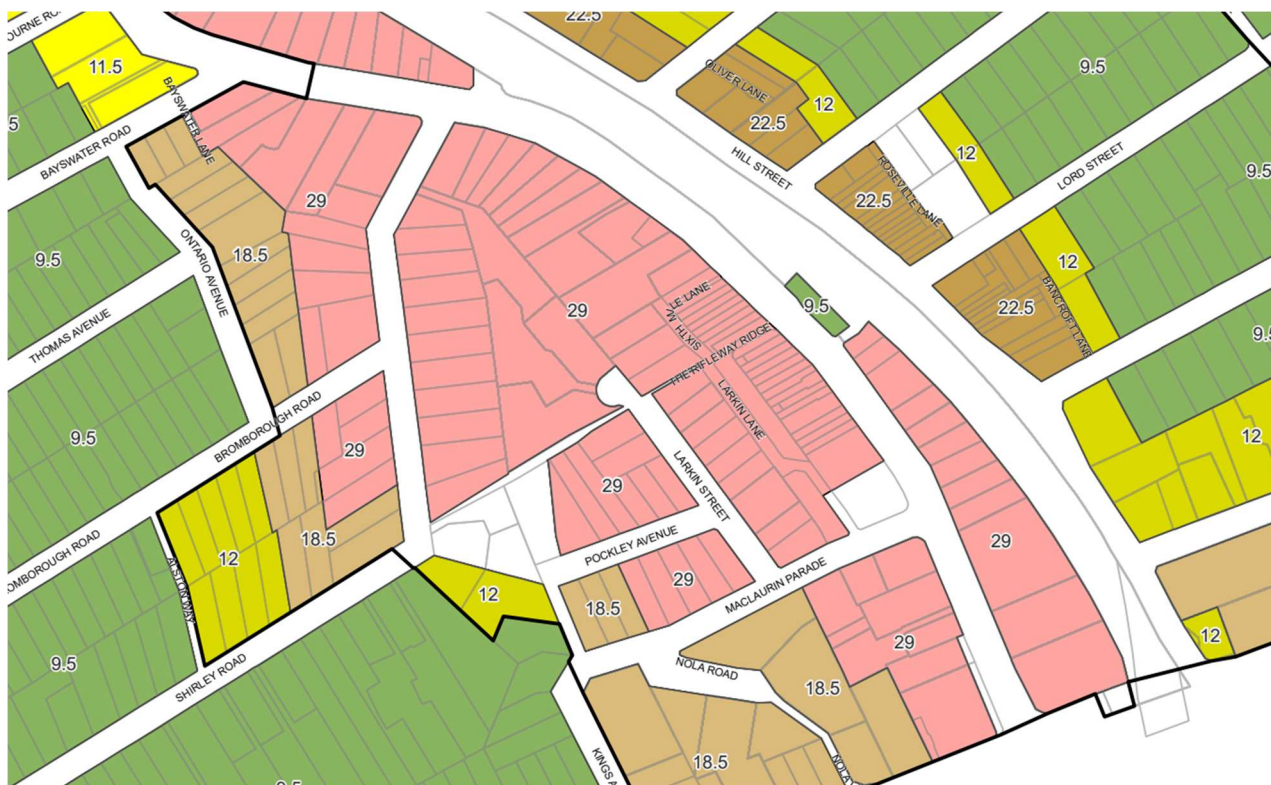


Figure 7: Extract of adopted TOD alternative building height map (Source: KRG Council website)

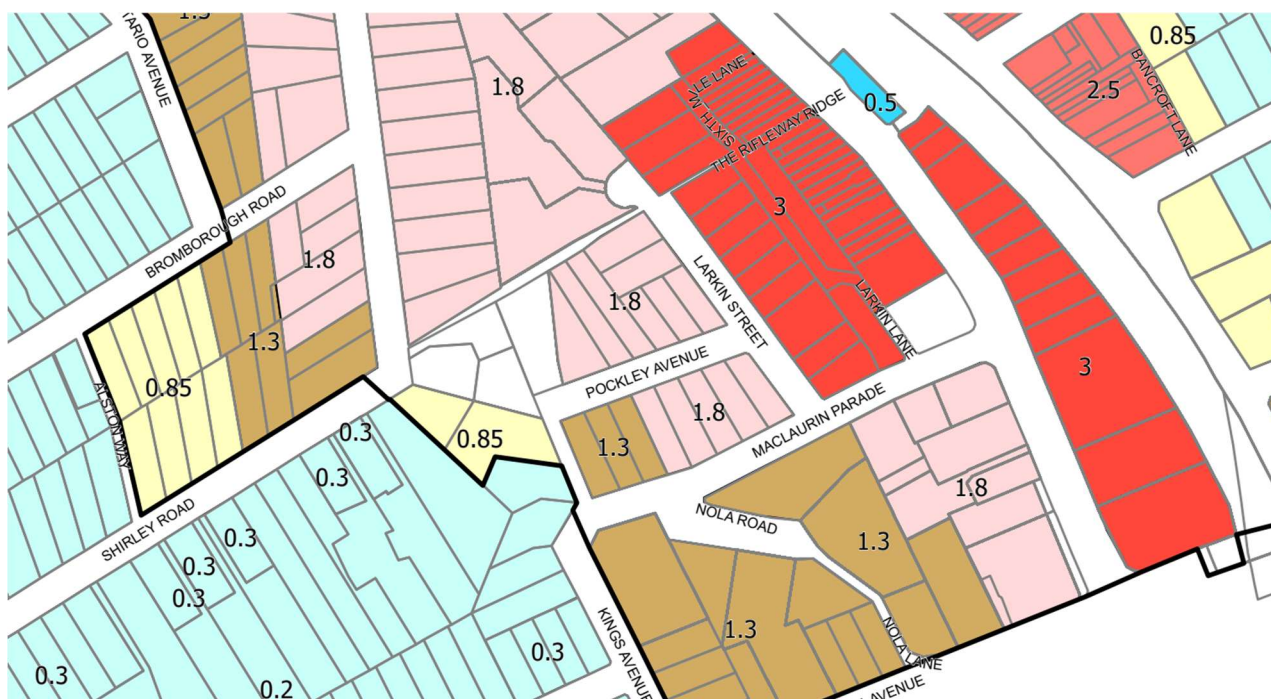


Figure 8: Extract of adopted TOD alternative FSR map (Source: KRG Council website)

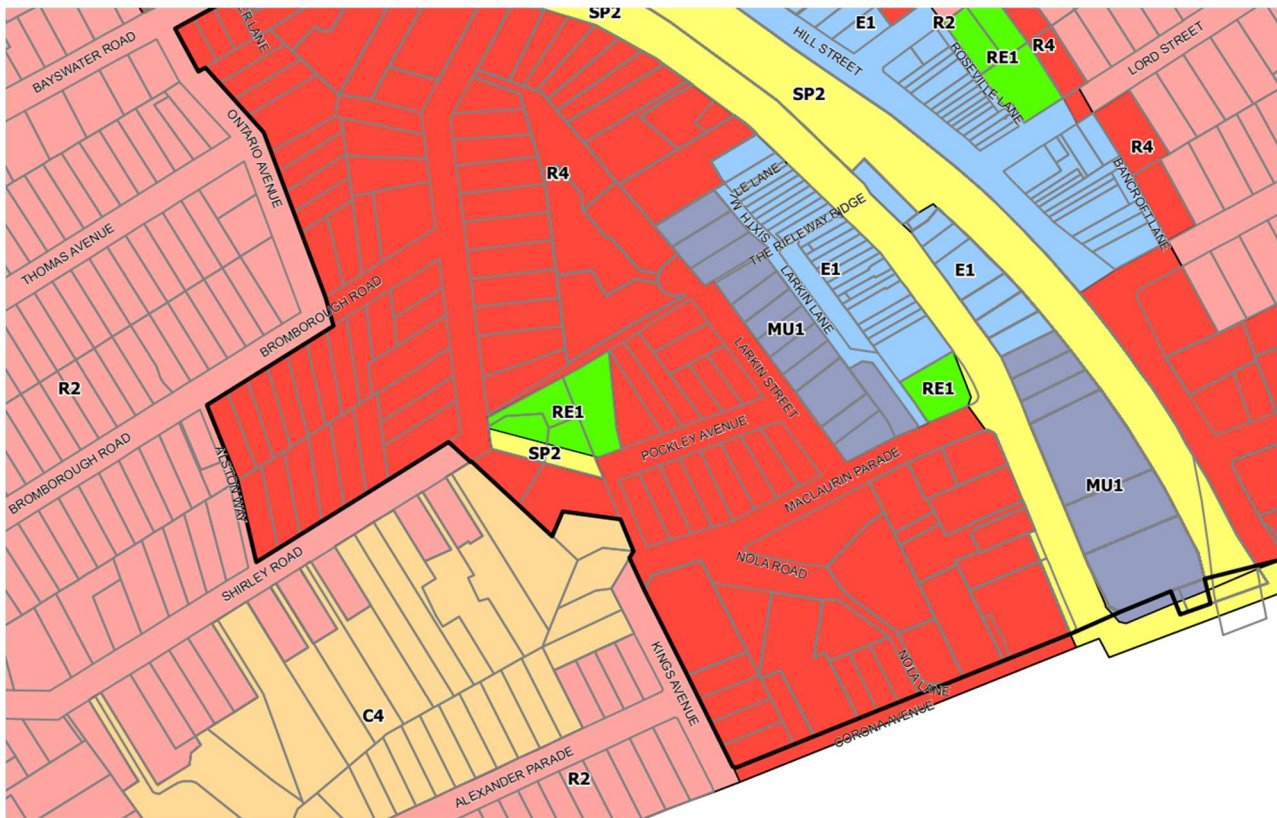


Figure 9: Extract of adopted TOD alternative zoning map (Source: KRG Council website)

THE STATUTORY CONTROLS

29. 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 (Transport and Infrastructure) 2021*
- (g) *State Environmental Planning Policy (Resilience and Hazards) 2021*
- (h) *Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015)*
- (i) *Ku-ring-gai Development Control Plan (KDCP)*
- (j) *Ku-ring-gai Community Participation Plan*
- (k) *Apartment Design Guide, published by NSW Department of Planning and Environment dated July 2015 (ADG)*
- (l) *Ku-ring-gai Contributions Plan 2010*

- (m) *Housing Productivity Contribution Ministerial Planning Order*
- (n) *Ku-ring-gai Council TOD Alternative Planning Controls*

ACTIONS OF THE RESPONDENT CONSENT AUTHORITY

- 30. The Development Application was accepted by Council and lodged on 11 April 2025.
- 31. On 15 April 2025, the Development Application was referred for comments.
- 32. The Development Application was notified in accordance with the Ku-ring-gai Community Participation Plan for a period of 30 days, between 22 May 2025 and 23 June 2025. In response 10 submissions were received. The objections to the Proposed Development raised the following key issues:
 - (a) Overshadowing by the proposed development;
 - (b) Solar access to northern ground floor Units as a result of the proposed retaining wall;
 - (c) Excessive building height and scale is inconsistent with existing low density development;
 - (d) Traffic impacts caused by increased vehicle density during peak hour at the MacLaurin Parade intersection accessing the Pacific Highway, which is currently congested and inadequate to service the locality.
 - (e) Traffic report does not contemplate cumulative impact of other proposed developments;
 - (f) Construction traffic;
 - (g) Increased bush fire risk with increased residential density as the locality is constrained by limited fire evacuation routes and comprises significant native vegetation, namely, the Remnant Blue Gum High Forest which extends along Blue Gum Creek;
 - (h) Overdevelopment within a low residential locality
 - (i) Streetscape impacts as a result of overdevelopment;
 - (j) Encroachment on wildlife corridor and impacts on fauna including avi-fauna such as cockatoos, crested pigeons, king parrots, lorikeets, galahs and whip bird;
 - (k) Drainage impacts along the western riparian corridor;
 - (l) Overlooking and privacy impacts;
 - (m) Social fabric impacts due to ever-increasing high rise development;
- 33. On 27 August 2025, the applicant was issued with a preliminary assessment letter indicating that the application was unsatisfactory in its current form.
- 34. On 16 July 2025, the SNPP was provided with a preliminary briefing.

35. On 9 October 2025, the Class 1 Appeal was filed with the Land and Environment Court (**Court**) against the deemed refusal of the Development Application.
36. Given that the Development Application met the regionally significant capital investment value threshold of > \$30 million, the Sydney North Planning Panel (**SNPP**) was the determining authority for the Application.
37. The SNPP is likely to determine the application in December 2025 or January 2026.

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. Non-compliant building height

The proposal exceeds the maximum building height permitted under 155(2) of Housing SEPP. The Clause 4.6 written request submitted in support of the variation is unsatisfactory as it fails to demonstrate that strict compliance with the standard is unreasonable or unnecessary in the circumstances of the case, nor does it provide sufficient environmental planning grounds to justify the contravention.

Particulars:

- a) The architectural Height Plane Diagram sheet number “DA.05.80 Revision A”, shows various breaches of the 22m maximum building height. The Clause 4.6 Request defers to this plan for the calculation of building height.
- b) The Height Plane Diagram does not provide an accurate calculation of building height as it utilises ceiling levels, i.e. RL102.4 for the breach in relation to Unit 5.01. The breach is caused by parapet and roof levels, which are above the ceiling level. The specific height of these elements is not specified on all the sections and elevations. The natural ground level that is annotated on the survey plan is not shown on the sections. This information is required.
- c) The KLEP definition of “building height” requires that height be measured from the ‘natural ground level (existing)’. An overlay of the roof plan and the survey plan is required to demonstrate that the building height has been measured in accordance with the requirements of the KLEP.
- d) The Clause 4.6 Request does not explain why it is necessary for the lift overrun to breach the height limit. The Request should explain why an alternative lift design that would require a lower overrun or no overrun is not feasible for the proposed development.
- e) The Clause 4.6 Request should include more detailed commentary about the overshadowing impact of those building elements that breach the building height, including when the impact occurs and commentary on any impacts upon existing and likely future development of properties in the vicinity of the Site.

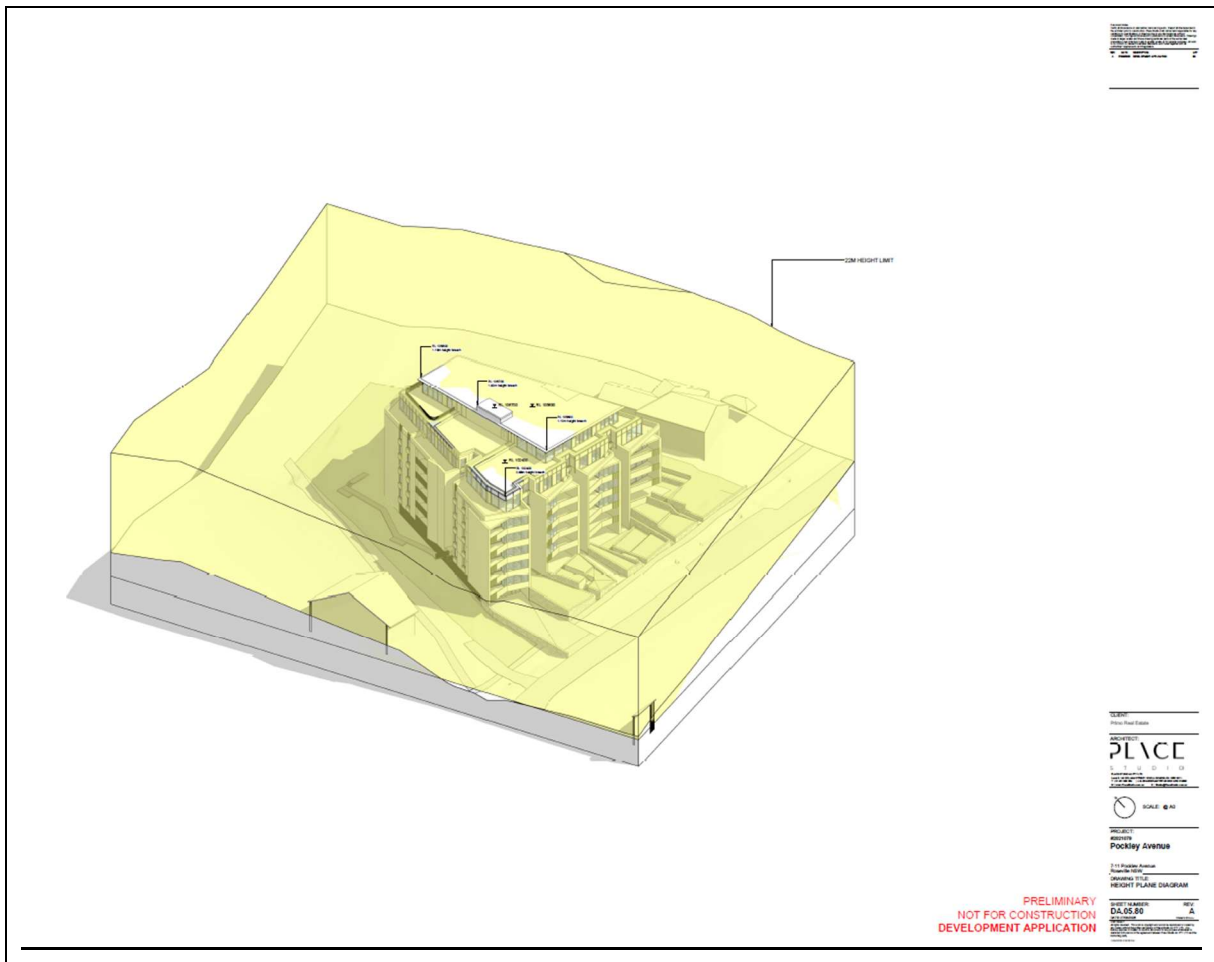


Figure 10 – Building height plane as shown within architectural plan sheet number DADA.05.80 Revision B

2. Non-compliant provision of affordable housing

The proposal does not comply with the requirements under section 156 of the SEPP Housing for the provision of affordable housing and should be refused.

Particulars:

- a) The Development Application is made under Chapter 5 of SEPP Housing. Section 156 of SEPP Housing states that development consent must not be granted unless the consent authority is satisfied that at least 2% of the gross floor area of a building will be used for affordable housing and the affordable housing will be managed by a registered community housing provider in perpetuity.
- b) No affordable housing is provided under the Development Application.
- c) Further, the GFA has not been accurately calculated and it is unclear what the affordable housing requirement for the proposal is. In particular:
 - i. areas of basement greater than 1m above the natural existing ground level have not been included within the GFA calculation. In accordance with Control 4 of Part 7B.1

KDCP, such areas are counted as a storey and are to be included in the floor space ratio calculation.

- ii. residential car parks in excess of the maximum have not been included in the GFA calculation, as required under Control 9 of Part 7B.1.
- b) 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.
- c) The survey plan is to be overlayed onto the Upper Ground (DA.01.11 Revision A) and Level 01 (DA.01.12 Revision A) 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 western elevation floor of residential units LG.01, LG.05, and LG.04 shown on sheet number DA.01.11, appear to be elevated above natural ground level, as shown within sheet number DA.02.01, which is close to this threshold. The GFA of the proposal will affect the FSR calculation for the development and the requirement for the provision of affordable housing. In accordance with the requirement of SEPP (Housing), that the affordable housing component must be clearly identified in the architectural plans as that which will be managed by a registered community housing provider in perpetuity and constitute at least 2% of the gross floor area of the proposed development.

3. Flood Risk

The proposal does not minimise the flood risk to life and property associated with the use of the land in accordance with section 5.21 of the KLEP.

Particulars:

- a) The Site is impacted by overland flows. The topography and drainage patterns of the Site are generally as follows:
 - i. the Site falls from the north-east to the south-west, with an overland flow path near the western portion of the Site.
 - ii. the external catchment upstream of the Site flows primarily to the west of the Site, drains to a local depression to the south west of the Site and then continues traveling downstream to the south. Flows also at Pockley Avenue travel from the east to the west sag point.
- b) According to the Applicant’s engineer, the developed scenario for the 1% AEP event are as follows:

- i. The site is flooded from upstream flows during the 1% AEP Storm event, with depths generally 100mm reaching a maximum of 360mm at the north-western side of the site.*
 - ii. The flood level within the subject site is RL 84.5m AHD to the north-eastern corner, RL 78.25m AHD to south-western corner and RL 87.0m AHD to the south-eastern corner.*
- c) The proposal does not comply with Part 24D.2 of KDCP as there is no certification from a design engineer that the minimum floor levels for the proposed development meets the design requirement level, as stated in section 6 of the Applicant's Flood Impact Assessment Report dated March 2025.

4. Inadequate building separation to boundaries

The Development Application should be refused because the proposed development is inconsistent with ADG Part 3F as it does not provide adequate building separation from habitable room windows and balconies to side boundaries.

Particulars:

- a) The proposed building separation to the western side boundary at the fifth and sixth storeys (Level 3 and Level 4) is approximately 7.5m to 8.7m. This is inconsistent with the minimum 9m required by ADG 3F-1 1.
- b) The proposed building separation to the eastern side boundary at the fifth storey (Level 4) is 6m. This is inconsistent with the minimum 9m required by ADG 3F-1 1. The proposed development results in inadequate building separation between the proposed building and its boundaries resulting in an unacceptable relationship with neighbouring sites that may cause unreasonable levels of external visual privacy inconsistent with ADG Objective 3F-1, as well as overlooking impacts to neighbouring sites, and outlook impacts to future neighbouring developments.

5. Inadequate solar access

The proposed development is inconsistent with ADG Part 4A as it does not provide adequate solar access to enough units.

Particulars:

- a) The documentation states that 31 of 42 (74%) units receive 2 hours direct sunlight between 9am and 3pm at midwinter (DA.05.10A).

- b) However, only 22 of 42 (52%) units appear to receive a minimum of 2 hours direct sunlight to both living rooms and private open spaces between 9am and 3pm at midwinter. This is inconsistent with the minimum 70% required by ADG 4A-1 1.
- c) The 9 disputed units are LG01, 101, 201, 204, 301, 304, 401, 404 which do not receive any solar access to their balconies, and 601 which does not receive 2 hours solar access to its living room window (DA.05.10A)
- d) The documentation states that 9 of 42 (21%) units receive no direct sunlight between 9am and 3pm at midwinter (DA.05.10A). This is inconsistent with the maximum 15% required by ADG 4A-1 3.
- e) The 8 additional units which do not receive any solar access to their balconies would increase the number of units with no direct sunlight to 17 of 42 (40%).
- f) The proposed development results in inadequate solar access to units which does not optimise the number of apartments receiving sunlight for residential amenity, inconsistent with ADG Objective 4A-1.

6. Inadequate Natural Cross Ventilation

The proposed development is inconsistent with ADG Part 4B as it does not provide adequate natural cross ventilation to enough units.

Particulars:

- a) The documentation states that 33 of 42 (79%) units are naturally cross ventilated (DA.05.20A).
- b) However, only 23 of 42 (55%) units appear to be naturally cross ventilated. This is inconsistent with the minimum 60% required by ADG 4B-3 1.
- c) The 10 disputed units are LG05, 108, 205, 208, 305, 308, 405, 408, 503, 505 which are considered to be single aspect units with no alternative orientation for varied wind pressure available.
- d) The ADG Glossary (p180) defines 'natural cross ventilation' as 'natural ventilation which allows air to flow between positive pressure on the windward side of the building to the negative pressure on the leeward side of the building providing a greater degree of comfort and amenity for occupants.'
- e) The ADG Glossary (p179) defines 'dual aspect apartment' as 'cross ventilating apartments which have at least two major external walls facing in different directions, including corner, cross-over and cross-through apartments' (emphasis added)
- f) The ADG Glossary (p178) defines 'corner apartment' as 'cross ventilating apartments on one level with aspects at least 90 degrees apart. Corner apartments are commonly located on the outermost corners of buildings' (emphasis added)

- g) The proposed development results in inadequate natural cross ventilation to units which does not maximise the number of apartments with natural cross ventilation to create a comfortable indoors environment for residents, which is inconsistent with ADG Objective 4B-3.

7. Internalised spaces

The proposed development is inconsistent with ADG Part 4D and Part 4F as habitable spaces and common circulation spaces are internalised.

Particulars:

- a) Unit 104 is shown with an internalised bedroom (DA.01.12A). This is inconsistent with ADG 4D-1 2 which requires every habitable room to have a window in an external wall.
- b) The common circulation space on Level 5 is internalised (DA.01.16A). This is inconsistent with ADG 4F-1 for daylight and natural ventilation to be provided to all common circulation spaces.
- c) The proposed development results in internalised rooms which do not achieve good amenity, inconsistent with ADG Objective 4D-1 and ADG Objective 4F-1

8. Excessive habitable room depths

The proposed development is inconsistent with ADG Part 4D as open plan layouts (living room, dining room and kitchen) are too deep.

Particulars:

- a) Units 102, 107, 206, 207, 306, 307, 406, 407, 503 and 505 have habitable room depths ranging from approximately 8.5m to 8.9m. This is inconsistent with the maximum 8m required by ADG 4D-2 2.
- b) The proposed development results in habitable spaces where the environmental performance is not maximised, inconsistent with ADG Objective 4D-2..

9. Subterranean storage areas

The proposed development is inconsistent with KDCP Part 7C.3 as residential storage areas are subterranean.

Particulars:

- a) The large communal storage area at Upper Ground Level (DA.01.11A) has walls in direct contact with soil, or relies on walls which are tanked without being separated by an accessible maintenance passage. This is inconsistent with KDCP 7C.3 6 and KDCP 7C.3 7.

- b) KDCP 1B.1 defines 'subterranean room' as 'a room within a residential dwelling that has an external wall to any part of the room (habitable and non habitable), including external storage, below the adjacent finished ground level and/or in direct contact with soil and/or requiring physical or spatial tanking'
- c) The proposed development results in the potential for dampness and water ingress into buildings and the inability to effectively maintain and service the building in the long term, inconsistent with KDCP Objective 7C.3 5

10. Inadequate accessibility

The proposed development is inconsistent with KDCP Part 7C.4 as units are not designed to the Livable Housing Design Guidelines.

Particulars:

- a) Several units are not designed to Silver Level of the Livable Housing Design Guidelines as they do not have a toilet pan with a minimum 1200mm clear circulation space forward of the toilet pan and/or a toilet pan is not located in the corner of the room to enable the installation of grabrails (LHDG Element 4 p29)(for example units 106 and 601 - list may not be exhaustive). This is inconsistent with KDCP 7C.4 3 for all units to be designed to Silver Level of the Livable Housing Design Guidelines.
- b) 7 of 42 (17%) units are nominated as being designed to Platinum Level of the Livable Housing Design Guidelines. This meets the requirements of KDCP 7C.4 3 for 15% of units to be designed to Platinum Level of the Livable Housing Design Guidelines, however not all aspects of the units meet the required Platinum Level Elements.
- c) Several units are not designed to Platinum Level of the Livable Housing Design Guidelines as they do not provide a minimum corridor width of 1200mm near the entry door (LHDG Element 3 p27)(units 107, 207, 307, 407), they do not provide a shower recess with a minimum dimension of 1160mm width x 1100mm length (LHDG Element 5 p33)(all units).

11. Unsatisfactory design

The proposed loading arrangements on the Site are unacceptable and do not comply with Part 22 of the KDCP. The proposal fails to demonstrate adequate compliance with design standards for on-site loading provision.

Particulars:

- a) Section 148(2) of the Housing SEPP makes the provision of car parking that is equal to or greater than the recommended minimum specified in Part 3J of the ADG, a non-discretionary development standard. Part 7B.1 of KDCP specifies maximum car parking requirements.

12. Water management

The proposal does not demonstrate that all reasonable management actions have been taken to avoid, minimise, or mitigate adverse impacts on adjoining properties, contrary to Clause 6.5 of the KLEP 2015. In addition, the application has not been accompanied by sufficient particulars to enable assessment against Clause 6.5 of the KLEP 2015. The proposal does not satisfy the requirements outlined under Clause 5.21(2) of the KLEP 2015.

Particulars:

- a) Clause 6.5 of the Ku-ring-gai LEP provides that, before granting development consent to development on any land to which the LEP 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 proposed 225mm pipe discharging to the existing swale is not supported. Stormwater runoff should be conveyed under the kerb, or under the road pavement, to avoid tree roots from large trees and inadequate and reduce the crossfall from the gravel shoulder to asphalt.
- c) The requirements set out under Clause 5.21(2) of the KLEP 2015 have not been satisfied, and as a result, the proposal fails to achieve the objective of Clause 5.21(1) of the KLEP 2015.

13. Adverse Tree impacts

The proposal results in unacceptable impacts on trees contrary to part 7A.6 and Part 13 of KDCP and AS4970-2025. Amended architectural, landscape and stormwater plans are required to address the following impacts on existing trees.

Particulars:

- a) Trees 1, 2, 3 and 4 - Major encroachment on Trees 1, 2, 3 and 4 from proposed walls and excavation for swale, front retaining wall and stormwater lines. The Applicant's Arborist report prepared by Redgum Horticultural dated 28 March 2025 recommends that existing wall on the north-eastern boundary setback should be retained and the new retaining wall should be constructed adjacent to the structure to maintain existing levels within the TPZ of those trees, minimising the impact. The rectangular swale proposed to be provided along the northern boundary should be removed or relocated and the stormwater lines along the eastern boundary should be relocated. Where relocation is not possible, root mapping and pipe levels should be provided on the stormwater plans to demonstrate that stormwater lines can be under bored to the eastern front boundary if necessary.
- b) Tree 21 - Major encroachment on Tree 21 from proposed walls and stormwater lines. Stormwater infrastructure along the frontage is to be relocated or root mapping and pipe levels are to be provided to demonstrate that lines can be under bored if necessary. The front retaining wall, private pedestrian path and associated walls to Unit LG.02 and LG.03 result in 1m of fill (which is inconsistent with Part 21.1 of KDCP) and should be removed to retain existing ground levels to the frontage within TPZ of Tree 21.
- c) Tree 11 - Major encroachment on Tree 11 *Eucalyptus grandis* (Flooded Gum) from the adjacent planter retaining walls, deck and basement which are located within SRZ of Tree 11. The proposed planters should be removed from within the SRZ and TPZ of Tree 11.
- d) Trees 11, 12, 13, 14, 17, 25, 24, 13, 26, 41, 45, 46, 47 and 48 - Major encroachment on Trees 11, 12, 13, 14, 17, 25, 24, 13, 26, 41, 45, 46, 47 and 48 from proposed stormwater lines. Consider re-locating the two 225mm stormwater lines along the southern and north-western side of the proposed building to reduce impacts on trees.
- e) Tree 12 *Jacaranda mimosifolia* (Jacaranda) is to be retained as it is not impacted by works;
- f) Tree 35 should be retained.

14. Inadequate deep soil zones

The proposal is inconsistent with the minimum deep soil landscape area required under Part 7A.6 of the KDCP.

Particulars:

- a) In accordance with Control 1 of Part 7A.6 of the KDCP, a site area of 3,099.5 m² requires a minimum of 1,549.75 m² (50%) of deep soil landscape area.
- b) The applicant's calculations (DA.05.50) indicate that the development provides 1,554.6 m² of deep soil landscaping.
- c) 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 1.2 metres wide, stormwater pipes of 300mm or less, lightweight

fences), has a minimum width of 2 metres, is not used for car parking and can be used for water sensitive urban design

- d) The applicant's calculation of deep soil area does not comply with this definition as garden beds that are less than 2 metres wide have been incorrectly included.
- e) When these areas are excluded, the actual deep soil zones are approximately 1,159 m² (38.5%), which is inconsistent with the 50% minimum required under KDCP.
- f) A rectangular swale is proposed along the eastern part of the northern boundary, for stormwater management. The swale is to consist of a timber retaining wall on the boundary and a masonry retaining wall setback 1.95m from the boundary.
- g) The deep soil zones on the Site have not been configured to retain healthy and significant trees on the Site as the proposed retaining wall and drainage swale reduces the available deep soil area for proposed trees, and is inconsistent with 3E-1 ADG.
- h) Further the stormwater works and multiple entries proposed to the ground floor units necessitate the removal of Trees 12 and 35 and adversely impacts on the TPZ for Trees 1 to 4, 11 and 12, which is inconsistent with Control 2, Part 7A.6 of KDCP and Control 8 of Part 21.1 KDCP, impacting on trees on the Site and adjoining properties.

15. Inadequate landscape design

The proposed landscape design outcomes are inconsistent with Objective 4O-2 and 4P of the ADG and the objectives and controls of Parts 7A.1, ~~and~~ 7A.6, 7C.2, Part 21.1 and Part 23.5 of the KDCP. The proposal fails to deliver a garden setting consistent with the desired future character of the locality. **I**

Particulars:

- a) The proposal includes multiple walled entrance paths permitting direct access to the ground floor units and a driveway which dominates the street frontage, reduces deep soil provision and impacts on street trees, which is inconsistent with Objective 4O-2 of the ADG and 7A.1 KDCP. The proposal therefore results in adverse visual amenity impacts and impacts on the streetscape and amenity of adjoining residents.
- b) The proposal is also inconsistent with Control 5, Part 21.1 of KDCP as existing ground level has not been maintained for 2m from the front boundary due to the multiple entries and retaining walls.
- c) There is insufficient information on the soil depth and top of wall levels to planters, for the consent authority to be satisfied that the proposal complies with Control 7, Part 23.5 of KDCP and Objective 4P of the ADG.
- d) The proposal fails to satisfy Control 7, Part 7C.2 of KDCP as the access to the communal open space via the southern boardwalk is not consistently shown as being accessible.
- e) The proposal fails to satisfy Part 21.2 of KDCP as there is insufficient midstorey and groundcover planting within the Biodiversity mapped area in the norther corner of the Site

which contains Blue Gum High Forest species. Only 16 *Westringia* shrubs are proposed against the wall of the driveway and 1 tree and 7 *Hibbertia* to the ground boundary. The proposed planting density within riparian area south of the driveway is approximately 32m² which is insufficient.

- f) Further, the development does not satisfy Sections 147 (1)(b) and 161 of SEPP (Housing), as the proposal does not satisfy the requirement of the ADG.

16. Noise Impact Assessment

Particulars:

- a) The acoustic report titled “Noise Impact Assessment” by E-Lab Consulting issued 11 April 2025 has not sufficiently assessed and provided recommendations to attenuate (where applicable) the likely noise impacts on neighbouring properties and future occupants of the proposal.
- b) Based on this report it appears that the consultants may not have completed noise monitoring at the Site to establish the background noise for the area and only estimates were used.
- c) The background noise should be established over a noise monitoring period of at least 7 days for the day and night-time periods at applicable locations, before undertaking an intrusive noise assessment of applicable noise sources for future inhabitants of the proposal as well as an external noise emission assessment for neighbouring properties.
- d) Compliance is to be assessed under various criteria including but not limited to the Australian Standard 2107: 2016 Acoustics- Recommended design sound levels and reverberation times for building interiors, the State Environmental Planning Policy (Transport and Infrastructure) 2021, The Protection of the Environment Operations Act 1997 and associated noise Regulation and Ku-ring-gai Council's DCP.
- e) Based on the submitted architectural plans, it appears the applicant is proposing to locate air conditioning condensers on balconies. This is not consistent with the objectives of Part 23.6 of KDCP as it results in an impact on the visual or general amenity of surrounding residents and the streetscape.
- f) Council may consider an application with air conditioning condensers on balconies provided the applicant is able to display compliance with the below noise criteria for condensers:
 - i. during peak time (7.00am to 10pm) – noise from air conditioning condensers will not exceed 5dB(A) above the ambient background noise (LA90, 15 min) level when measured at any lot boundary, and
 - ii. during off peak time (10pm to 7am) - noise from air conditioning condensers will not be audible in habitable rooms of any other residence.

17. Location of air conditioning condensers

The proposal does not demonstrate compliance with Objective 4E-3 of the ADG and the controls outlined in Parts 7C.8 and 23.6 KDCP, specifically regarding the location of air conditioning condensers, as the location of these condensers has been identified on the architectural plans as being located on the balconies for the units.

Particulars:

- a) The development fails to demonstrate compliance with design criteria of Objective 4E-3 of the ADG and Part 23.6, control 7 of the KDCP, which requires air conditioning condensers to be located on roofs, in basements, or fully integrated into the building design.
- b) The air conditioning condensers have been located on the balconies for the units which is not supported.
- c) Further, there is insufficient information for the consent authority to be satisfied that the area occupied by the air conditioning condensers is not included in the minimum balcony area requirements, the condensers are not visible, enclosed, and that they comply with the following noise criteria:
 - i. during peak time (7.00am to 10pm) – noise from air conditioning condensers will not exceed 5dB(A) above the ambient background noise (LA90, 15 min) level when measured at any lot boundary, and
 - ii. during off peak time (10pm to 7am) - noise from air conditioning condensers will not be audible in habitable rooms of any other residence.

18. Impact on Council's Infrastructure

The Development Application includes works which will impact on Council's infrastructure and which does not comply with Council's technical specifications 'Road Works and Drainage Works dated November 2004'.

Particulars:

- a) No footpath design in accordance with Council drawing 2003-004 Rev. 'B' has been provided along the site's frontage.
- b) The footpath longitudinal section does not show the extent of cut/fill, existing services and existing street tree locations.
- c) All redundant driveway crossings have not been shown to be removed.
- d) The project arborist has not endorsed the civil plans.

19. BASIX inconsistency

The proposal is inconsistent with the landscape outcomes stated in the BASIX certificate.

Particulars:

- a) The BASIX certificate indicates 0m² of total lawn and 500m² of garden area which is less than the actual area indicated on the plans of approximately 220m² of lawn and 1269m² of common garden area. In addition, the landscape areas for the planters to Units 1.04, 1.06, 6.01 and 6.02 are not included in certificate and are to be added.
- b) A separate Basix certificate is required, as amendments cannot be made.

20. 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
- c) Development Application.
- d) The Development Application is also unsatisfactory pursuant to Sections 1.3(f) and 1.3(g) of the EPA Act, as it does not promote good design and amenity of the built environment.

B2 – CONTENTIONS THAT COULD BE RESOLVED BY CONDITION OF CONSENT

21. Communal open space

- a) The architectural and landscape plans are to be amended to consistently incorporate ramps for accessible access to the communal open space via the southern boardwalk.
- b) Fixed bench seating is to be setback minimum 1m from the edge and/or balustrade of the building for safety

22. Car parking and Access

- a) The parking provision should be reduced to the lower end of the range in the DCP and supplemented with at least 1 car share vehicle.
- b) Remote/intercom communications be provide at the access gate next to the basement shutter door, so visitors can communicate with the occupants to access the bicycle parking. This is to be depicted on the architectural plans.

- c) The access point is to be amended to accommodate the 2m x 2.5m sight triangle as per Figure 3.3 of AS2890.1:2004.

23. Electric vehicles

- a) In accordance with the KDCP, EV readiness is to be provided for all car parking spaces within the development, with design and construction provisions (including conduits, switchboards, and electrical capacity) to enable the installation of electric vehicle charging points linked to each apartment's electricity meter.
- b) The basement plans fail to demonstrate that EV readiness has been provided for all car parking spaces within the development. The basement car parking plans show only one charging point in the ground-level car park.
- c) EV readiness is to be provided for all car parking spaces within the development.

24. Bulky Goods Collection Point

An on-site Bulky Goods Collection Point as part of the entry access driveway is to be provided in accordance with Section 25B.2 of the Ku-ring-gai DCP. Details shall be submitted to the satisfaction of the Certifier prior to the issue of any Construction Certificate.

B3 - CONTENTIONS THAT THERE IS INSUFFICIENT INFORMATION TO ENABLE ASSESSMENT

25. Solar access and overshadowing

There is insufficient information to properly assess solar access to the proposal and to assess overshadowing to and from neighbouring properties.

Particulars:

- a) The survey does not identify a true north point. A true north point is required to inform accurate solar access diagrams and analysis. The Site Analysis Plan and solar access diagrams must reflect the true north point based on the survey.
- b) The 'sun-eye view' diagrams (DA.05.11A to DA.05.17A) indicate that the proposed development will overshadow properties adjoining to the immediate west and to the south across Pockley Avenue which are similarly mapped as Transport Oriented Development Sites. Consideration should be given to ensuring that adequate solar access is available to future development and that their development potential is not constrained (ADG 3B-2 and KDCP 7A.2 11). The solar access model should indicate potential development envelopes for these neighbouring properties in the 'sun-eye view' diagrams.

- c) The 'sun-eye view' diagrams (DA.05.11A to DA.05.17A) indicate that future development on properties to the east which are similarly mapped as Transport Oriented Development Sites, and to the north which are mapped as R4 High Density Residential, may over overshadow the proposed development. The ADG Glossary (p181) defines 'solar access' as 'the ability of a building to continue to receive direct sunlight without obstruction from other buildings or impediments' (emphasis added). Consideration should be given to ensuring that adequate solar access is available to the proposed development and that the development potential of neighbouring properties is not constrained (ADG 3B-2 and KDCP 7A.2 11). The solar access model should indicate potential maximum development envelopes for neighbouring properties in the 'sun-eye view' diagrams.
- d) Any revised 'sun-eye view' diagrams should be produced at fifteen minute intervals and be based on the true north point.

26. Outdoor clothes drying

There is insufficient information to properly assess that outdoor clothes drying can take place as the location of outdoor clothes drying has not been identified on the plans (ADG 4U-1 2 and KDCP 7C.9 1).

27. Flood Assessment

There is insufficient information to satisfy the consent authority that the floor levels comply with the minimum development levels as required under Part 24D.2 of KDCP.

- a) The design requirements levels as stated within Section 6 of the Flood Impact Assessment Report are to be confirmed and shown on the architectural plans.

28. Water Management

There is insufficient information to satisfy the consent authority of works within the public road reserve under s.138 and s.139 of the Roads Act 1993.

Particulars:

- a) The proposal does not provide a kerb and gutter 6.1m from boundary to kerb face, extending to the culvert outside No. 15 Pockley Avenue.
- b) No new kerb inlet pit and associated pipe to the existing pipe at the headwall outside No. 15 Lockley Avenue has been provided. Design details to be designed in accordance with the

General Specification for the Construction of Road and Drainage Works in Ku-ring-gai Council, dated November 2014. A modification of the headwall is required.

29. Geotechnical Assessment

There is insufficient information for the consent authority to be satisfied that the proposal complies with the objectives of clause 6.2 'Earthworks' of the KLEP, Part 21.1 of the DCP or under Council's Engineering Design Guide.

Particulars:

- a) The geotechnical reports do not determine the site-specific subsurface profile and geotechnical parameters.
- b) An amended or supplementary geotechnical investigation is to be prepared, and include the following information:
 - i. at least 3 cored boreholes within the Site to bedrock;
 - ii. recommendations for excavation methods and support, vibration monitoring, dilapidation survey etc.
 - iii. record of groundwater levels to determine if permanent dewatering will be required, which may require external referral to NSW Office of Water for licensing conditions.

30. Waste Management

The Development Application does not contain sufficient information to confirm that waste collection requirements under Part 25A of the KDCP are satisfied. Amended plans are to be submitted to address the following:

Particulars:

- a) Demonstrate that there will be 2.6m headroom clearance along the whole of the travel path required for the small waste collection vehicle as required under Part 25A.3 of the KDCP.
- b) Provide a longitudinal section through the driveway starting from the centreline of the public road to the basement loading bay area (including realistic slab/beam depths, stormwater pipelines and other overhead services) .
- c) Demonstrate that the waste storage facilities floors will be graded and appropriately drained to the sewer and a tap with hot and cold water is to be located in close proximity to the waste storage for cleaning.

31. Environmental Site Management Plan

An adequate environmental site management plan has not been submitted. An environmental site management plan which addresses the following is to be submitted:

- a) Tree protection fencing to be indicated on plan.
- b) Storage and facilities are not to be located within the Notional Root Zone (NRZ) of street trees where there is currently existing deep soil.
- c) Only utilise areas already paved/built upon within the NRZ such as driveways, otherwise locate outside of the NRZ.

32. Amended Landscape plan

Amended landscape plans addressing the following additional information is required:

- a) Confirm if V swale along north-western boundary is to be turfed as shown on Drawing no. 111 of the Stormwater Plans Issue A prepared by Telford Consulting dated 31 March 2025.
- b) Provide top of wall levels to planters to ensure the planters meet the minimum soil depths required for planting under Control 7, Part 23.5 of KDCP and Objective 4P of ADG.
- c) Clarify whether the pedestrian fire exit path needs to step up from existing ground level at the boundary to then step down to the basement.
- d) Landscaping plans are inconsistent with the stormwater plans as they indicate that a wall is to be provided along the full length of the northern boundary whereas on the stormwater plans, a 2.3m wide V swale is proposed along the western part of the northern boundary. Landscaping plans are to be amended to be consistent with the stormwater plans.
- e) The symbol DE indicated on the Landscape Plan is not in the plant schedule. Amend plans and schedule to identify plant species.

33. Inaccurate plans

The plans provide inaccurate information, as follows:

- a) The applicant is to correctly label the elevations, as shown within sheet number DA.02.01 Revision A. Using Pockley Avenue as a reference, which is located south of the site, Elevation West is to be labelled Elevation East and Elevation East is to be labelled Elevation West.
- b) Within the section plan (DA.03.00 Revision A), and all plans generally, provide accurate natural ground heights along the eastern side boundary line and locate and describe buildings on adjoining sites in accordance with the survey detail.

34. All building heights to be shown

The amended plans are to provide additional height dimensions, as follows:

- a) Not all building heights are shown. A roof level of 105600 is shown for the upper podium level, however, not all roof level heights are shown at Level 5 and 6.
- b) No building levels are shown on the “Elevation North” diagram, as shown within sheet number “DA.02.00 Revision A”.
- c) Building height levels must be shown on plans that show the lift overrun, the roof levels of Levels 5 and 6, heights of external balconies of roofs and external balcony’s must show buildings heights at corner of buildings.
- d)

35. Inconsistencies in the plans

The architectural plans contain the following inconsistencies:

- a) Documentation of ground level (existing) lines should be shown at the face of the building to allow for the proper counting of storeys.
- b) The site coverage as shown on DA.05.50A has been calculated incorrectly. Areas to check include the inclusion of the footprint of upper floor levels; not excluding the lift shafts; and using a current plan for the diagram, in accordance with Part 7A.5 1 KDCP.
- c) The Deep soil landscaping area has been calculated incorrectly. Areas less than 2m wide are to be excluded from the calculation of the deep soil landscaping area in accordance with Part 7A.6 1 KDCP
- d) As shown within DA.02.01A the proposed car park projects approximately 2.4 metres above existing ground level, which exceeds the 1 metres height requirement for basements, thus contributing to the overall height of the development and its overshadowing cast onto adjoining properties (Part 7B1.4 KDCP).
- e) The large basement communal storage area at Upper Ground Level, shown on plans DA.01.11A, appears to be subterranean and not be separated from a tanked wall by an accessible maintenance passage. An accessible maintenance passage, as shown by Figure 7C.3-2 of the KDCP (shown below) is required:

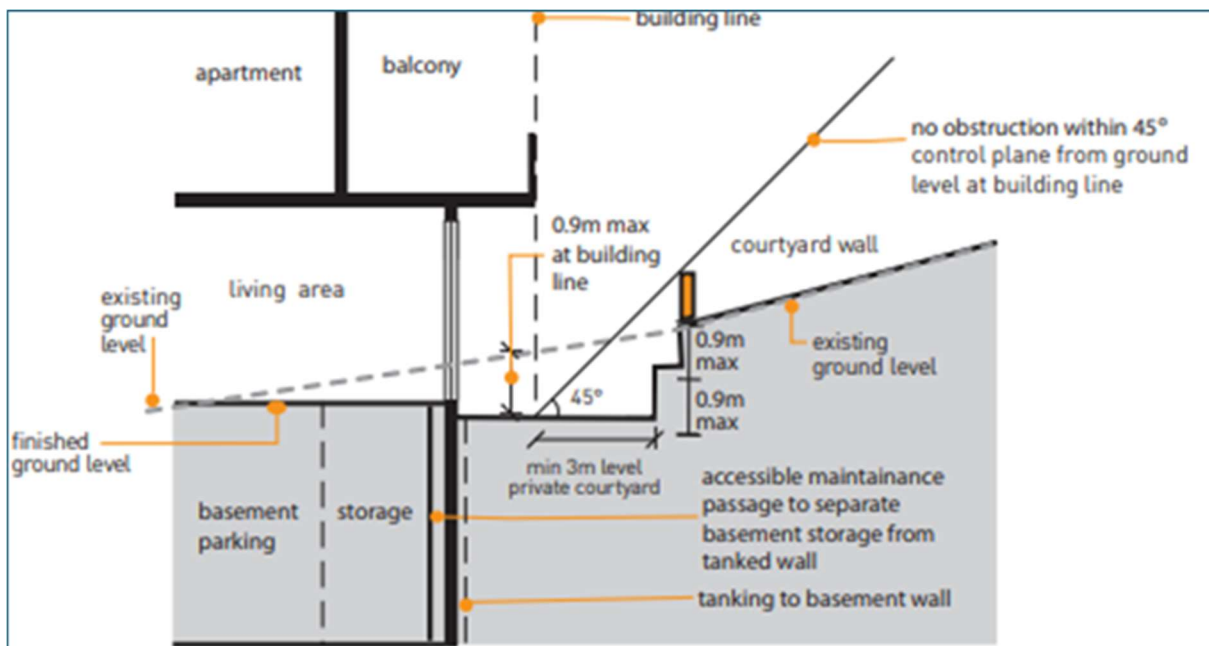


Figure 7C.3-2:
Ground floor apartments located below ground level

SIGNATURE

Signature of authorised officer of
respondent consent authority

Name of authorised officer

Phillip Johnston

Capacity

Executive Assessment Officer, Ku-ring-gai Council

Date of signature

12/11/2025