

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-636
DA Number	eDA0189/25
LGA	Ku-ring-gai
Proposed Development	Demolition of existing structures and construction of a residential flat building with basement car parking and associated works.
Street Address	7-11 Pockley Avenue, Roseville
Applicant/Owner	Applicant: Place Studio AU Pty Ltd Owner: Mr DAS Mathews, Mrs SK Mathews, Mr A Berenjforoush, Mrs N Asadi, Mrs LC Sansome
Date of DA lodgement	28/04/2025
Total number of Submissions	Ten submissions
Total Number of Unique Objections	Ten unique objections
Recommendation	Refusal
Regional Development Criteria - Schedule 6 of the SEPP (Planning Systems) 2021	General development over \$30,000,000
List of all relevant s4.15(1)(a) matters	• SEPP (Planning Systems) 2021 (SEPP PS) • SEPP (Housing) 2021 (SEPP Housing) • SEPP (Resilience and Hazards) 2021 • SEPP (Sustainable Buildings) 2022 • Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) • Ku-ring-gai Development Control Plan (KDCP) • Ku-ring-gai Contributions Plan 2010
Summary of submissions	• Bushfire impacts • Additional traffic impacts • Fauna and flora impacts • Retaining walls impacting deep soil along eastern side of site • Overshadowing • View loss • Water runoff • Character of locality changing • Additional trees for screening

Attachments	1. Architectural Plans (Full Set) 2025/136696 2. Landscape Plans (Full Set) 2025/136717 3. Stormwater Plans 2025/136733 4. Survey Plans 2025/136735 5. Clause 4.6 (building height) 2025/136706 6. Design Verification Statement & ADG Compliance Table 2025/136708 7. Statement of Environmental Effects 2025/136731 8. Traffic and Parking Report 2025/136738 9. Flood Impact Assessment Report 2025/136711 10. Preliminary assessment letter 2025/270504 11. Statement of Fact and Contentions 2025/379039
Report prepared by	Phillip Johnston
Report date	28/01/2026

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report? **Yes**

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (Clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

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

PURPOSE OF REPORT

To determine Development Application No. eDA0189/25 for demolition of existing structures, lot consolidation and construction of a residential flat building development with basement car parking and associated works.

Pursuant to Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021, the application is defined as regionally significant development because the estimated development cost exceeds \$30,000,000, being \$33,649,509.00. As a result, the Sydney North Planning Panel (SNPP) becomes the consent authority, as prescribed under Section 4.5(b) and associated Schedule 2, Clause 9(b) of the Environmental Planning and Assessment Act, 1979.

INTEGRATED PLANNING AND REPORTING

Places, Spaces & Infrastructure

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

EXECUTIVE SUMMARY

Issues

Amendment No. 1 to TOD SEPP
Building height
Non-compliance with multiple ADG controls
Non-compliant affordable housing
Flood risk
Inadequate building separation to boundaries
Inadequate solar access
Inadequate natural cross ventilation
Internalised spaces
Excessive habitable room depths
Subterranean storage areas
Inadequate accessibility
Water management
Adverse tree impacts
Inadequate deep soil zones

Noise/visual impact of balcony air conditioning condensers

BASIX inconsistency

Landscape design

Electric vehicle readiness

Insufficient information

Urban design issues

Submissions

10 submissions received

Land and Environment Court

Deemed refusal appeal filed on 9/10/2025

Recommendation

Refusal

HISTORY

Site history

The site has a history of low-density residential use.

Previous applications history

A Pre-DA consultation was not undertaken with Council.

Council's records do not show any recent applications relating to the site.

Current Development Application History

Date	Action
28 April 2025	Application lodged.
29 April 2025	The application was notified to neighbouring property owners for a period of 30 days. Ten submissions were received.
15 May 2025	The applicant submits a 3D digital model of the development.
20 August 2025	A letter was sent to the applicant seeking additional information (Attachment A10). Concerns were raised in relation to: - Verification for affordable housing - Verification of north point - Building height - Floor space ratio - Corrections to shadow diagrams based upon verification of north point - Building separation

	- Solar access - Natural cross ventilation - Habitable rooms to have windows - Room depths - Common circulation - outdoor clothes areas - roof top planting - location of air conditioning condensers and mail boxes - waste storage facilities - water management - civil works within Pockley Avenue - flooding - number of car spaces - geotechnical report requires additional information - inconsistent BASIX - insufficient deep soil - tree impacts - communal open space not consistent between landscape plan and architectural plans - landscape design - inadequate Environmental Site Management Plan
24 September 2025	Council seeks an update from the applicant about their response to the preliminary assessment letter and no response was received.
9 October 2025	A Class 1 appeal against the deemed refusal of the application was filed with the Land and Environment Court. Council receives notice of the appeal on 16 October.
10 October 2025	Council seeks an update from the applicant about their response to the preliminary assessment letter dated 29 August 2025. No response received.

Land and Environment Court appeal history

On 9 October 2025 a Class 1 appeal against the deemed refusal of the application was filed with the Land and Environment Court.

THE SITE



Figure 1: Aerial photograph showing subject site outlined in red and surrounding properties

Site description

The site is legally described as Lot 23 in DP 652725, Lot 22 in DP 8261, and Lot 1 in DP 960352 and is commonly known as Nos. 7, 9 and 11 Pockley Avenue, Roseville, respectively.

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. Having a total area measuring 3,099.5m² the site is located on the high side of Pockley Avenue. The site falls from a mid-point along the eastern side boundary down towards all corners of the site with its lowest point being in the south-western corner. The site's steepest fall is 11.77m (19.9%) to the south-western corner. There is an overland flow path near the western portion of the site.

Part of the site is mapped as comprising biodiversity, as shown within **Figure 3 - Biodiversity Values map**.

Constraint:	Application:
Visual character study category	1920-1945
Easements/rights of way	No
Heritage Item - Local	No
Heritage Item - State	No
Heritage conservation area	No
Within 100m of a heritage item	Yes – Nos. 12 and 16 Shirley Avenue, Roseville

Bush fire prone land	No
Natural Resources Biodiversity	Yes – along the northern and western site boundaries
Natural Resources Greenweb	Yes – along the northern and western site boundaries
Natural Resources Riparian	Yes – along the western boundary property
Within 25m of Urban Bushland	No
Contaminated land	No

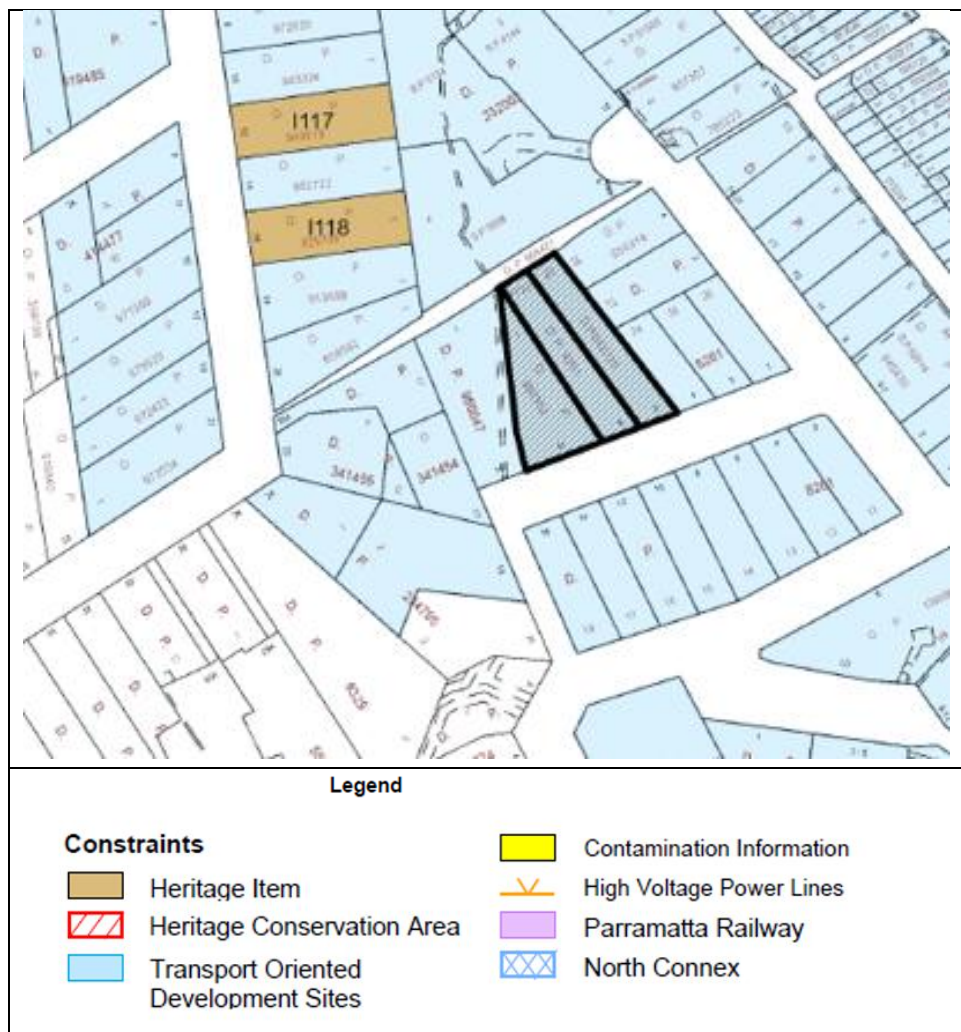


Figure 2: map showing site within the Transport Oriented Development areas



Figure 3: map showing site and Biodiversity values

Surrounding development

Surrounding development comprises of single and two storey residential dwelling houses on landscaped allotments. The surrounding zoning is predominantly R4 High Density Residential except for the land surrounding the Roseville Railway Station, as shown in **Figure 4**.

The site adjoins 'The Rifleway' to the rear (north) of the site, which is an elevated pedestrian walkway that provides access to the Pacific Highway. To the east, the site shares a side boundary with three properties, known as No. 5 Pockley Avenue, No. 2 Larkin Street and No. 4 Larkin Street, Roseville. These sites accommodate single storey dwelling houses. To the west, the site adjoins No. 15 Pockley Avenue, Turramurra, which contains a single storey dwelling house, a drainage easement and extensive vegetation.

Further to the east of the site is SP2 Infrastructure zoned land (Roseville Railway Station and Pacific Highway), land zoned E1 Local Centre and RE1 Public Recreation, as shown within **Figure 4**. Further to the west of the site is a vegetation corridor of remnant Blue Gum High Forest – a critically endangered ecological community on land zoned C4 Environment Living, which leads to the Blue Gum Creek, which is zoned C2 Environmental Conservation.

Strategic context

The site is located within a Transport Oriented Development (TOD) Area as defined under State Environmental Planning Policy (Housing) 2021 (SEPP Housing), as gazetted on 13 May 2024.

On 11 June 2025, Ku-ring-gai Local Environmental Plan (Housing) (Map Amendment No. 1) was made. The Map Amendment No. 1 (the Amendment) commenced when it was published on the NSW Legislation Website on 13 June 2025. This had the effect of pausing the application of the TOD provisions within the Ku-ring-gai Local Government Area, except for those sites where a Development Application (DA) or State Significant Development Application (SSDA) had already been lodged or the Secretary's Environmental Assessment Requirements (SEARS) had been issued – which in effect provided a 'savings' provision.

The subject site is 'saved' under the amendment by virtue of the DA being lodged prior to the amendment being gazetted, consequently, the TOD provisions remain applicable.

Council's Alternative TOD plan was gazetted and came into effect on 14 November 2025 via State Environmental Planning Policy Amendment (Ku-ring-gai Station Precincts) 2025 (SEPP Station Precincts).

The savings provision in Clause 1.8A(2) of Ku-ring-gai Local Environmental Plan (KLEP) 2015, relevantly states:

A development application made, but not finally determined, before the commencement of State Environmental Planning Policy Amendment (Ku-ring-gai Station Precincts) 2025 must be determined as if the policy had not commenced.

Consequently, the application is assessed against the original TOD provisions.

Under the Alternative TOD, the site is zoned R4 High Density Residential (**Figure 4**). The site has a maximum building height of 29m and a variable maximum Floor Space Ratio (FSR) of 1.8:1 (**Figures 5 and 6**). A key change under the Alternative TOD is that the zoning of the adjacent site to the west, No. 15 Pockley Avenue has changed from R2 Low Density Residential to RE1 Public Recreation (**Figure 4**).

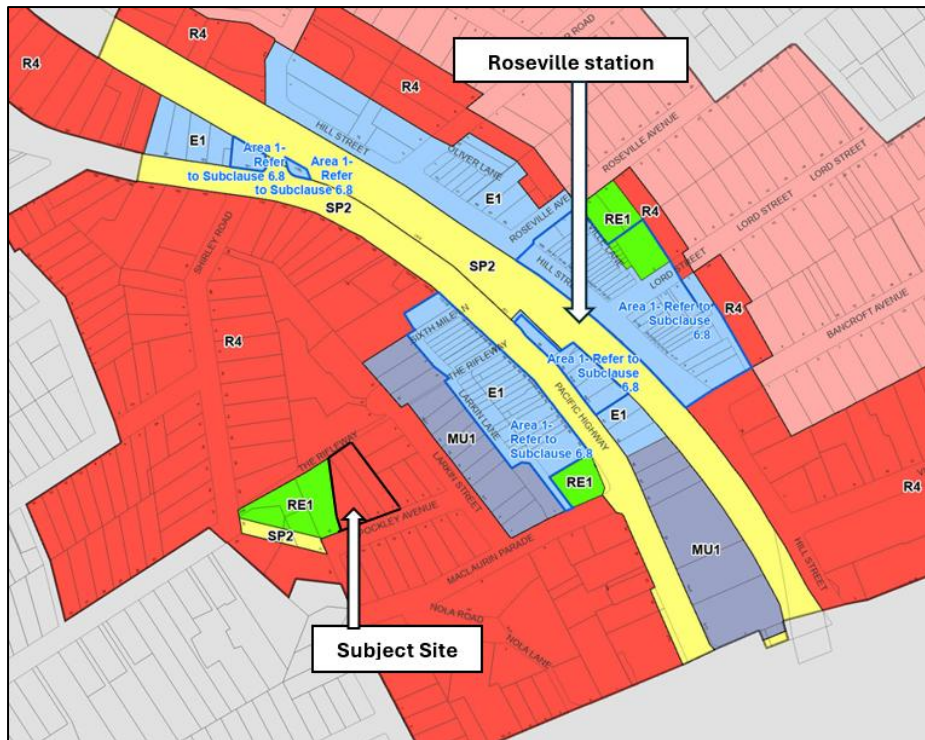


Figure 4: Plan showing the Site and Zoning under Alternative TOD

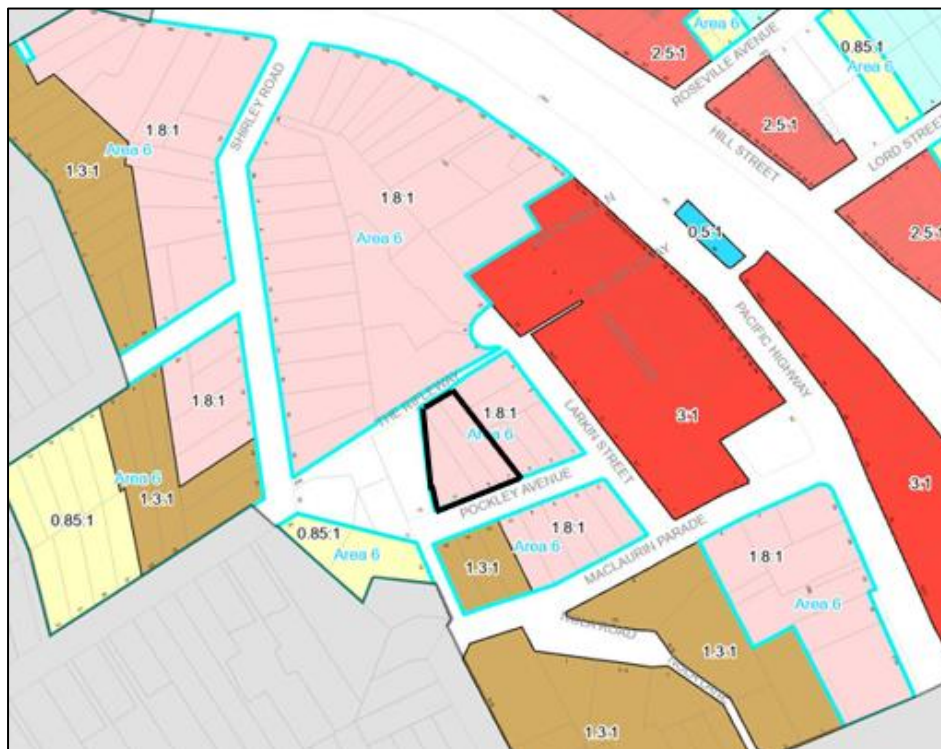


Figure 5: Plan showing the Site and Floor Space Ratio under Alternative TOD

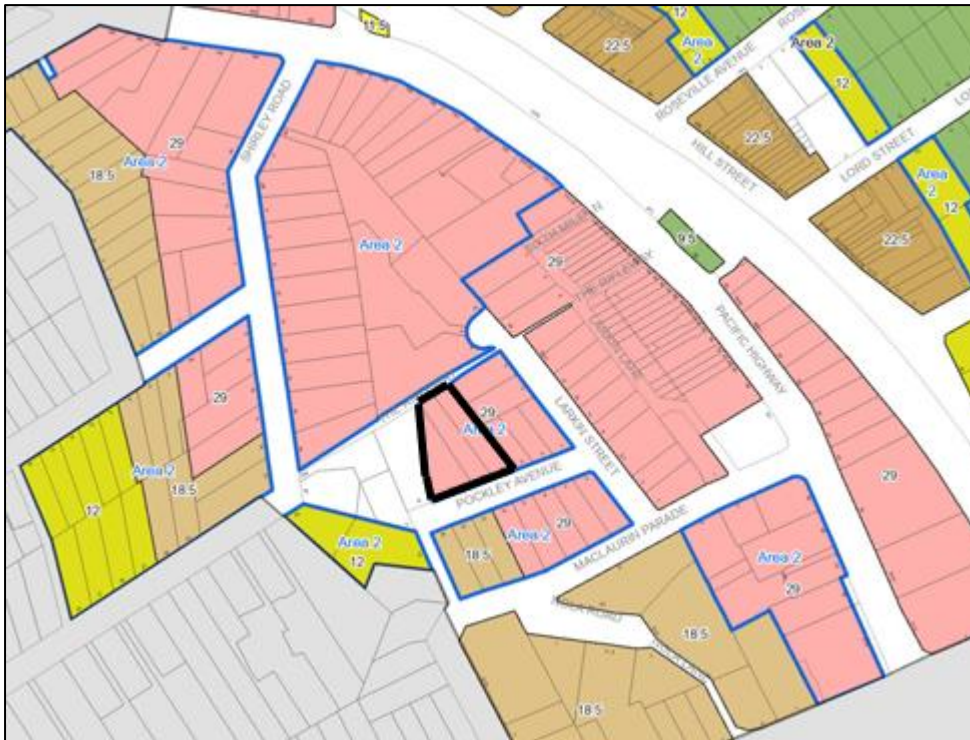


Figure 6: Plan showing subject Site and building height under Alternative TOD within Area 2

On the height of buildings map, the site is subject to a maximum building height of 29m.

On the floor space ratio (FSR) map, the site has a maximum FSR of 1.8:1.

THE PROPOSAL

The Development Application seeks consent for a residential flat building pursuant to Chapter 5 of SEPP Housing comprising the following:

- a) consolidation of 3 allotments;
- b) demolition of the 3 existing 1-2 storey residential dwelling houses 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 to Pockley Avenue via a 6.5m wide two-way driveway
 - 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. 231.62m² 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 12,370 litres 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

Works in the road reserve include driveway crossing and drainage.

CONSULTATION

Community

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

1. *Rushenka Parera of 20A Shirley Road, Roseville*
2. *Eloise Dalmas of Unit 9 / 6 Larkin Street, Roseville*
3. *Anthony Ray of Unit 12 / 6 Larkin Street, Roseville*
4. *Richard Blake of Unit 5 / 6 Larkin Street, Roseville*
5. *Helen Francombe of 24 Shirley Road, Roseville*

6. *Zara Pennicook of 6 Larkin Street, Roseville*
7. *Frank Walker of 4 Alexander Parade, Roseville*
8. *Emma Eddario of 4 Kings Avenue, Roseville*
9. *Francis Walker of 4 Alexander Parade, Roseville*
10. *Tanya Fielder of 12 Alexander Parade, Roseville*

The submissions raised the following issues:

Overshadowing by the proposed development

The applicant's shadow diagrams (DA.05.00Rev A and DA.05.01 Rev A) show that some mid-winter shadow is created principally to the dwelling of No. 15 Pockley Avenue from 9:00am to approximately 10:30am, and to the front lawns of properties to the south of Pockley Avenue opposite the site. However, the impacts are not significant, as the submitted shadow diagrams indicate more than 3 hours solar access will be retained to the dwelling house and private open space of these properties. The proposal complies with Control 10 of Part 7A.2 of KDCP, which requires retention of 3 hours solar access.

Solar access to northern ground floor Units resulting from a proposed retaining wall

The applicant's mid-winter sun-eye diagrams (DA.05.11 to DA.05.15) shows that the lower south-eastern ground level apartments (1.04 and 2.04) will be impacted by the existing dwellings, fronting Larkin Street, from 9am to 11am. However, a minimum 2 hours of solar access is provided under the Apartment Design Guidelines (ADG). The adjoining properties to the east, which front Larkin Street, also provide a building height limit of 29m. Due to the downward slope of land within the locality, it is likely that future development of the Larkin Street properties, will cast a greater shadow over the Site. A Site Analysis plan has not demonstrated a future scenario for shadow if higher density developments were to be developed. This issue is included as a reason for refusal (5 and 25).

Excessive building height and scale is inconsistent with existing low density development

The proposal does not comply with the building height development standard and a clause 4.6 request seeking to vary the standard has been provided. The clause 4.6 request is not supported for the reasons identified in reason for refusal 1.

Traffic impacts caused by increased vehicle density during peak hour at the MacLaurin intersection accessing the Pacific Highway and the cumulative impacts of traffic from other developments

The traffic impacts have been considered by Council's Team Leader Development Engineers and the proposal is acceptable in this regard. Refer to the engineering comments within the Internal Referral section of this report for additional information.

satisfactorily determine the impacts in this regard. As a result, the proposal is not supported in this regard. Refer to the engineering comments within the Internal Referral section of this report for additional information.

Overlooking and privacy impacts

Agreed, detrimental impacts relating to overlooking and privacy form reasons for refusal.

Social fabric impacts due to ever-increasing high rise development

The subject site and the adjoining land to the east and the south are zoned R4 High Density Residential under KLEP 2015 and permit higher density development. No concerns are raised in this regard.

View loss over existing tree canopy viewed from 20A and 24 Shirley Avenue, Roseville

Existing views from the rear of these properties are easterly, towards neighbouring properties and tree canopy areas within the existing low-density residential area. The proposal will not obstruct significant views.

The site is located within a R4 High Density Residential zoned area where substantial redevelopment is anticipated. Consequently, the character of the locality is expected to evolve over time from its current low-scale residential form to a higher density residential built form, changes to views/outlook of adjoining sites are an outcome anticipated by the change in zoning.

Water runoff created due to the steepness of the site with significant overflow impacting No. 15 Pockley Avenue

Council's Team Leader, Development Engineers, has considered Part 24D.2 of the DCP, which requires consideration of existing drainage systems. The objectives of Part 24.D primarily seek to ensure that existing drainage systems are not compromised, there are minimal effects on neighbouring properties, and protect new development from inundation or flood damage. The site has a downward slope from the eastern side boundary extending to the western side boundary. As shown within **Figure 8**, the western side of the site is mapped as Category 3 Riparian Corridor. Council's Team Leader, Development Engineers, advises the applicant's Flood Impact Assessment Report does not detail proposed floor levels above relevant flood levels, contrary to Part 24D.2 of the DCP, as no certification has been submitted by the applicants design engineer that shows 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. The issues of water runoff impacts and water management are discussed in detail in the following sections of this report and form reasons of refusal.

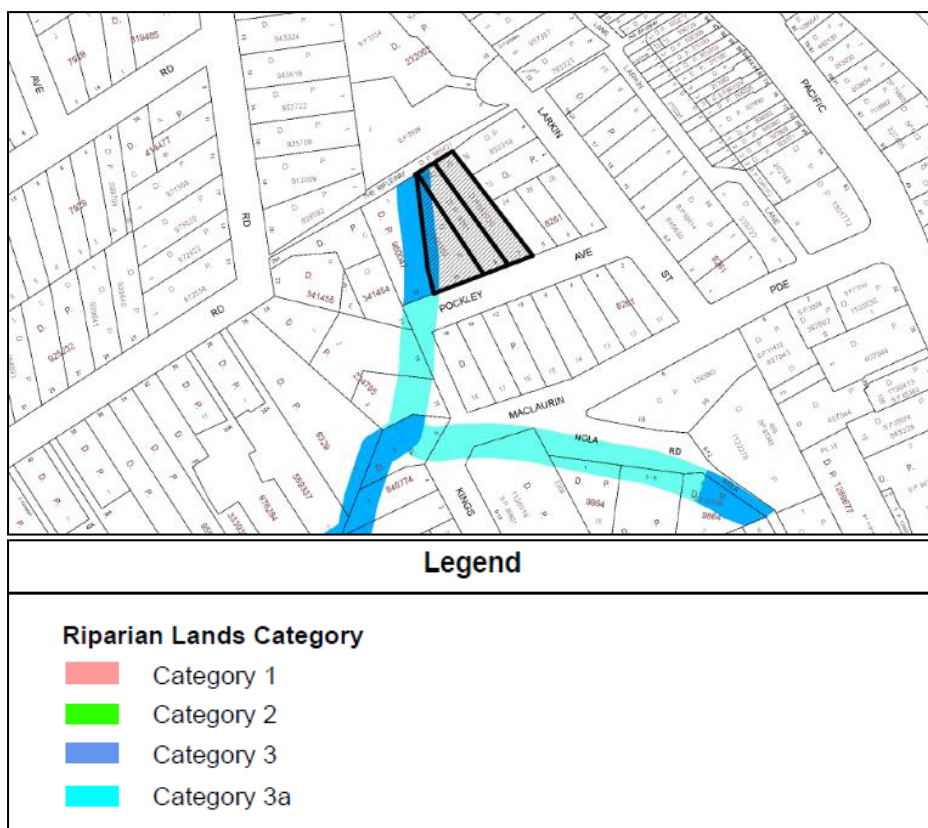


Figure 8: map showing site and riparian corridor

Additional trees for screening purposes be provided along the western portion of the site

Council's Senior Landscape and Tree Assessment Officer has considered the proposal and is satisfied that the submitted landscape plan is satisfactory for the provision of tall, medium and small trees for screening purposes. Refer to the landscape comments within the Internal Referral section for additional commentary.

Internal Referrals

Urban design

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

SEPP (HOUSING) 2021 (SEPPH):

Under SEPP Housing, Chapter 5, s155(2) the maximum building height is 22m and the maximum floor space ratio is 2.5:1, as detailed in s.155(4)(a). Section 156(1) and (2) of SEPP Housing requires residential flat buildings with a gross floor area of at least 2,000m² to provide at least 2% of its gross floor area of the building for use as affordable housing managed by a registered community housing provider in perpetuity. There does not appear to be any affordable housing provided. This aspect should be verified. The site has a street frontage of 61m, which meets SEPP Housing, s159, which requires a minimum lot width of 21m.

The aims of SEPPH Chapter 5 include the 'delivery of mid-rise residential flat buildings... around rail... stations that — are well designed, and are of appropriate bulk and scale, and provide amenity and liveability' (emphasis added) (SEPPH

150(b)(i-iii)). These objectives are not considered to be met (see below with regard to building height). In relation to overshadowing see the Apartment Design Guide assessment below with regard to future neighbours, potential to constrain neighbouring development, building separation to side boundaries, units with 2 hours solar access, units with no sun, overshadowing from future neighbours, and natural cross ventilation). These aspects should be addressed.

The proposed building height is 23.92m [DA.05.80A and Clause 4.6 p5]. This exceeds the maximum building height of 22m by 1.92m (8.7%). The areas that breach the height plane appear may have overshadowing impacts to properties to the west and south (see Apartment Design Guide below regarding overshadowing of future neighbours) [DA.05.11A to DA.05.17A]. This aspect should be addressed.

The stated gross floor area is 5,519.52m² [DA.05.30A]. This is equivalent to a floor space ratio of 1.78:1. This meets the requirements of SEPP Housing 155(4)(a) for a maximum of 2.5:1. It is noted that the gross floor area does not appear to be calculated correctly, including areas such as: areas of basement greater than 1m above the natural existing ground level (KDCP 7B.1 4 Note); excessive resident car parking (KDCP 7B.1 9); excessive visitor car parking (KDCP 7B.1 11); the thickness of walls to common vertical circulation such as lifts and stairs; and the thickness of walls to risers, however even including these items, the gross floor area would remain significantly under the maximum floor space ratio. This aspect is considered acceptable from an urban design perspective.

THE APARTMENT DESIGN GUIDE (ADG):

SEPP Housing, Chapter 4 Design of residential apartment development applies to the proposal as the development is for the purpose of a residential flat building (s144(2)(a)), and consists of the erection of a new building (s.144(3)(i)), that is at least 3 storeys (s144(3)(b)), and contains at least 4 dwellings s144 3(c)). SEPP Housing s147(1)(b) requires the consent authority to consider to the Apartment Design Guide. SEPP Housing, s161 also requires that consideration be given to the Apartment Design Guide.

The 'Sun-eye View' diagrams provided [DA.05.11A to DA.05.17A] indicate that the proposal will overshadow properties adjoining to the immediate west and to the south across Pockley Avenue, which are similarly mapped, as the subject site, as Transport Oriented Development Sites. No analysis appears to have been provided about the potential overshadowing impact of the proposal to the future development of these sites. Planning for solar access should not be on a 'first-in best-dressed' basis.

Consideration should be given to ensuring that adequate solar access is available to future developments and that their development potential is not constrained. This aspect may not meet ADG 3B-2 1, ADG 3B-2 2, ADG 3B-2 4 and ADG 3B-2 5 (also KDCP 7A.2 11). This aspect should be verified. To assist with this assessment, fifteen minute 'Sun-eye View' diagrams should be produced with envelopes shown on neighbouring sites to demonstrate the potential overshadowing impact of the proposal on surrounding properties.

The proposed building separation to the western side boundary at the fifth and sixth storeys (Level 03 and Level 04) is approximately 7.5m to 8.7m [DA.01.14A to DA.01.15A and DA.02.01A]. The proposed building separation to the eastern side boundary at the fifth storey (Level 4) is 6m [DA.01.15A and DA.02.01A]. This does not meet the requirements of ADG 3F-1 1 for a building separation of 9m from side boundaries for habitable rooms and balconies on the fifth and sixth storeys. This

aspect should be addressed.

31 of 42 (74%) units are stated as receiving a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter [DA.05.10A]. This meets the requirements of ADG 4A-1 1 for a minimum of 70%, however the solar access diagrams do not appear to be calculated correctly. It is noted that ADG 4A-1 1 requires that both 'living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight' (emphasis added). Based on the diagrams submitted, areas to check include: typical southwest corner unit balcony; typical south-eastern corner unit balcony; and topmost floor southern unit living room window. This would mean the proposal has 24 of 42 (57%) units receiving a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter (independent desktop review) [DA.05.11A to DA.05.17A]. This aspect should be addressed. Also, the north point detailed on the 'Sun-eye View' diagrams appears to be incorrect by approximately 15 degrees (independent desktop review). This aspect should be verified. Further, the 'Sun-eye View' diagrams provided do not anticipate that the properties uphill to the immediate east, downhill to the west, and to the north across The Rifleway, which are similarly mapped as Transport Oriented Development Sites, may redevelop to a similar scale, or even greater scale (using the SEPPH In-fill affordable housing bonuses). No analysis appears to have been provided about the potential overshadowing impact of a future development of these neighbouring sites on the proposal. The ADG defines solar access as 'the ability of a building to continue to receive direct sunlight without obstruction from other buildings...' (emphasis added) (ADG Glossary p181). Consideration should be given to ensuring that adequate solar access can be maintained with future developments and that their development potential is not constrained. This aspect should be verified.

9 of 42 (21%) units are stated as receiving no direct sunlight [DA.05.10A]. This does not meet the requirements of ADG 4A-1 3 for a maximum of 15%, however the solar access does not appear to be calculated correctly. It is noted that both living rooms and private open spaces must receive at least 15 minutes sun to not be counted as no sun apartments (ADG 4A-1 8 and Solar Access Requirements in SEPP 65 Technical Note p2). Areas to check include: typical southwestern corner unit balcony; and typical southeast corner unit balcony. This would mean the proposal has 17 of 42 (40%) units receiving no direct sunlight (independent desktop review) [DA.05.11A to DA.05.17A]. This aspect should be addressed. See also comments above regarding incorrect north point and impact of future development of neighbouring sites on the proposal.

33 of 42 (79%) units are stated as receiving natural cross ventilation [DA.05.20A]. This meets the requirements of ADG 4B-3 1 for a minimum of 60%, however the natural cross ventilation does not appear to be calculated correctly. It is noted that the ADG 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...' (emphasis added) (ADG Glossary p180), and defines a 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 building' (emphasis added) (ADG Glossary p178). Areas to check include: units located on 'indentations'/'notches' on side elevations which do not have the benefit of a leeward side of the building and are not located on an outermost corner of the building. This aspect should be addressed.

Proposed unit 1.04 is shown with an internalised bedroom [DA.01.12A]. This does not meet the requirements of ADG 4D-1 2 for every habitable room to have a window in an external wall and not borrow daylight and air from other rooms. This aspect should be addressed.

Several unit plans have open plan layouts with habitable room depths greater than 8m from a window (Units 1.02, 1.07 and typical over, 2.06 and typical over, 5.03, and 5.05) [DA.01.11A to DA.0.16A]. This does not meet the requirements of ADG 4D-2 2 for a maximum depth of 8m. This aspect should be addressed.

The common circulation space on Level 05 is internalised [DA.01.16A]. This does not meet the requirements of ADG 4F-1 4 for daylight and ventilation to be provided to all common circulation spaces. This aspect should be addressed.

The location of outdoor clothes drying areas do not appear to be identified. This does not meet the requirements of ADG 4U-1 2 (also KDCP 7C.9 1). This aspect should be addressed.

The location of air conditioning condensers appears to be on balconies (dashed rectangle) [DA.01.11A to DA.01.17A]. This does not meet the requirements of KDCP 23.6 6 and KDCP 23.6 7 to locate air conditioning condensers within the basement or on the rooftop. This aspect should be addressed.

KU-RING-GAI DEVELOPMENT CONTROL PLAN (KDCP):

The latest version of the Ku-ring-gai Development Control Plan is Amendment 6 and 7 made on 25 March 2024 (KDCP 1A.9).

The stated site coverage is 925.81m² [DA.05.50A]. This is equivalent to a site coverage of 29.9%. This meets the requirements of KDCP 7A.5 1 for a maximum of 30%, however the site coverage does not appear to be calculated correctly. Areas to check include: inclusion of the footprint of upper floor levels; not excluding the lift shafts; and using a current plan for the diagram. This aspect should be addressed. This aspect should be referred to Council's landscape section for comment.

The stated deep soil landscaping area is 1,554.6m² [DA.05.50A]. This is equivalent to a deep soil landscaping area of 50.2%. This meets the requirements of KDCP 7A.6 1 for a minimum of 50%, however the deep soil zone does not appear to be calculated correctly. Areas to check include: paths greater than 1.2m wide; and areas of planting between retaining walls less than 2m wide. This aspect should be addressed. This aspect should be referred to Council's landscape section for comment.

The proposed car park projects approximately 2.4m above existing ground level [DA.02.01A]. This does not meet the requirements of KDCP 7B.1 4 for a maximum of 1m, however, in this instance, the site is very steep and the location of the driveway in the fall of the land, and the openness of the western car park wall for ventilation (material/detail to be verified) is considered to be a positive design resolution. This aspect is considered acceptable from an urban design perspective (however see Apartment Design Guide above regarding storey count and building separation).

The large basement communal storage area at Upper Ground Level appears to be subterranean and not be separated from a tanked wall by an accessible maintenance passage [DA.01.11A]. This does not meet the requirements of KDCP 7C.3 4 or KDCP 7C.3 7. This aspect should be addressed.

Several units do not appear to be designed to Silver Level of the Livable Housing Design Guidelines (for example units 1.06 and 6.01 [DA.01.12A and DA.01.17A] do not appear to have a toilet pan with a minimum 1200mm clear circulation space forward of the toilet pan and/or a toilet pan located in the corner of a room to enable

the installation of grabrails (LHDG Element 4 p29)). This does not meet the requirements of KDCP 7C.4 3 for all units to be Silver Level. This aspect should be addressed. Silver Level accessibility templates should be shown clearly on all plans.

7 of 42 (17%) units appear to be nominated as being designed to Platinum Level of the Livable Housing Design Guidelines [DA.07.00A]. This meets the requirements of KDCP 7C.4 3 for 15% of units to be Platinum Level, however not all aspects appear to meet the required Platinum Level elements: units 1.07, 2.07, 3.07 and 4.07 do not provide a minimum corridor width of 1200mm near the entrance door (LHDG Element 3 p27); and all units do not provide a shower recess with a minimum dimension of 1160mm width x 1100mm length (LHDG Element 5 p33). This aspect should be addressed. Further, it is noted that unit LG.02 as shown on the Upper Ground plan [DA.01.11A] does not match the 'Livable Unit Plans' diagram [DA.07.00A]. This aspect should be addressed.

The location of mailboxes do not appear to be identified. This does not meet the requirements of KDCP 7C.5 8 This aspect should be addressed.

Major issues include: true north (to be verified); provision of affordable housing (to be verified); bulk and scale; amenity and liveability; overshadowing of future neighbours (to be verified); potential to constrain neighbouring development; building separation to side boundaries; units with 2 hours solar access; units with no sun; incorrect north point (to be verified); overshadowing from future neighbours (to be verified); and natural cross ventilation

Minor issues include: internalised bedroom; habitable room depth; internalised common circulation; location of outdoor clothes drying areas; location of air conditioner condensers; site coverage; deep soil; car park wall material (to be verified); subterranean basement storage area; Silver Level units; accessibility templates; Platinum Level units; and location of mailboxes.

Summary of Key Issues

SEPP (Housing) 2021 – Chapter 5 Transport-Oriented Development

- The site is mapped within a Transport-Oriented Development (TOD) Area, making a residential flat building permissible in the R2 Low Density Residential zone (SEPPH 152, 154).*
- The SEPP permits an increased height limit of 22m and FSR of 2.5:1 (SEPPH 155(2) and 155(4)(a)).*
- The proposal exceeds the permitted height, reaching 23.92m (8.7% breach), with potential overshadowing impacts requiring resolution.*
- The submitted GFA (5,519.52m²; FSR 1.78:1) is under the maximum, although several GFA calculation issues require correction. Even with adjustments, the FSR remains compliant.*
- Affordable housing (minimum 2% of GFA under SEPPH 156) does not appear to be provided. This requires confirmation.*
- The site frontage of 61m complies with the minimum 21m width requirement (SEPPH 159).*
- The aims of Chapter 5 (well-designed, mid-rise development of appropriate scale, amenity, and liveability) are not demonstrated to be met, particularly regarding height, overshadowing, and design quality.*

Apartment Design Guide (ADG) Considerations

- Overshadowing analysis does not assess impacts on future development potential of adjoining TOD-mapped sites. Sun diagrams require verification and*

refinement, including correction of the north point and modelling of potential future envelopes.

- *Building separation at upper levels (5th–6th storeys) is below the required 9m for habitable rooms (ADG 3F-1).*
- *Solar access compliance is doubtful:*
 - *Actual analysis suggests 57% (not 74%) of units receive the required 2 hours sunlight, below the 70% minimum (ADG 4A-1).*
 - *40% of units appear to receive no direct sunlight, exceeding the 15% maximum (ADG 4A-1).*
- *Natural cross-ventilation is over-stated; several units are not true corner apartments and do not meet ADG definitions.*
- *Several design non-compliances include:*
 - *Internalised bedroom (ADG 4D-1).*
 - *Habitable room depths >8m (ADG 4D-2).*
 - *Internalised common corridor on Level 05 (ADG 4F-1).*
 - *Missing outdoor clothes drying areas (ADG 4U-1).*
 - *Air-conditioning condensers located on balconies contrary to KDCP requirements.*

Ku-ring-gai Development Control Plan (KDCP) Issues

- *Site coverage and deep-soil calculations appear incorrect despite meeting numeric minimums; both require verification by Council's landscape team.*
- *Basement car park exceeds the 1m maximum projection above ground (KDCP 7B.1), though may be acceptable due to site topography and ventilation design.*
- *Subterranean communal storage lacks required separation from tanked walls (KDCP 7C.3).*
- *Several units do not meet Silver Level Livable Housing requirements; accessibility templates are incomplete.*
- *Platinum Level units (15% required) are nominated but do not meet several mandatory elements.*
- *Mailboxes are not shown (KDCP 7C.5).*

Major Issues

- *Accuracy of north point (to be verified).*
- *Lack of affordable housing (to be verified).*
- *Excessive bulk and scale.*
- *Overshadowing of future neighbours and constraints on neighbouring development potential.*
- *Insufficient building separation.*
- *Non-compliance with ADG requirements for solar access, units with no sun, and cross ventilation.*

Minor Issues

- *Internalised bedroom.*
- *Excessive habitable room depths.*
- *Internalised common circulation.*
- *Missing clothes-drying areas.*
- *AC condenser locations.*
- *Site coverage and deep-soil verification.*
- *Subterranean storage design.*
- *Silver/Platinum accessibility compliance.*
- *Inconsistent unit plans.*
- *Mailbox location not identified.*

The applicant was requested to address these concerns in the request for further information (RFI), as detailed in **Attachment 10** giving opportunity to respond to the issues raised, however, the applicant has not replied up until writing this report. It is agreed that the matters identified from the Urban Design Consultant, are relevant because, good design outcomes are beneficial to future occupants and the life of the development for the future.

Since the lodgement of the application and comments received from Council's Urban Design Consultant, Council's Alternate Scheme to the TOD SEPP was gazetted, which essentially permits a greater building height. However, other concerns remain. In this regard, the proposal provides several non-compliant matters and insufficient information to satisfy the provisions of the ADG and KDCP, which is discussed in detail in the following sections of this report and are included in the reasons of refusal.

Landscaping

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

SEPP (Sustainable Building: BASIX) 2022																		
Part 3 Aims	Proposed	Complies																
To encourage sustainable residential development	Certificate 1789842M_02 dated 7 April 2025 is submitted with the application.	NO																
	<table><tr><th>Stated in certificate</th><th>Actual (approximately)</th></tr><tr><td>Common Lawn area – 0m2</td><td>220m2</td></tr><tr><td>Common garden area - 500m2</td><td>1269m2 (Includes riparian area 527m2)</td></tr><tr><td>Indigenous/low water use -0m2</td><td>N/A</td></tr><tr><td>Unit 1.04 -0m²</td><td>36.6m²</td></tr><tr><td>Unit 1.06 - 0m²</td><td>38.6m²</td></tr><tr><td>Unit 6.01 - 0m²</td><td>53m²</td></tr><tr><td>Unit 6.02 - 0m²</td><td>67.7m²</td></tr></table>		Stated in certificate	Actual (approximately)	Common Lawn area – 0m2	220m2	Common garden area - 500m2	1269m2 (Includes riparian area 527m2)	Indigenous/low water use -0m2	N/A	Unit 1.04 -0m ²	36.6m ²	Unit 1.06 - 0m ²	38.6m ²	Unit 6.01 - 0m ²	53m ²	Unit 6.02 - 0m ²	67.7m ²
	Stated in certificate		Actual (approximately)															
	Common Lawn area – 0m2		220m2															
	Common garden area - 500m2		1269m2 (Includes riparian area 527m2)															
	Indigenous/low water use -0m2		N/A															
	Unit 1.04 -0m ²		36.6m ²															
	Unit 1.06 - 0m ²		38.6m ²															
	Unit 6.01 - 0m ²		53m ²															
	Unit 6.02 - 0m ²		67.7m ²															
The proposal is inconsistent with the landscape commitments within the BASIX certificate.																		

ADG			
Objective 3E-1 Deep soil zones	Proposed		
Deep soil zones are areas of soil not covered by buildings or structures within a development. They exclude basement car parks, services, swimming pools, tennis courts and	The proposal satisfies this part		
	Deep soil zones are to meet the following requirements:		
	Site Area	Min dimension	Deep Soil Zone (% of Site area)
	Less than 650m ²	-	7%
	650m ² – 1500m ²	3m	
	Greater than 1500m ²	6m	

<i>impervious surfaces including car parks, driveways and roof areas.</i> <i>Figure 3E.4 Pedestrian pathways and paving which is specifically designed for tree root growth can occupy up to 10% of the deep soil zone</i>	<table border="1"> <tr> <td data-bbox="537 188 820 331"> <i>Greater than 1500m² with significant existing tree cover</i> </td><td data-bbox="820 188 991 331"> <i>6m</i> </td><td data-bbox="991 188 1201 331"></td></tr> </table> <i>On some sites it may be possible to provide larger deep soil zones, depending on the site area and context:</i> <i>• 10% of the site as deep soil on sites with an area of 650m² - 1,500m²</i> <i>• 15% of the site as deep soil on sites greater than 1,500m²</i> <i>Site area = 3099.5m²</i> <i>Deep soil at 7% = 216.96m²</i> <i>Deep Soil at 15% = 464.9m²</i> <i>The proposed Deep Soil complies with 1050m² (approximately) with 6m minimum width and including 40m² of decking.</i>	<i>Greater than 1500m² with significant existing tree cover</i>	<i>6m</i>		
<i>Greater than 1500m² with significant existing tree cover</i>	<i>6m</i>				
<i>Deep soil zones should be located to retain existing significant trees and to allow for the development of healthy root systems, providing anchorage and stability for mature trees.</i>	<i>The proposal does not satisfy this part with the walled swale reducing available deep soil area for proposed trees.</i> <i>Design solutions may include:</i> <i>• basement and sub-basement car park design that is consolidated beneath building footprints</i> <i>• use of increased front and side setbacks</i> <i>• adequate clearance around trees to ensure long term health</i> <i>• co-location with other deep soil areas on adjacent sites to create larger contiguous areas of deep soil</i>	NO			
Objective 3F-2	Proposed	Complies			
<i>Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space</i>	<i>The proposal satisfies this part.</i> <i>Communal open space, common areas and access paths should be separated from private open space and windows to apartments, particularly habitable room windows. Design solutions may include:</i> <i>• fencing and/or trees and vegetation to separate spaces</i> <i>• raising apartments/private open space above the public domain or communal open space</i> <i>• planter boxes incorporated into walls and balustrades to increase visual separation</i> <i>• pergolas or shading devices to limit overlooking of lower apartments or private open space</i>	YES			

Part 4O-1 Landscape Design	Proposed	Complies
<i>Successful landscape design complements the existing natural and cultural features of a site and contributes to the building's setting</i>	<i>Tree planting in deep soil zones. The proposal satisfies this part, which:</i> <i>Site area greater than 1500m² requires:</i> <i>- One large tree or two medium trees per 80m² of deep soil zone</i> <i>Site Area - 3099.5m²</i> <i>ADG Deep soil -216.96m²</i> <i>Required Trees: 6</i> <i>Proposed and existing trees -13 large/tall trees.</i>	YES
Objective 4O-2 <i>Landscape design contributes to the streetscape and amenity</i>	<i>Landscape design responds to the existing site conditions including:</i> <i>- changes of levels</i> <i>- views</i> <i>- significant landscape features including trees and rock outcrops</i> <i>The proposal does not satisfy this part. The multiple walled entrance paths and driveway dominate the street frontage, reduce deep soil and impact street trees. Removal of separate entrances to ground floor units or consolidation of entry points with fire stair entry to reduce walling, filling and impact to street trees is recommended.</i>	NO
4P Planting on structures	<i>There is insufficient information to determine compliance with this part because soil depths are unable to be confirmed without top of wall levels to planters. The following is required:</i> <i>Large trees</i> (12-18m high, 16m crown spread) <i>Soil volume – 150m³</i> <i>Soil Depth – 1200mm</i> <i>Soil area – 10m x 10m</i> <i>Medium trees</i> (8-12m high, 8m crown spread) <i>Soil volume – 35m³</i> <i>Soil Depth – 1000mm</i> <i>Soil area – 6.0m x 6.0m</i> <i>Small trees</i> (6-8m high, 4m crown spread) <i>Soil volume – 9m³</i> <i>Soil Depth – 800mm</i> <i>Soil area – 3.5m x 3.5m or equivalent</i> <i>Shrubs</i> <i>500-600mm soil depth</i>	NO

	Ground cover 300-450mm soil depth Turf 200mm	
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KDCP COMPLIANCE TABLE								
Control	Proposed	Satisfies						
Part 7A.1 Local Character and Streetscape								
Provide a garden setting with building surrounded by landscape gardens, including canopy trees on all sides.	The proposal does not satisfy this part. The proposed rectangular swale limits proposed tree planting to the northern boundary.	NO						
Part 7A.6 Deep Soil Landscaping and Part 13 Tree and Vegetation Preservation								
C1. Residential flat development is to have a minimum deep soil landscape area:	The proposal does not satisfy this part. 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 up to 1.2m wide, stormwater pipes of 300mm or less diameter, lightweight fences; has a minimum width of 2m; is not used for car parking; and can be used for water sensitive urban design. <table><tr><td>Site Area</td><td>Minimum Deep Soil Landscaping</td></tr><tr><td>Less than 1800m²</td><td>40% of the site</td></tr><tr><td>1800m² or more</td><td>50% of the site</td></tr></table> Note: For the purpose of this section, the site excludes any access handle. Note: Certain sites in the B2 and B4 zones have a reduced maximum deep soil landscaping area. Refer to Section B, Part 14 - Urban Precinct and Sites Site Area -3099.5m² Deep Soil requirement -1549.75m² Proposed Deep Soil = 1195m2 (approximately). at minimum 2m width is 38.5%. Note that removal of the rectangular swale (1950mm width) and increase of the northern planter to a minimum 2m internal width result in 1459.6m² (47%) deep soil. Consolidation of pedestrian entry paths would	Site Area	Minimum Deep Soil Landscaping	Less than 1800m ²	40% of the site	1800m ² or more	50% of the site	NO
Site Area	Minimum Deep Soil Landscaping							
Less than 1800m ²	40% of the site							
1800m ² or more	50% of the site							

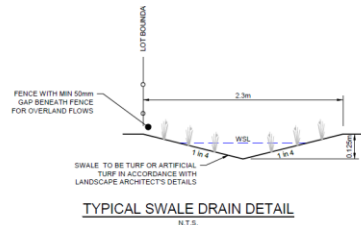
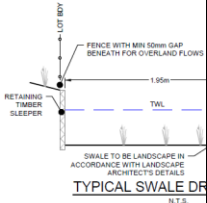
	further increase deep soil with the reduction in walling providing larger areas of more than 2m in width that can be included in calculations.	
C2. Deep soil zones are to be configured to retain healthy and significant trees on site and adjoining sites where possible.	The proposal does not satisfy this part. Tree removal The proposal includes the removal of 16 trees: Tree 5, 6 and 7 Camellia sp (Camellia) Tree 8 Acer buergeriana (Trident Maple) Tree 9 Polyspora axillaris Tree 10 Murraya paniculata Tree 12 Jacaranda mimosifolia (Jacaranda) Tree 15, 16 Syagrus romanzoffiana (Cocos Palm) Tree 22 Camellia japonica (Camellia) Tree 27 Ficus benjamina (Weeping Fig) Tree 29 Magnolia champaca (Himalayan Magnolia) Tree 32 Lagerstroemia indica (Crepe Myrtle) Tree 33, 34, 35 Triadaca sebifera (Chinese Tallowwood) T44 Liquidambar styraciflua (Liquidambar) Major encroachment from basement The removal of Trees 5, 6, 7, 8, 9, 10, 15, 16, 22, 27, 29, 32, 33, 34 and 44 is acceptable due to either exempt species, being within the footprint of the building or small in size. The removal of Tree 12 Jacaranda mimosifolia (Jacaranda) is not acceptable, as this tree is sufficiently setback from the works to allow for retention and Tree 35 could be retained with design amendments. These are reasonably sized and would provide instant visual amenity and assist in balancing the built form with soft landscaping which are key objectives of the DCP.	NO

	Tree impacts <i>The following trees are impacted by the proposal:</i> - Trees 1 and 2 and 21 <i>Cinnamomum camphora</i> (Camphor laurel) /Street tree: There is a major encroachment from proposed walling and stormwater within the Notional Root Zones of the trees may impact root systems. The Arborist report also states that where there are existing walls they are to be retained to protect the tree roots and maintain existing ground levels. - Tree 3 <i>Camellia</i> sp (<i>Camellia</i>): Major encroachment from proposed walling and stormwater. - Tree 4 <i>Polyspora axillaris</i> – (<i>Fried Egg Plant</i>): Major encroachment from proposed walling and stormwater - Tree 11 <i>Eucalyptus grandis</i> (<i>Flooded Gum</i>): Major encroachment from planter retaining walls within the tree's structural root zone (SRZ), deck and basement. The solution is to remove proposed planters from within the TPZ of Tree 11. - Tree 14 <i>Eucalyptus grandis</i> (<i>Flooded Gum</i>): Retaining wall construction and basement cut will be a minor encroachment. - Tree 18 <i>Casuarina glauca</i> (<i>She Oak</i>): Minor impact from proposed stormwater, which is acceptable. - Tree 41 <i>Populus deltoides</i> (<i>Eastern Cottonwood</i>): Basement construction is a minor encroachment and elevated boardwalk, which has an acceptable encroachment providing hand excavation for piers. - Tree 46 <i>Cyathea</i> sp. (<i>Tree Fern</i>) The elevated boardwalk is an acceptable major encroachment providing there is hand excavation for piers. - Tree 48 <i>Populus deltoides</i> (<i>Eastern Cottonwood</i>) Basement is a minor encroachment and elevated boardwalk an acceptable encroachment providing hand excavation is undertaken for piers. - Trees 11,12,13,14,17,25,24,26,41,45, 46,47 and 48 are impacted by the proposed stormwater lines, which are a major encroachment within the SRZ's. Applicant is to review the option to relocate the two 225mm stormwater lines against the southern and north-western	
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	side of the proposed building. - Trees 2,3 and 4: The proposed swale to the northern boundary is a major encroachment. - Tree 21 <i>Cinnamomum camphora</i> (Camphor laurel): The proposed boundary wall, entry paths, fill, stormwater and cut for the basement are a major encroachments within the tree protection zone of this tree. The proposed wall and stormwater line to the eastern front boundary are a major encroachment and there is no existing front wall acting as an existing root barrier. There is an option to relocate the stormwater or provide root mapping and pipe levels to demonstrate no impact or the lines can be under bored if necessary. The applicant should review options to locate pedestrian path off the proposed basement path or delete access to reduce impact on Tree 21 and retain existing ground levels. Demolition to be supervised where near Trees 1, 2, 11, 14, 21, and 41. This could be conditioned. Trees not impacted by the proposed works are: Trees,18, 19, 20, 23, 28, 30, 31, 36, 37, 38, 39, 40, 42, and 43.	
C3. Deep soil zones are to be configured to allow for required tree planting including tall tree planting and garden and screen planting at front, side and rear boundaries	The proposal satisfies this part	YES
C4. Deep soil landscaping is to be provided in the common areas as a buffer between buildings that softens the bulk and scale of the buildings	The proposal satisfies this part	YES
C7. Tree replenishment and planting.	The proposal satisfies this part. Lots with the following sizes are to support a minimum number of tall trees capable of attaining a mature height of at least 18m on shale,	YES

	transitional soils and 15m on sandstone derived soils. <table><tr><td>Lot Size</td><td>Number of Tall Trees</td></tr><tr><td>1,801m² +</td><td>1 per 300m² of site area or part thereof</td></tr></table> The minimum number of trees required for the site of 3099.5m² is 10 trees. The proposal retains 5 tall trees and proposes 8 tall trees.	Lot Size	Number of Tall Trees	1,801m ² +	1 per 300m ² of site area or part thereof	
Lot Size	Number of Tall Trees					
1,801m ² +	1 per 300m ² of site area or part thereof					
C8. In addition to tall trees, a range of medium, small trees and shrubs are to be selected to ensure that vegetation softens the built form and creates a garden setting. At least 50% of all tree plantings are to be locally occurring trees and spread around the site.	The proposal satisfies this part.	YES				
C9. Trees are to be planted within all setback areas. At least 30% of the required number of tall trees are to be planted within the front setback	The proposal satisfies this part. The proposed trees to frontage included 3 x Syncarpia glomulifera, 6 x Elaeocarpus sp., 6 x Livistonia sp., 4 Hymenosporum sp. and 1 x Glochidion sp.	YES				
Part 7C.2 Communal Open Space						
C7. The location and design of the Primary communal open space is to optimise opportunities for active and passive social and recreation activities, solar access and orientation.	The proposal does not satisfy this part. The proposed fixed bench seating to the rooftop terrace is located too close to edge of the building providing a safety issue with the potential step up to the edge. Bench seating should be relocated a safe distance from the edge. Accessible access to the Communal Open Space within the southern setback via the southern boardwalk is not indicated consistently on the architectural and landscape plans. Some of the plans indicate steps and other plans indicate	NO				

summer shade, outlook, and maintain the privacy of residents on adjoining sites zoned differently for lower density residential development sites.	ramps.	
C9. Communal open space is to be integrated with any significant natural feature(s) of the site and soft landscaping areas	The proposal satisfies this part.	YES
Part 7C.5 Building Entries		
To soften the impact of hard landscaping within the site. C12. Building entry paths are to be a minimum 1.2m wide and located within the common area with a minimum dimension of 1.2m on either side for landscape planting.	The proposal satisfies this part.	YES
Part 21 General Site Design		
21.1 Earthworks and Slope C3.Landscape cut or fill should not be more than 600mm above or below natural ground line.	Pedestrian access to unit LG.02 and LG.03 results in fill of more than 1m. Deletion of the paths would allow for retention of existing levels to the frontage. Due to proximity to main pedestrian entry to apartments, additional paths are not necessary.	NO
C4.A minimum 0.6m width is required between	The proposal satisfies this part.	YES

retaining walls.		
C5. Existing ground level is to be maintained for a distance of 2m from any boundary.	Existing ground level has not been maintained for 2m from any boundary. A wall is proposed to part of the northern boundary along the eastern side where the rectangular swale is proposed for stormwater. The rectangular swale consists of a timber retaining walls along the boundary and masonry wall set back 1.95m from boundary wall. The swale is 250mm deep. The proposed swale wall to the boundary impacts trees located within a neighbouring property. A review of options should be explored to setback the rectangular swale from the boundary and adjacent proposed planter walls to terraces to retain existing levels along the boundary and to protect trees within neighbouring property. Landscape plans indicate a wall to the full length of the northern boundary which is not required where the 2.3m wide V-shape swale is proposed. The swale depth is 125mm with 1:4 batters. A v-shape swale is required to remain along the boundary to reduce impacts on existing trees on site. The landscape plans are also be amended to ensure consistency with the stormwater plans.  <u>V-SHAPE SWALE CHANNEL CAPACITY CALCULATIONS</u>  <u>RECTANGULAR SW CAPACITY CALC</u> Proposed walling to the front boundary does not retain existing levels and impacts existing street trees. No. 9 Pockley Avenue does not have any existing front wall and Nos. 7 and 11 have low or stone walls.	NO
C8. Retaining walls, excavated and filled areas are to be located and constructed to have no adverse impact on iii) trees and	The proposal does not satisfy this part. Refer to comments under Part 7A.6 and Part 13 above	NO

vegetation to be retained on site or on adjoining sites.		
21.2 Landscape Design To ensure the landscape design and species selection is suitable to the site its context and considers the amenity of residents and neighbours.	<i>The landscape plan is not acceptable.</i> <i>The applicant needs to provide additional mid-storey and groundcover planting to the biodiversity mapped area to the northern corner of the site with Blue Gum High Forest species. This is required to supplement the existing and proposed planting. The proposed Banksia spinulosa needs to be replaced with BGHF species.</i> <i>The Plant symbol DE indicated on the Landscape Plan is not included in the plant schedule.</i> <i>Proposed planting density to the area to the south-western corner of the site, adjacent to the driveway is insufficient with 16 Westringia shrubs against the wall of the driveway, 1 tree and 7 Hibbertia to the front boundary. Increase number of shrubs to ensure area fully landscaped.</i> <i>The landscape plans do not indicate the stormwater swale to the northern side boundary. Further, a wall is positioned across the swale which is inconsistent with stormwater plans.</i> <i>The applicant is to confirm if the 'V' section swale to the north-western boundary needs to be turfed as per engineering detail and if the proposed rectangular channel to north-western boundary can be planted out as per landscape plan.</i> <i>The proposed Angophora to northern boundary is not suitable to plant within the rectangular walled swale. If the swale is set back from boundary adequate room can be provided for tree planting. Refer to the comments under Control 5, Part 21.1 regarding the swale location and engineering comments.</i> <i>The applicant needs to clarify why the pedestrian fire exit path needs to step up at boundary from existing ground level only to then have to step down to the basement.</i>	NO
Part 23 General Building Design and Sustainability		
23.5 Roof Terraces and Podiums To encourage	<i>The proposal does not satisfy this part.</i> <i>Top of wall levels to planters have not been provided. The applicant is required to provide top</i>	NO

<i>use of low maintenance planting and low water use on roof terraces and podiums with appropriate support systems</i>	<i>of wall levels to ensure planters meet the following soil depths:</i> <i>Minimum soil provision for a range of plant sizes must be in accordance with the following:</i> <i>i. large trees (canopy diameter of up to 16m at maturity) - minimum soil volume 150m³ - minimum soil depth 1.3m - minimum soil area 10m x 10m area or equivalent</i> <i>ii. medium trees (8m canopy diameter at maturity) - minimum soil volume 36m³ - minimum soil depth 1m - approximate soil area 6m x 6m or equivalent</i> <i>iii. small trees (4m canopy diameter at maturity) - minimum soil volume 11m³ - minimum soil depth 0.8m - approximate soil area 3.5m x 3.5m or equivalent</i> <i>iv. shrubs - minimum soil depth 0.5-0.6m</i> <i>v. ground cover - minimum soil depth 0.3-0.45m</i> <i>vi. turf - minimum soil depth 0.1-0.3m</i> <i>Note: Any subsurface drainage requirements are in addition to the minimum soil depths quoted above.</i>	
23.9 Construction, demolition and disposal C2. An environmental site management plan showing tree protection area, machinery usage zones, storage areas, site sheds and location of stormwater pollution barriers is to be submitted with the application as per Council's DA Guide.	<i>An adequate Environmental Site Management Plan (ESMP) has not been submitted because tree protection fencing has not been indicated on Plan. When designing, storage and facilities are not to be located within the Notional Root Zone (NRZ) of street trees.</i>	NO

The Applicant was issued an RFI (**Attachment 10**) letter giving opportunity to respond to the issues raised, however, the applicant did not reply.

Notwithstanding the above, the proposal provides non-compliant matters and insufficient information to satisfy the provisions of the ADG and KDCP, which is discussed in detail in the following sections of this report and are included in the reasons of refusal.

Engineering

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

Water Management

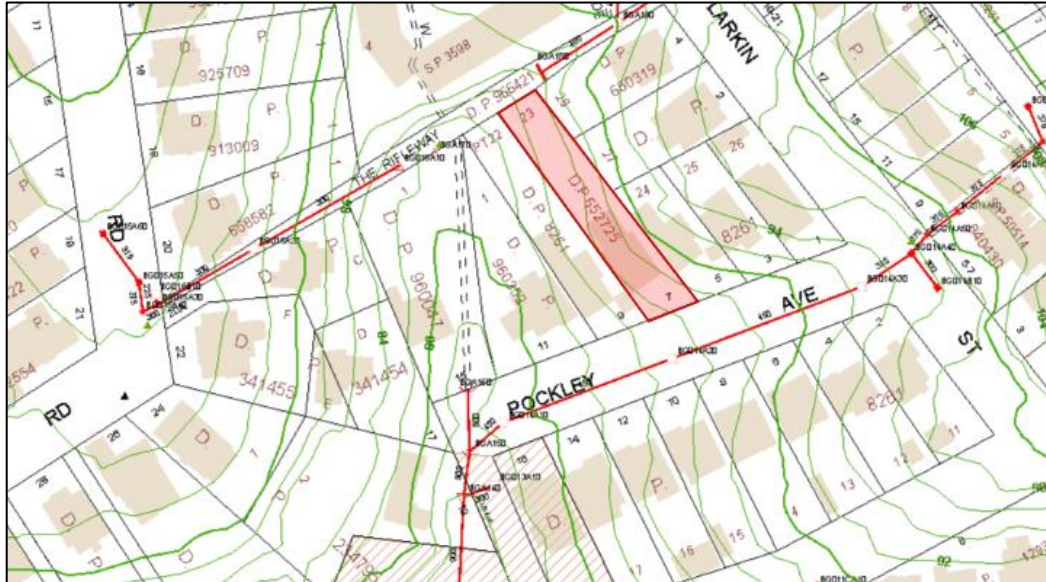


Figure 9: plan showing drainage lines within the road network

The stormwater plans show all roof areas to be collected and conveyed to a combined detention and retention tank of 63.06m³ and 12,370 l respectively, located beneath the driveway area. The overflow from the detention system is directed to the bottom of the existing drainage channel via a 225mm pipe located in Pockley Avenue.

The sizing of the detention system complies with Part 24C.5 of the DCP. An emergency overflow weir within the OSD has also been provided in case of blockage, which is acceptable.

The design also incorporates suitable inlet pits within the landscaped area to capture surface water flows prior to connection into the proposed stormwater system. The stormwater pits are acceptable to prevent surface flow directed to the downstream properties.

A BASIX Certificate has been submitted, with no water commitments required. The stormwater plan shows a rainwater tank with a total storage capacity of 100,000l with re-use to be provided for irrigation purposes only. The water balance model submitted proposes to reduce the site runoff days by 90.9% by providing irrigation to 1592m² of landscaped areas, car wash and for internal toilet flushing, which satisfies Council's streamflow objectives under Part 24C.3 of the DCP.

A pump-out pit of 5m³ within the basement has been shown to capture portion of the driveway and basement perimeter area of 34.2 m². The pump-out tank has been designed based on the 100-year, 2-hour storm event, as required under Part 24B.5 of the DCP and relevant Australian Standards. It will be conditioned to have the rising main from the pump-out pit to be conveyed to the on-site detention (OSD) tank.

The pollutant load standards set out in Part 24C.6 of the DCP are satisfied. A proprietary pollution device comprising 10 x 'StormFilters within the OSD tank has been provided as a stormwater quality measure to improve stormwater runoff quality from the subject site.

Overland Flow Assessment

The subject site is impacted by overland flows, as shown in **Figure 10** below. The topography and drainage patterns of the subject site are generally as follows:

1. The site falls from the north-east to the south-west, with an overland flow path near the western portion of the site.
2. External catchment upstream flows are primarily to the west of the site and drains to a local depression to the south-western part of the site. It then continues traveling downstream to the south. Flows located at Pockley Avenue travel from the eastern to the western sag point.

A Flood Assessment Report prepared by Telford Consulting Pty Ltd has been carried out to consider the following:

- i. surface runoff across the catchment.
- ii. flooding towards the lower part of the catchment.
- iii. flooding impact on the subject site.

According to the design engineer, the developed scenario for the 1% Annual Exceedance Probability (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.

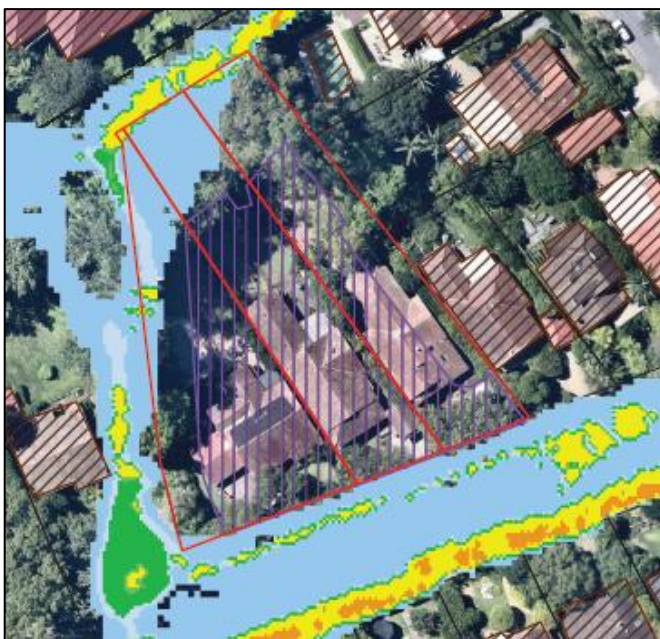


Figure 10: plan showing overland flows

The subject site is classified as being generally hazard category H1 with minor pockets ranging between H2 to H5 (H1 being generally safe for vehicles, people and buildings and H5 being unsafe for vehicles and people. All building types vulnerable to structural damage. Some less robust building types vulnerable to failure). As a result, future occupants will not be exposed to risks associated with the hazardous areas identified within the site being present away from the habitable areas, as the site is assessed as an H1 flood hazard area

The report concludes that the subject site is minorly flood affected during the 100-year storm event near the western area of the site and that the proposed development will not cause adverse impacts on floodplain storage.

The applicant claims the minimum floor levels for the proposed development meet the design requirements levels, as stated within Section 6 of the Flood Impact Assessment Report, however, this statement hasn't been certified by a design engineer, which is required and consequently forms reason for refusal 3 and 27.

A Flood Risk Management Plan has been provided within the flood assessment which is to be adhered to if consent is granted.

Car Parking and Vehicular Access

Access and Circulation Design

A new 6.5m wide combined entry/exit driveway off the Pockley Avenue site frontage for two-way traffic flows has been provided, in accordance with "Category 2" requirements of AS2890.1.

The driveway gradient of 5% for the first 6m, as per AS2890.1:2004 has been provided.

A swept path analysis using AS2890.1:2004 B85 and B99 design vehicle has been submitted within the Appendix of the Traffic Report for the critical spaces, which demonstrates vehicles can safely enter and exit the carpark including the critical spaces in a forward direction.

Traffic generation and associated impacts – Council's Strategic Traffic Engineer comments:

The Traffic and Parking Assessment Report (TPAR) has calculated the traffic generation of the site using the industry accepted traffic generation rate for high density residential developments close to transport (0.19 vehicle trips in AM peak hour and 0.15 vehicle trips in PM peak hour, 2-way) set out by Transport for NSW in the Guide to Transport Impact Assessments. Applying these rates would result in the following additional peak hour vehicle movements:

- *AM peak hour: 6 vehicle trips (2-way) per hour.*
- *PM peak hour: 4 vehicle trips (2-way) per hour.*

No operational assessment of this intersection was carried out in the TPAR, presumably because it noted that vehicle movements of this magnitude (an average of 1 additional vehicle trip every 10-15 minutes) would have not have any noticeable or unacceptable effect on the road network serving the site in terms of road network capacity or traffic-related environmental effect, which is agreed.

In terms of the wider transport context, Council's Strategic Planning section commissioned transport consultants to assess the cumulative impacts in Roseville reflective of the NSW Government's higher residential development policy - Transport Oriented Development (TOD) and Council's alternative scenario. At this point, the study indicates that the existing Level of Service of the intersection of Pacific Highway/Clanville Road/Shirley Road is C in the AM peak (satisfactory operation) and A in the PM peak (good operation).

This development (in isolation) is unlikely to significantly impact on the operation of the intersection, but with the full roll-out of the NSW Government's TOD in Roseville, intersection operation will deteriorate to Level of Service B (satisfactory operation) in the AM peak and Level of Service D (operating near capacity) in the PM peak. While improvements to the intersection are possible and are being planned, these can be costly and have not been considered or approved by Transport for NSW or Council.

Parking provision and design

Car Parking

The following apartment breakdown was provided as part of the TPAR:

Use	Market Housing	Affordable Housing
Studio	-	-
1 bedroom	2	-
2 bedroom	15	-
3+ bedroom	25	-
Total	42	-

Car parking provision has been assessed against the requirements of the TOD SEPP and the Ku-ring-gai DCP:

Parking type	TOD SEPP requirement	Ku-ring-gai DCP requirement	Proposed
Residential - Market	39	52-71	73
Residential - Affordable	-	-	-
Visitor	-	7	11
Car Wash Bay	-	shared with visitor parking bay	Not shown
Loading Bay	-	1	1
Total	39	60-79	85

The proposed residential parking provision meets the requirements of the TOD SEPP but exceeds the requirements of the Ku-ring-gai DCP by 2 resident car parking spaces and 4 visitor car parking spaces. Control 9 of Section 7B.1 of the DCP notes that car parking exceeding the requirements of the parking controls for residential flat buildings within 800 metres walking distance of a railway station entry will not be excluded from the Gross Floor Area as defined in the Ku ring gai Local Environmental Plan (KLEP).

Car share spaces

The DCP does not require car share spaces for residential developments of less than 90 dwellings. As part of this assessment though, given the site's proximity to transport, shops and amenities, the proposed parking should be reduced and supplemented with car share vehicle/s to provide access to additional travel options and reduce reliance on on-street parking. Conditions like the following could be imposed:

- 1. At least 1 space on lower ground level is to be reserved for car share operation, with no charge to the car share operator to use the space/s.*
- 2. The space/s must be available/accessible to verified members of the car share scheme (including members who are not residents of the development) and should be well-lit with safe pedestrian access.*
- 3. These spaces must be contracted to an operator (a car share provider that has been approved by the responsible authority) with evidence of agreement submitted to Council prior to issuing of an Occupation Certificate.*
- 4. Car share vehicles must be operational within 4 weeks of issue of the Occupation Certificate.*
- 5. The agreement must ensure appropriate insurance and vehicle maintenance is in place, including public liability.*
- 6. Since car share spaces are located in the basement, sufficient cellular communications connectivity must be available at the location of the car-share spaces to ensure proper car share management/operation.*

Bicycle Parking

The number of bicycle parking facilities for residents and visitors is provided in accordance with the DCP.

Resident bicycle parking is proposed to be in a secure bike parking area on the lower ground level. Visitor bicycle parking is also located on the lower ground level. The entry ramp and the bicycle/pedestrian lane are relatively flat, and a separate gate at the basement entry provides dedicated access to the bicycle parking facilities. This is an acceptable arrangement, however it is recommended that remote/intercom access be provided at this gate, so visitors have easy communication with the occupants.

Electric Vehicles (EVs)

In accordance with the DCP, EV readiness is to be provided for all car parking spaces within the development, with design and construction (provision for conduits, switchboards, electrical capacity etc) to enable installation of electric vehicle charging points that are linked to each individual dwelling electricity meter. While this has not been specifically demonstrated in any of the documentation, this could be conditioned.

Access Point

A 6.5m wide access point at the property boundary is proposed (which is acceptable), coupled with an adjoining 1.5m wide bicycle/pedestrian access way. Between the property boundary and the access gate to the basement car park, the bicycle/pedestrian access way should be delineated with line-marking to offer visual separation.

There is a minor non-compliance in the provision of the 2m x 2.5m sight triangle as per AS2890.1 (shown in red below), but this could be conditioned to be corrected:

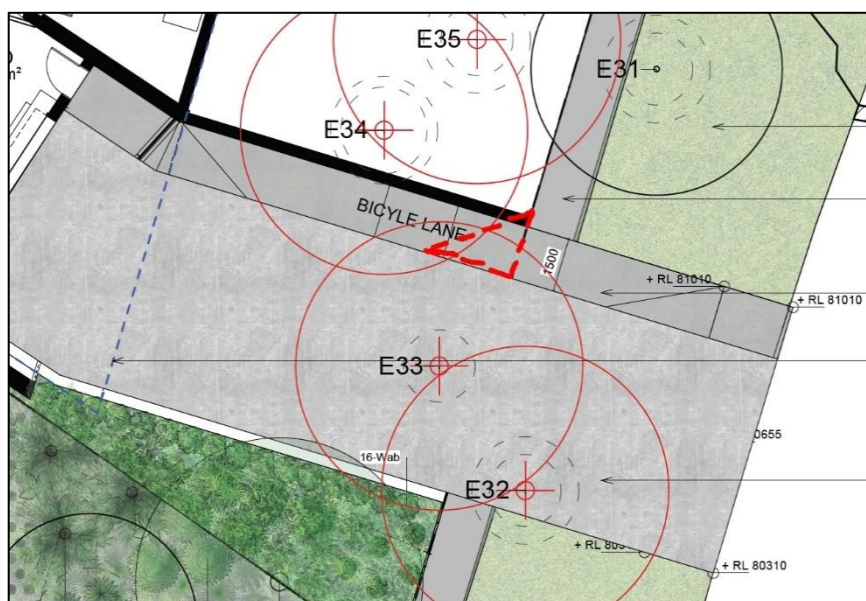


Figure 11: plan showing sight line as dashed colour red

In accordance with Section P of Council's Traffic and Transport Policy, 'No Parking' restrictions for 6m on either side of the driveway are to be implemented prior to occupation.

To facilitate home deliveries (e.g. groceries, parcels etc), bulky goods waste collection and other service vehicles that cannot access the basement due to the 2.6m height clearance, the development should also provide an on-site loading area (a separate hardstand area is not permitted). The position of the loading area 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 is to be provided to cater for a minimum 6.7m long service vehicle. The loading space/s should be line marked and/or signposted as a designated loading area. Requests for an on-street Loading Zone will not be considered.

Note that if the car parking numbers are reduced as recommended above, a 6m wide access point will still be required, to facilitate larger service vehicles that cannot access the basement.

Construction Management

An indicative construction traffic management plan (CTMP) has been provided within the Traffic Report. Due to site and road network constraints, rigid trucks can only be used with a maximum length of 11m. This applies across all three stages. In this regard, trucks will be able to load/unload on site during the demolition and excavation stages, noting all trucks are to exit the site in a forward direction.

In the event of an approval, it should be conditioned that a detailed construction management plan (CTMP) will need to be submitted prior to the issue of the

construction certificate showing the construction vehicle routes for the southbound and northbound directions, largest vehicle to be used entering and exiting the site for the demolition, excavation and construction stages, stockpiles and all necessary tree protection fencing.

It is understood that whilst all loading and unloading will occur within the site, a Works Zone may also be applied for directly outside the site frontage, noting the opposite side of the road will likely require the installation of No Stopping restrictions. In this instance a Work Zone condition is recommended to this effect, including the need for approval by Council's Traffic Committee and the payment of the necessary fees, should the application be approved.

Waste Management

According to the Waste Management Report, based on the estimated waste generated by the residential component of this development, the recommended bin quantities are as follows:

- i. general waste: 8 x 660L bins
- ii. cardboard/paper recyclables: 4 x 660L bins
- iii. co-mingled recyclables: 4 x 240L bins
- iv. FOGO waste: 7 x 240L bins

The waste garbage and bulk waste room can provide the required number of bins for waste, paper and recycling.

A swept turn path of Council's 6.7m long waste collection vehicle has also been prepared within the appendix of the Traffic Report demonstrating the ability for the truck to enter and exit the site in a forward direction, and to turn around within the lower ground floor parking area and access the loading bay.

A longitudinal section through the driveway and into the basement loading bay area to clearly demonstrate that there will be 2.6m clear headroom along the whole of the travel path is required for the small waste collection vehicle as required under Part 25A.3 of the DCP. The section must include realistic slab/beam depths, stormwater pipelines and other overhead services.

Impacts on Council Infrastructure

Council's Design Engineer has suggested that kerb and gutter is required approximately mid-way from the existing swale drain to existing edge of asphalt, along with road pavement construction between the existing asphalt and new kerb and gutter. This is also to keep the kerb and gutter away from the trees and reduce the crossfall from gravel shoulder to asphalt.

There is a requirement also to provide a kerb inlet pit near the bottom and a pipe to the existing pipe at the headwall outside No. 15 Lockley Avenue. This would require modification of the headwall. The proposed drainage would need to be connected to the new kerb inlet pit via a 225mm pipe as proposed discharging to the existing swale will not be supported.

It would be better to keep the water from the northern side within the northern side, rather than risk it leading to a surcharge from the pipes on the southern side and running into the houses on the low side.

An existing footpath along the site's frontage will need to be reinstated. The application is to be approved including a stormwater pipe across the road to connect to Council's existing trunk drainage system. Detailed design drawings for these works will be assessed by Council's Operations Department for approval under the Roads Act. Works will also need to include upgrades to the nature strip for the removal of the existing pipe driveway crossings. No occupation certificate should be issued until the works are completed to the satisfaction of Council.

Geotechnical Investigation

The geotechnical investigation carried out on site was primarily a desktop study. No geotechnical assessment was carried on the site, which is required by Council's DA Guide. As a result, there is insufficient information to enable determination of the proposal's compliance with the objectives of Clause 6.2 of the LEP, Part 21.1 of the DCP. The geotechnical report submitted does not determine the site-specific subsurface profile and geotechnical parameters. The geotechnical investigation should involve at least three (3) cored boreholes within the site down to bedrock. The report is to contain recommendations for excavation methods and support, vibration monitoring, dilapidation survey etc. Groundwater levels are to be recorded to determine if permanent dewatering will be required, in which case the DA may require referral to NSW Office of Water for licensing conditions (Integrated).

The applicant was issued an RFI (**Attachment 10**) letter giving opportunity to respond to the issues raised, however, the applicant has not replied at this point.

Notwithstanding the above, the proposal provides non-compliant matters and insufficient information to satisfy the provisions of the ADG, LEP and KDCP, which is discussed in detail in the following sections of this report and are included in the reasons of refusal.

Environmental Health

Council's Environmental Health Officer commented on the proposal as follows:

The submitted architectural plans show air conditioning condensers on balconies, which do not meet Part 23.6 of the DCP. Council may consider an application with air conditioning condensers on balconies provided the applicant is able to display compliance with noise criteria for condensers.

Architectural plans do not display the waste storage facilities floors graded and appropriately drained to the sewer. A tap with hot and cold water is to be in close proximity to facilitate cleaning.

Balconies areas (m²) are to show area compliance with ADG. Noise and screening details to be provided. If the development were to be supported, relevant conditions are recommended to mitigate the above concerns. Notwithstanding the above, the proposal provides non-compliant matters and insufficient information to satisfy the provisions of the ADG and KDCP, which is discussed in detail in the following sections of this report and are included in the reasons of refusal.

Building

Council's Senior Building Surveyor has advised that the proposed development would generally be capable of achieving compliance with the BCA requirements. A detailed BCA assessment

will be required to be undertaken by the Certifier at the Construction Certificate stage.

STATUTORY PROVISIONS

Biodiversity Conservation Act 2016

The purpose of the Act is to maintain a healthy, productive and resilient environment.

The vegetation within the subject property is consistent with plant community type (PCT 3136) Blue Gum High Forest (BGHF) which is listed as a Critically Endangered Ecological Community (CEEC) under the *Biodiversity Conservation Act 2016*. A biodiversity development assessment report (BDAR) was submitted with the application. Council's Ecological Assessment Officer raises no concerns about the development.

State Environmental Planning Policy (Planning Systems) 2021

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

The SEPP identifies the proposed development as being regionally significant development having an estimated development cost of \$33,649,509.00, which is above the \$30 million threshold specified by Clause 2 of Schedule 6. Reference is made to the Estimated Development Cost Report that forms part of this DA package. Accordingly, the SNPP is the consent authority for this application.

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

The provisions of Chapter 4 require Council to consider the potential for a site to be contaminated. The subject site has a history of residential use and as such, it is unlikely to contain any contamination and further investigation is not warranted in this case.

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

In accordance with Chapter 2 and Schedule 1 of the SEPP, a valid BASIX certificate has been submitted. The proposal is inconsistent with commitments identified in the Certificate as it relates to the proposed private and common garden and lawn areas. This discrepancy may impact the proposed water usage for the site.

State Environmental Planning Policy (Biodiversity & Conservation) 2021

Chapter 6 Water catchments

Part 6.6 Water quality

The site is located within a regulated catchment. Council's Team Leader, Development Engineers, has considered the provisions of Clause 6.6 'Water quality and quantity' in the assessment of the proposal. The proposal is acceptable in this regard as the drainage will be captured on-site and directed to Council's drainage network. For more details refer to the Internal Referrals discussion earlier in the report.

Part 6.8 Flooding

Part 6.8 requires consideration of flooding to avoid risks and ensure there are safe areas.

Council's Team Leader Development Engineers has considered the submitted Flood Report. The flood report is deficient, lacking details of floor levels and their relationship to flood levels to ensure there is sufficient freeboard. These issues are reflected in reasons for refusal **3** and **27**.

State Environmental Planning Policy (Housing) 2021

SEPP Housing contains several principles, including the promotion of the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services.

The subject application seeks development consent for a residential building on land that is zoned R2 Low Density Residential (*relevant residential zone*). The site is located within a mapped Transport Oriented Development area. The application does not seek to provide in-fill affordable housing under the minimum affordable housing requirements under Chapter 2 of SEPP Housing.

The relevant Sections of 4 and 5 of SEPP Housing are considered below.

Chapter 4 – Design of residential apartment development

Consideration has given to the design principles set out in Schedule 9 of SEPP Housing in the urban design referral comments earlier in the report. The proposed development is inconsistent with all nine of the design quality principles, which are reflected in recommended reasons for refusal Nos 1, 4, 5, 6, 7, 8, 25, 26, 32, 29, 30, and 32.

Consideration is also given in the table below to the Apartment Design Guide (ADG).

ADG COMPLIANCE TABLE	
Guideline	Compliance
<i>Objective 3A-1</i> Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.	NO
<i>Objective 3B-1</i> Building types and layouts respond to the streetscape and site while optimising solar access within the development.	NO
<i>Objective 3B-2</i> Overshadowing of neighbouring properties is minimised during mid-winter.	NO
<i>Objective 3C-1</i> Transition between private and public domain is achieved without compromising safety and security.	NO
<i>Objective 3C-2</i> Amenity of the public domain is retained and enhanced.	NO
<i>Objective 3D-1</i> An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.	NO

ADG COMPLIANCE TABLE			
Guideline		Compliance	
Design criteria			
1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)		YES	
2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)			
Objective 3D-2 Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.		NO	
Objective 3D-3 Communal open space is designed to maximise safety.		NO	
Objective 3E-1 Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.		NO	
Design criteria			
Deep soil zones are to meet the following minimum requirements:		NO	
Site Area	Min dimension		Deep Soil Zone (% of Site area)
Less than 650m2	-		
650m2 – 1500m2	3m		
Greater than 1500m2	6m		
Greater than 1500m2 with significant existing tree cover	6m		
		7%	
Objective 3F-1 Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.		NO	

ADG COMPLIANCE TABLE				
Guideline				Compliance
Design criteria				
Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:				NO
Building height	Habitable rooms and balconies	Non-habitable rooms	Proposal	
up to 12m (4 storeys)	6m	3m		
up to 25m (5-8 storeys)	9m	4.5m	6 and 8	
Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2). Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.				
Objective 3F-2 Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.				YES
Objective 3G-1 Building entries and pedestrian access connects to and addresses the public domain.				YES
Objective 3G-2 Access, entries and pathways are accessible and easy to identify.				YES
Objective 3H-1 Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.				NO
Design guidance				
Car park access should be integrated with the building’s overall facade. Design solutions may include: - the materials and colour palette to minimise visibility from the street - security doors or gates at entries that minimise voids in the facade - where doors are not provided, the visible interior reflects the facade design and the building services, pipes and ducts are concealed				YES
Objective 3J-1 1. Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas				YES

ADG COMPLIANCE TABLE	
Guideline	Compliance
Design criteria	
1. For development on sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area the minimum car parking requirement for residents and visitors is: i. set out in the Guide to Traffic Generating Developments, or ii. the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street.	YES
Objective 3J-2 Parking and facilities are provided for other modes of transport.	YES
Objective 3J-3 Car park design and access is safe and secure.	YES
Objective 3J-4 Visual and environmental impacts of underground car parking are minimised.	YES
Objective 3J-6 Visual and environmental impacts of above ground enclosed car parking are minimised.	YES
Objective 4A-1 To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.	NO
Design criteria	
1 Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas	NO
2 In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter	NO
3 A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	NO
Objective 4A-2 Daylight access is maximised where sunlight is limited.	YES

ADG COMPLIANCE TABLE							
Guideline	Compliance						
Objective 4A-3 Design incorporates shading and glare control, particularly for warmer months.	YES						
Objective 4B-1 All habitable rooms are naturally ventilated.	NO						
Objective 4B-2 The layout and design of single aspect apartments maximises natural ventilation.	NO						
Objective 4B-3 The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.	NO						
Design criteria							
1 At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	NO						
2 Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	NO						
Objective 4C-1 Ceiling height achieves sufficient natural ventilation and daylight access.	YES						
Design criteria							
Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <table> <tr> <td>Minimum ceiling height for apartment and mixed use buildings</td><td>Proposal</td></tr> <tr> <td>Habitable rooms</td><td>2.7m</td></tr> <tr> <td>Non-habitable</td><td>2.4m</td></tr> </table>	Minimum ceiling height for apartment and mixed use buildings	Proposal	Habitable rooms	2.7m	Non-habitable	2.4m	YES YES
Minimum ceiling height for apartment and mixed use buildings	Proposal						
Habitable rooms	2.7m						
Non-habitable	2.4m						
Objective 4C-2 Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.	YES						
Objective 4C-3 Ceiling heights contribute to the flexibility of building use over the life of the building.	YES						
Objective 4D-1 The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.	NO						

ADG COMPLIANCE TABLE		
Guideline		Compliance
Design criteria		
Apartments are required to have the following minimum internal areas:		YES
Apartment type	Minimum internal area	
Studio	35m ²	
1 bedroom	50m ²	
2 bedroom	70m ²	
3 bedroom	90m ²	
The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.		
Objective 4D-2 Environmental performance of the apartment is maximised.		NO
Design criteria		
1	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	NO
2	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	NO
Objective 4D-3 Apartment layouts are designed to accommodate a variety of household activities and needs.		NO
Design criteria		
1	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)	NO
2	Bedrooms have a minimum dimension of 3m (excluding wardrobe space)	YES
3	Living rooms or combined living/dining rooms have a minimum width of: 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments	YES
4	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	YES

ADG COMPLIANCE TABLE		
Guideline		Compliance
Objective 4E-1 Apartments provide appropriately sized private open space and balconies to enhance residential amenity		YES
Design criteria		
All apartments are required to have primary balconies as follows:		YES
Dwelling type	Minimum area	Minimum depth
Studio apartments	4m ²	-
1 bedroom apartments	8m ²	2m
2 bedroom apartments	10m ²	2m
3+ bedroom apartments	12m ²	2.4m
The minimum Balcony depth to be counted as contributing to the balcony area is 1m		Balconies width 2m
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.		
Objective 4E-2 Primary private open space and balconies are appropriately located to enhance liveability for residents.		YES
Objective 4E-3 Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.		YES
Objective 4E-4 Private open space and balcony design maximises safety.		YES
Objective 4F-1 Common circulation spaces achieve good amenity and properly service the number of apartments.		NO
Design criteria		
1. The maximum number of apartments off a circulation core to a single level is eight.		YES
Objective 4F-2 Common circulation spaces promote safety and provide for social interaction between residents.		YES
Objective 4G-1 Adequate, well-designed storage is provided in each apartment.		YES

ADG COMPLIANCE TABLE		
Guideline		Compliance
Design criteria		
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:		NO
Dwelling type	Storage size volume	
Studio apartments	4m ³	
1 bedroom apartments	6m ³	
2 bedroom apartments	8m ³	
3+ bedroom apartments	10m ³	
At least 50% of the required storage is to be located within the apartment		
Objective 4G-2 Additional storage is conveniently located, accessible and nominated for individual apartments.		NO
Objective 4H-1 Noise transfer is minimised through the siting of buildings and building layout.		YES
Objective 4H-2 Noise impacts are mitigated within apartments through layout and acoustic treatments.		YES
Objective 4J-2 Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.		YES
Objective 4K-1 A range of apartment types and sizes is provided to cater for different household types now and into the future.		NO
Objective 4K-2 The apartment mix is distributed to suitable locations within the building.		NO
Objective 4L-2 Design of ground floor apartments delivers amenity and safety for residents.		YES
Objective 4M-1 Building facades provide visual interest along the street while respecting the character of the local area.		YES
Objective 4M-2 Building functions are expressed by the façade.		YES
Objective 4N-1 Roof treatments are integrated into the building design and positively respond to the street.		YES

ADG COMPLIANCE TABLE	
Guideline	Compliance
<i>Objective 4N-2</i> Opportunities to use roof space for residential accommodation and open space are maximised.	YES
<i>Objective 4N-3</i> Roof design incorporates sustainability features.	YES
<i>Objective 4O-1</i> Landscape design is viable and sustainable.	NO
<i>Objective 4O-2</i> Landscape design contributes to the streetscape and amenity.	NO
<i>Objective 4P-1</i> Appropriate soil profiles are provided.	NO
<i>Objective 4P-2</i> Plant growth is optimised with appropriate selection and maintenance.	NO
<i>Objective 4P-3</i> Planting on structures contributes to the quality and amenity of communal and public open spaces.	NO
<i>Objective 4Q-1</i> Universal design features are included in apartment design to promote flexible housing for all community members.	NO
<i>Objective 4Q-2</i> A variety of apartments with adaptable designs are provided.	YES
<i>Objective 4Q-3</i> Apartment layouts are flexible and accommodate a range of lifestyle needs.	NO
<i>Objective 4U-1</i> Development incorporates passive environmental design.	YES
<i>Objective 4U-2</i> Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer. Adequate natural ventilation minimises the need for mechanical ventilation	YES
<i>Objective 4U-3</i> Adequate natural ventilation minimises the need for mechanical ventilation.	YES
<i>Objective 4V-1</i> Potable water use is minimised.	YES
<i>Objective 4V-2</i> Urban stormwater is treated on site before being discharged to receiving waters.	YES

ADG COMPLIANCE TABLE	
Guideline	Compliance
<i>Objective 4V-3</i> Flood management systems are integrated into site design.	NO
<i>Objective 4W-1</i> Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.	YES
<i>Objective 4W-2</i> Domestic waste is minimised by providing safe and convenient source separation and recycling.	YES
<i>Objective 4X-1</i> Building design detail provides protection from weathering.	YES
<i>Objective 4X-2</i> Systems and access enable ease of maintenance.	YES
<i>Objective 4X-3</i> Material selection reduces ongoing maintenance costs.	YES

The specific departures from the ADG requirements, identified in the table above, are not supported and form part of the reasons for refusal. The applicant was provided with an opportunity to respond to Council's RFI letter however, at the time of writing this report, a response had not been received.

Section 148 (2) of SEPP Housing provides the following are non-discretionary development standards:

- i. the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,*
- ii. the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,*
- iii. the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.*

The proposed development meets the above standards.

Section 149 (1) of SEPP Housing provides that a requirement, standard or control for residential apartment development that is specified in a development control plan and relates to the following matters, as referred to within Part 7C.1 of the DCP, has no effect if the ADG also specifies a requirement, standard or control in relation to the same matter.

Objective 1 of Part 7C.1 of this provision is to ensure that aspects of development controlled by SEPP (Housing) 2021 Apartment Design Guide comply with those provisions.

Control 1 of Part 7C.1 states that:

“All residential flat buildings are to comply with the objectives, Design Criteria and Design Guidance of the following Apartment Design Guide sections:

- i. 3F visual privacy,*
- ii. 4A solar and daylight access,*
- iii. 4B common circulation and spaces,*
- iv. 4C ceiling heights,*
- v. 4D apartment size and layout,*
- vi. 4E private open space and balconies,*
- vii. 4F natural ventilation,*
- viii. 4G storage.”*

As outlined within the table above the proposed development does not meet the design criteria of the ADG in relation to solar and daylight access, common circulation and communal spaces, deep soil areas, provision of affordable housing, apartment size and layout, natural ventilation, and storage, which form the basis of refusal. Refer to the Urban Design referral for further details in this regard, in addition to the compliance table under that heading being Part 7 Residential Flat Buildings.

Chapter 5 – Transport orientated development

The subject application was lodged under the provisions of Chapter 5 of SEPP Housing.

The proposal is permitted with development consent pursuant to Section 154 of SEPP Housing, as the land is located within a ‘relevant residential zone.’

The following table considers the proposal having regard to the development standards in Sections 155, 156, 157, 158, 159 and 160 of SEPP Housing:

Development standard	Proposed	Complies
S 155 - Maximum building height Residential flat building – 22 metres	23.92 metres (lift overrun, and roof top south facing edges of the upper two floor levels)	NO
S 155 - Maximum floor space ratio – 2.5:1	1.79:1 However, inaccuracies in calculation (refer to Attachment 10)	YES
S 156 – Affordable housing GFA – > 2000m ² Proposed GFA = 5,519.52m ² , 2% of GFA to be used for affordable housing and; S 157 – Affordable housing parking spaces (min) 1 bedroom – 0.4 parking space 2 bedroom – 0.5 parking space 3 or more bedrooms – 1 parking space	Required Affordable GFA = 110.4m ² The documentation submitted with the application does not confirm the provision of any affordable housing.	NO
S 159 – Minimum lot width 21 metres wide at the front building line	61 metres	YES
S 161 - Consideration of Apartment	Consideration of the	NO

Development standard	Proposed	Complies
Design Guide (ADG)	ADG is provided earlier in this report, and the proposed development does not meet several provisions under the ADG, as discussed earlier.	

The above non-compliances with the development standards are addressed below under the Clause 4.6 assessment below.

Any inconsistencies with other Environmental Planning Instruments

The development standards referred to in the above table prevail to the extent of any similar provisions contained in another Environmental Planning Instrument including KLEP 2015.

The following development standards under KLEP 2015 are not the same as those in the above-mentioned SEPP Housing development standards and as such they continue to apply to the assessment of the subject application:

Development standard	Proposed	Complies
CI 6.6 – Requirements for multi dwelling housing and residential flat buildings: Lot width and depth – 30 metres (if site area is greater than 1800m ²)	Site area = 3,098.5m ²	YES
	- Lot width 61 metres, and	YES
	- Lot depth – 77.015 metres (eastern) and 72 metres (western)	YES

Section 156 Affordable housing

The subject application involves residential development in the form of a residential flat building, however, the development has not demonstrated that the development application meets Section 156 of SEPP Housing, which 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. No affordable housing is proposed and this forms one of the reasons for refusal.

Ku-ring-gai Local Environmental Plan 2015

Ku-ring-gai Local Environmental Plan (KLEP) 2015 is the statutory LEP for the subject site.

Part 1 Preliminary

Clause 1.2 Aims of the Plan

The proposal has been assessed against the relevant Aims of the Plan. The proposal is inconsistent with the Aims for the reasons outlined in this assessment report.

The development:

- does not encourage a variety of housing types within Ku-ring-gai by not providing affordable housing;
- does not minimise the flooding risk to life and property, as the site is impacted by overland stormwater flows;
- does not incorporate appropriate water management measures to promote efficient use of existing infrastructure; and
- does not satisfy the relevant controls relating to flood risk, building separation to boundaries, accessibility, landscape, solar access, internal amenity, ventilation, visual amenity, and therefore fails to provide an acceptable level of amenity for future occupants and adjoining properties.

Part 2 Permitted or prohibited development

Clause 2.1 and 2.2 Zoning and permissibility:

At time of lodgement the site was zoned R2 Low Density Residential. The proposed development is defined as a residential flat building and is prohibited development under this zone. However, the development is permissible under the provisions of Section 154 of SEPP Housing, as the land is a 'relevant residential zone', which prevails over the KLEP.

Zone objectives

The objectives of the R2 Low Density Residential zone under the KLEP 2015 are:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for housing that is compatible with the existing environmental and built character of Ku-ring-gai.*

The development does not provide for the housing needs of the community because it does not provide the affordable housing that is required by SEPP Housing. Further, the proposed development fails to provide for housing that is compatible with the existing environmental and built character of Ku ring gai, for the reasons outlined within this report.

The proposed development therefore does not uphold the first and third bullet point objectives of the R2 zone.

Development standards:

Clause 4.6 Exceptions to development standards

As detailed earlier, the proposal has a height of 23.92 metres, which does not meet the maximum height limit prescribed under the SEPP Housing. The applicant has submitted a Clause 4.6 request seeking to vary the 22 metres building height development standard contained in Section 155 of SEPP Housing. Clause 4.6 provides flexibility in applying certain development standards and an assessment of the request to vary the development standard is provided below:

- (1) *The objectives of this clause are as follows—*
 - a. *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - b. *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
 - a. *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - b. *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

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

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, the Court established five ways to demonstrate that compliance with a development standard is unreasonable or unnecessary. The applicant has adopted the first way (the development meets the underlying objectives of the standard) to demonstrate that compliance with the building height development standard is unreasonable and unnecessary in this instance, as summarised below:

Historically the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was satisfaction of the first method of the five set out in Wehbe v Pittwater Council [2007] NSWLEC 827. This first method requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 at [16]-[17]. Similarly, in Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This request addresses the first method outlined in Wehbe v Pittwater Council [2007] NSWLEC 827. It should be noted that this method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The request also addresses the third method, that the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (Initial Action at [19] and Linfield Developments Pty Ltd v Cumberland Council [2019] NSWLEC 131 at [24]). Again, this method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

There are no stated objectives within Clause 155 of SEPP Housing. However, there are stated aims for Chapter 5 which are:

(a) to increase housing density within 400m of existing and planned public transport,

(b) to deliver mid-rise residential flat buildings, seniors housing in the form of independent living units and shop top housing around rail and metro stations that—

(i) are well designed, and

(ii) are of appropriate bulk and scale, and

(iii) provide amenity and liveability,

(c) to encourage the development of affordable housing to meet the needs of essential workers and vulnerable members of the community.

Due to the fall of the site, the eastern end of the building is below the height control, whilst leading edges of areas of the roof at the western end of the building are marginally above the height control. In addition, there is a height variation as a result of the lift overrun.

The total proposed floor space is well below the maximum achievable for the site. The proposed variations to the height control support a balanced approach to the fall of the land and ensure that the development is able to maximise the delivery of housing supply on an ideal site within 400 metres of the Roseville train station.

Notwithstanding the minor variations to the height control, the proposed development is highly articulated, particularly well designed noting full compliance with all other DCP controls, and of an appropriate bulk and scale. The development provides a very high level of amenity with both natural cross ventilation and solar access performance well in excess of the minimum design guidance on the Apartment Design Guide.

Therefore, the proposed development achieves the aims of the 22 metres height control in Chapter 5 of SEPP Housing, notwithstanding the minor variations.

Key facts that support the above reasons why strict compliance with the building height development standard is unreasonable and unnecessary in the circumstances of the case are as follows:

- The proposed departure from the height control on the site occurs only as a result of the significant fall across the site with some minor protrusion of roof elements. The point encroachments are more than balanced by areas of the building which are well below the height control.*
- The proposal presents as a 7 storeys scale to the adjacent street as anticipated by the height control and therefore achieves an appropriate contextual fit which will be compatible with the emerging scale of development within the area.*
- The proposed areas of non-compliance are particularly minor along the western edges of the building, with the greatest extent of non-compliance located centrally within the floorplate of the building, such that it is unlikely to be visible or perceptible from the ground floor around the proposed building.*

- *The proposed areas of height non-compliance do not result in any meaningful additional overshadowing to the adjacent properties to when compared to that which would result from a strictly compliant development.*
- *There are no adverse impacts in terms of privacy impacts to adjacent sites resulting from the proposed variation to the height development standard which would warrant strict compliance.*
- *The proposed variation allows for the most efficient and economic use of the land and a sensible response to the steep fall of the site to achieve practical floor layouts for the proposed apartments, and in particular it is noted that the proposed development has an FSR of only 1.78:1 against a maximum control of 2.5:1.*
- *Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public.*
- *Having regard to the planning principle established in the matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191 most observers would not find the proposed development offensive, jarring or unsympathetic to its location and the proposed development will be compatible with its context.*
- *The proposed variation to the height control is minor and will not result in a building which is inconsistent with the desired future character of development in the zone and locality generally.*

The underlying objective or purpose of the development standard would be undermined, if compliance was required with the consequence that compliance is unreasonable (the third method Wehbe v Pittwater Council [2007] NSWLEC 827 [42]-[43] as applied in Linfield Developments Pty Ltd v Cumberland Council [2019] NSWLEC 131 at [24])

The underlying objective and purpose of the standard relates to aims to incentivise and facilitate the delivery of new housing within 400 metres of identified train stations. This objective would be thwarted by strict compliance because it would simply result in the loss of housing supply without any public benefit.

Strict compliance with the height control would not meaningfully reduce the impact of the development on the streetscape or neighbouring properties and would provide reduced amenity to occupants of the development. Accordingly, it is considered that strict compliance would likely result in the defeat of the underlying object and purpose of the incentivised height control because it would encourage a less desirable outcome for the site.

Comment:

The above is not agreed for the following reasons:

- a) The overall height and therefore degree of non-compliance has not been established. KLEP definition of "building height" requires the height to 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.
- b) 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 lower the overrun or result in no overrun is not feasible for the proposed development.

- c) Referring to **Figure 14** below, the height plane provides insufficient information:
- i. the natural ground level, that is annotated on the survey plan, is not shown on the Height Plane Diagram and Sections.
 - ii. the Height Plane Diagram does not provide an accurate calculation of building height, as it utilises ceiling levels, for example 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, and
 - iii. the specific height of these elements is not specified on all the sections and elevations.
- d) The Clause 4.6 request should include more detailed commentary about the overshadowing impact of those building elements that breach the building height, as it appears that the sun-eye diagrams show an inaccurate location of true north.
- e) A detailed site analysis plan does not identify likely future development of properties in the vicinity of the site, and as a result, the Clause 4.6 request has not considered these factors.

The Clause 4.6 request is incomplete for the above reasons and therefore cannot be supported and therefore form the basis of the reason not to support the request to vary the maximum height development standard.

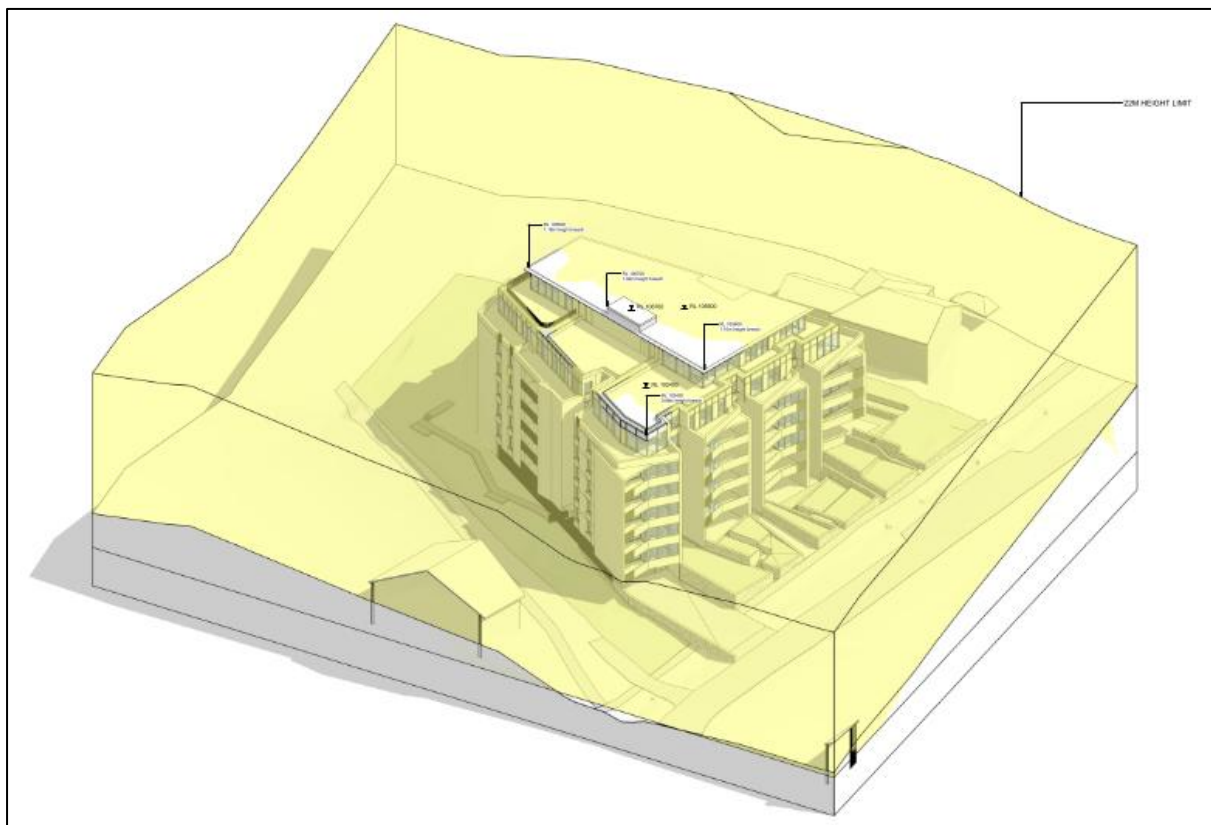


Figure 12: plan showing the 22 metres building height plane

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

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

The Land & Environment Court matter of Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, provides assistance in relation to the consideration of sufficient environmental planning grounds whereby Preston J observed that:

- *in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and*
- *there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development*

The primary basis for the proposed variation to the building height control is as a result of responding to the particularly steep fall of the land, noting that there are many areas of the building which are generally equally below the height control as there are areas which exceed the height control as illustrated in Figure 2 below:



Figure 13: plan showing south eastern street facing elevation

Due to the particular site circumstances and the design of the proposal, elimination of the components which breach the height control will not result in a better planning outcome (when compared to a strictly compliant development). As illustrated in Figure 2, the components which breach the height control to the greatest extent are located centrally within the building from the front and rear of the building. The point encroachments which occur along the western side of the top of the building are only up to a maximum of approximately 1.2 metre. Accordingly, the areas of protrusion are either so minor, or centrally located, such that the majority of the areas of breach will not be readily apparent from the public domain or the ground floor plane around the site.

The proposal still presents as a 7 storeys scale to the adjacent street as anticipated by the incentivised height control and therefore achieves an appropriate contextual fit which will be compatible with the future desired character of the area, notwithstanding the height non-compliance.

Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any meaningful benefits to the owners or occupants of the surrounding properties or the general public in the particular circumstance of this site and this proposal, but would constrain the achievement of sensible internal planning for the proposal and potentially encourage:

- *an increase in height in areas of the development which are well below the height control in an attempt to regain floor space elsewhere; and*
- *greater excavation on site.*

For reasons already explained earlier in this request, that would be a suboptimal planning outcome. Avoiding that suboptimal planning outcome and achieving the proposed superior outcome constitutes sufficient environmental planning grounds to warrant the proposed variation to the current height control. The proposal will achieve a reasonable and balanced outcome with regard to the steep fall of the land, achieve a scale in terms of number of storeys as anticipated by the height control, and without meaningful impact to adjacent properties.

The components which breach the height control to the greatest extent are located centrally within the building from the front and rear of the building. The point encroachments which occur along the western side of the top of the building are only up to a maximum of approximately 1.2 metres. Accordingly, the areas of protrusion are either so minor, or centrally located, such that the majority of the areas of breach will not be readily apparent from the public domain or the ground floor plane around the site.

The proposal still presents as a 7 storeys scale to the adjacent street as anticipated by the incentivised height control and therefore achieves an appropriate contextual fit which will be compatible with the future desired character of the area, notwithstanding the height non-compliance.

Whilst the proposal provides housing in a high density form of development, this is consistent with the permissible form of development provided by SEPP Housing. Notwithstanding, the proposal has been sensitively designed in relation to the environmental attributes of the site, and also provides a built form which reflects the fine grain character of existing development in the street, with vertical expression which reflects the traditional character of the street.

Comment:

The Clause 4.6 request has not satisfactorily addressed the environmental factors relating to the site, as:

1. The design hasn't responded to the site constraints, because it hasn't stepped down the site.
2. It hasn't been demonstrated that removal of the non-compliant height elements would not result in an equal or lesser impact.
3. Minor non-compliances aren't in themselves justification to support a variation.

4. No meaningful benefits would be achieved if compliance was required, isn't in of itself a suitable justification.
5. Despite the claim the applicant hasn't demonstrated how the non-compliance results in a superior design outcome.
6. Equally, a compliant development could still provide residential units, meeting the objective to provide housing within close proximity to public transport.

For reasons articulated above and throughout this report the Clause 4.6 Request has not addressed the relevant matters, is therefore not supported.

Development standards that cannot be varied.

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

Conclusion

The applicant's justification does not demonstrate that compliance with the development standard is unreasonable or unnecessary in this case, nor does it provide sufficient environmental planning grounds to justify contravening the standard.

The submitted request to vary the standard is not supported, and applying flexibility in respect of the maximum height of building is considered inappropriate in this circumstance. The variation does not satisfy the criteria outlined in Clause 4.6.

Part 5 Miscellaneous provisions

Clause 5.10 – Heritage conservation

The subject site does not contain a heritage item and is not within a heritage conservation area but is located within 100m of heritage item at Nos. 12 and 16 Shirley Road, as shown within **Attachment 2**.

The impacts of the proposed development on the nearby heritage item is acceptable because there is sufficient separation between the item and the subject site.

The proposed works do not affect any known archaeological or Aboriginal objects or Aboriginal places of heritage significance.

Clause 5.21 – Flood planning

The objective of this clause is to minimise flood risk, allow development on land that is compatible with the flood function and behaviour, avoid adverse or cumulative impacts on flood behaviour and the environment and enable the safe occupation and efficient evacuation of people in the event of a flood.

Council's Team Leader Development Engineers has considered the submitted Flood Impact Assessment Report. Concern is raised that the design engineer has not certified the minimum floor levels for the proposed development, as depicted on the architectural plans, has met the design requirements levels as stated within Section 6 of the Flood Impact Assessment Report per reason for refusal **3** and **27** to enable an assessment to ensure there is sufficient free board.

Part 6 Additional local provisions

Clause 6.1 – Acid sulphate soils

The objective of this clause is to ensure that development does not disturb, expose, or drain acid sulfate soils and cause environmental damage. The land is mapped as Class 5 Acid sulfate soils. Development consent is required for works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water-table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land. The proposal is not subject to this clause as the works are more than 500 metres of adjacent Class 1, 2, 3 or 4 land.

Clause 6.2 - Earthworks

Council's Team Leader Development Engineers has considered the relevant plans and is not satisfied that the proposed development is acceptable. In this regard refer to Engineering comments within the Internal Referral section of this report for additional commentary.

Clause 6.3 - Biodiversity protection

The site is mapped as land comprising biodiversity significance.

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

Clause 6.4 – Riparian land and waterways

Referring to **Figures 10** the site is mapped as riparian land and waterways.

Council's Ecological Assessment Officer has considered the proposed development and is satisfied it has been designed to minimise impacts on riparian land and waterways, as per the requirements of the KLEP.

Clause 6.5- Stormwater and water sensitive urban design

Council's Team Leader Development Engineer's has considered the objective of this clause which seeks to minimise the adverse impacts of urban water on the site and within the catchment. The stormwater design does not adequately manage water quality and control discharge volumes and frequency per reason for refusal (12, 18, and 28).

Ku-ring-gai Development Control

Part 1A.5 General aims of the DCP

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

Part 2: Site analysis

A site analysis plan, which is to identify the existing and likely future characteristics of the site and the surrounding area, has been provided. However, the site analysis plan has not considered the future likely character of the TOD areas (**Figure 2**) and is therefore insufficient for the purposes of an assessment. This is reflected in reasons for refusal 25, 27, 28, 29, 30, 32, 33, and 35.

Part 3: Land consolidation and subdivision

The proposed development requires the consolidation of the existing allotments. The consolidation will not result in any irregular lot configurations, result in any isolated sites or result in the creation of remaining allotments that cannot be reasonably developed due to constraints such as heritage, riparian land or biodiversity mapped areas. Therefore, the application is assessed as consistent with this Part of the DCP and is acceptable.

Part 7: Residential Flat Buildings

COMPLIANCE TABLE		
Development Control	Proposed	Complies
Part 7 Residential Flat Buildings		
7A.1 – Local character and streetscape		
All Residential Flat Buildings are to be designed by an architect registered with the NSW Architects Registration Board.	Compliance demonstrated.	YES
All residential flat buildings are to demonstrate how they provide a garden setting with buildings surrounded by landscaped gardens, including tall trees, on all sides.	Insufficient tree planting proposed.	NO
Design components of new development are to be based on the existing predominant and high quality characteristics of the local neighbourhood.	Materials and finishes are designed to complement the surrounding locality within the TOD Alternative Scheme.	YES
The appearance of the development is to maintain the local visual character by considering the following elements: i) visibility of on-site development when viewed from the street, public reserves and adjacent properties; and ii) relationship to the scale, layout and character of the tree dominated streetscape of Ku-ring-gai.	Does not maintain the desired landscape setting envisaged under the TOD Alternate Scheme.	NO
The predominant and high quality characteristics of the local neighbourhood are to be identified and considered as part of the site analysis.	Insufficient information provided.	NO
Development is to integrate with surrounding sites by: i. being of an appropriate scale retaining consistency with the surrounds when viewed from the street, public domain or adjoining development; ii. minimising overshadowing; and iii. integrating built form and soft landscaping (gardens and trees)	Does not maintain the desired landscape setting envisaged under the TOD Alternate Scheme.	NO

within the tree canopy that links the public and private domain throughout Kuring-gai.		
Development on visually prominent sites is to: - i.be of high architectural and aesthetic quality; - ii.be integrated into the existing landscape through the site planning process and avoid tall and bulky structures; - iii.have a selection of external colours and finishes that are sensitive to the site and locality; - iv.retain significant landscape and vegetation elements; - v.consider views to the site as well as those from the site; and - vi.soften visual impact by extensive landscaping including tall and medium trees and shrubs.	The site becomes a prominent site, as it adjoins an area of RE1, public recreational zone, as shown in (Figure 4) . The presentation to the future park is not acceptable due to the development not being within a garden setting, building heights, and western side setbacks.	YES
Colours of materials used in sites adjoining or in close proximity to bushland areas and Heritage Conservation Areas are to be in harmony with the built and natural landscape elements of the area.	Compliance demonstrated.	YES
7A.2 – Site layout		
The site layout is to demonstrate a clear and appropriate design strategy and arrangement of building mass in response to the Site Analysis in Part 2 Site Analysis of this DCP. Demonstration of design strategies to address opportunities and constraints based on Site Analysis are to include: - i.building location and orientation on the site optimising northern aspect; relationship with neighbouring developments; building setbacks; geographical aspect; views; access etc; - ii.response of building development in maintaining site characteristics within the subject site, such as topography, vegetation, significant trees, any special features, etc. - iii.building separation and internal layouts of buildings that respond to (i) above and be consistent with the requirements of the DCP. - iv.limited apartments with no direct sunlight.	The building site location is acceptable. However, the applicant has not provided a site analysis plan addressing the future likely character of future buildings and building separation from adjoining sites impacting the site and proposal.	NO

A drawing and supporting written information is to demonstrate how the building and its layout has applied and responded to the site analysis required by Part 2 of the DCP.	Refer to sheet no. DA.00.02. The Site Analysis plan does not address the future likely character of future buildings and building separation impacting the site and proposal. Nor has the design demonstrated how it appropriately addresses the sloping topography.	NO
Development near noise sources is to comply with Section B Part 20 Development Near Rail Corridors and Busy Roads of the DCP.	Not adjacent to a noise source.	YES
Any building with a frontage to the street is to address that street.	The building addresses the street.	YES
Soft landscaping, including tall trees, is to be provided between onsite buildings, fences and courtyard walls.	Adequate soft landscaping is proposed.	YES
Hard landscaping is to be minimised and to maximise opportunities for landscape planting	Hard landscaping is minimised.	YES
Long straight driveways are not permitted, except where necessary for battle-axe sites. Driveways are to be designed to be of minimal visual impact.	A long, straight driveway is not proposed.	YES
Provide a single pedestrian entry point into the development from the street. Other entries may be permitted where several buildings address the street along an extended street or where there are dual frontage sites.	Five pedestrian entry points shown within DA.01.02.	NO
Three hours of direct sunlight between 9am and 3pm on 21st June is to be maintained to the living rooms, primary private open spaces and any communal open spaces within i. existing residential flat buildings and multi-dwelling housing on adjoining lots, and ii. residential development in adjoining lower density zones.	The proposal is not an existing residential flat building or multi-dwelling housing, and is not adjacent to a lower density zone. The adjoining land to the west is zoned RE1.	YES
Overshadowing should not compromise the development potential of the adjoining yet to be redeveloped sites.	Minor shadow impacts to the south-eastern portion of the zone RE1 park created, which is satisfactory.	YES
Developments are to allow the retention of a minimum of 4 hours direct sunlight between 9am to 3pm on 21st June to all existing solar collectors and solar hot water services on neighbouring buildings.	3 hours sunlight is maintained.	YES

7A.3 – Building setbacks		
Residential flat buildings are to meet the following street setback requirements: i. 10m from the street boundary; ii. on corner sites and sites with multiple street frontages at 10m setback is to be provided on all street frontages.	10 metre front setback proposed.	YES
Residential flat buildings on the sites identified in Part 14 Urban Precincts and Sites of the DCP are to meet the following street setback requirements: i. street setbacks as specified in the Building Setback maps in Part 14 Urban Precincts and Sites of this DCP; ii. a minimum of 8.0m from the street boundary to the fourth storey and above; iii. on corner sites, or sites with multiple street frontages, the street boundary setback is 8.0m to the fourth storey and above on all street frontages.	The site is not identified within Part 14 Urban Precincts	N/A
Residential flat buildings are to provide a 2.0m articulation zone behind the street setback, and no more than 40% of this zone (in plan) is to be occupied by the building.	Articulation zone is provided.	YES
The building line to any street is to be parallel to the prevailing building line in the streetscape. For angled sites, a stepped façade may be appropriate.	The proposed building is parallel to the street boundary.	YES
Residential flat buildings are to meet the following side and rear setback requirements to ensure deep soil, landscaping and tall trees are accommodated to all sides of the building: i) a minimum of 6m from the side boundary for all levels up to the fourth storey. ii) a minimum of 9m to the fifth storey and above.	The proposal provides a part 7 and part 8-storey building, taking into account the basement entry level, as the floor level above is more than 1 metres measured from ground level. Therefore, the storey height is measured from the south-western corner of the site, as viewed from Pockley Avenue. The eastern side setback does not comply as level 5 balconies measure 6 metres not 9. The western side setbacks do not comply, as Level 04 (storey 5) measures 6 metres.	NO
Side setback areas behind the building line are not to be used for driveways or for vehicular access into the building.	Side setbacks are not occupied by driveways.	YES

Driveways are to be set back a minimum of 6m from the side boundary within the street setback to allow for deep soil planting.	Complies.	YES
Setbacks are to respond to the attributes identified in the site analysis, conducted as required by Section A Part 2 Site Analysis of the DCP, including consideration of the location of adjoining buildings and views of the site.	No analysis provided about likely future development in TOD area.	NO
Side and rear setbacks at a zone interface Residential flat buildings are to provide the following side and rear setbacks to land which is zoned differently for lower density residential development: i.minimum 9m from the side and rear boundary up to the 4 th storey ii.minimum 12m from the side and rear boundary for the 5 th storey and above iii.greater setbacks may be required where residential flat building is located upslope from a lower density zone	Referring to Figure 4 , the proposal meets this control.	YES
Encroachments i.Basements do not encroach into any setback areas ii.Ground floor terrace/courtyard walls min 8m to street boundary / 4m to rear & side boundaries / 7m adjacent to lower density residential zone iii.No encroachments where site area is < 1800m ² iv.No encroachments are permitted where minimum side setbacks have not been achieved. v.A maximum of 15% of the street setback area occupied by private terraces/courtyards	Basements do not encroach. 37% of the front building setback comprises private courtyards for apartments 1.02 and 1.04 within sheet no. DA.01.02.	NO
Eaves, open pergolas, blades, fins and columns may encroach into the setback areas where they do not increase the apparent bulk of the building or create visual clutter:	Visual clutter not proposed.	YES
7A.4 – Building Separation		
Residential buildings on the same development site are to include areas of deep soil in between the buildings that are capable of housing substantial vegetation and tall trees.	One building proposed	N/A
The minimum separation between residential buildings on the development site is to comply with the following controls: Up to 4 th storey: • 12m between habitable rooms/balconies	One building proposed	N/A

9m between habitable rooms/balconies and non-habitable rooms 6m between non-habitable rooms 5th storey & above: 18m between habitable rooms/balconies 13.5m between habitable rooms / balconies and non-habitable rooms 9m between non-habitable rooms		
Buildings are to be located so that apartments benefit from views into and through onsite landscaped gardens.	Complies.	YES
7A.5 – Site coverage		
The site coverage may be up to a maximum of 30% of the site area, provided that the deep soil landscaping requirements in Section A Part 7A.6 Deep Soil Landscaping are met.	29.9% (925.81m ²) provided.	YES
7A.6 – Deep soil landscaping		
A minimum deep soil landscaping area of 40% for a site area less than 1800m ² and 50% for a site area of 1800m ² or more.	38.5% Refer to Landscape and Urban Design comments for additional commentary.	NO
Deep soil zones are to be configured to retain healthy and significant trees on the site and adjoining sites, where possible.	Front setback area impacted by retaining walls and pathways. Refer to Landscape and Urban Design comments for additional commentary.	NO
Deep soil zones are to be configured to allow for required tree planting including tall tree planting and garden and screen planting at front, side and rear boundaries.	See comments above.	NO
Deep soil landscaping is to be provided in the common areas as a buffer between buildings that softens the bulk and scale of the buildings.	Side setbacks 6 metres wide and rear yard provide deep soil areas for landscaping.	YES
Driveways are not to dominate the street setback area. Deep soil landscaping areas in the street setback are to be maximised.	The driveway does not dominate the street setback.	YES
Lots with the following sizes are to support a minimum number of tall trees capable of attaining a mature height of at least 18m on shale, transitional soils and 15m on sandstone derived soils. i. 1200m² or less – 1 tall tree per 400m² or part thereof ii. 1201m² – 1800m² – 1 tall tree per 350m² or part thereof iii. 1801m² + - 1 tall tree per 300m² or part thereof	Site area = 3,099.5m² requiring 11 tall trees. The proposal retains 5 tall trees and proposes 8 tall trees.	YES

In addition to the tall trees, a range of medium trees, small trees and shrubs are to be selected to ensure that vegetation softens the building form and creates a garden setting. At least 50% of all tree plantings are to be locally occurring trees and spread around the site.	The proposal satisfies this part.	YES
Trees are to be planted within all setback areas. At least 30% of the required number of tall trees are to be planted within the front setback.	The proposal satisfies this part.	YES
7B – Access and parking		
7B.1 – Car parking provision		
All residential flat developments are to provide on-site car parking within basements.	Compliance achieved.	YES
Basement car park areas are to be consolidated under building footprints.	Compliance achieved.	YES
The use of single lane tunnels and single lane spiral ramps is not permitted. Double lane spiral ramps may be allowed where there are no other options but can only link a maximum of 2 floor levels.	Compliance achieved.	YES
The basement car park is not to project more than 1m above existing ground level.	Ground floor above the basement projects approximately 2.4 metres above ground level, which exceeds the 1 metres height requirement, thus, is counted as a storey for the purposes of the DCP and will be included in the floor space ratio calculation as well as any control based on the number of storeys.	NO
Single lane aisles, straight ramps and tunnels max 12.0m in length.	Compliance achieved.	YES
Direct and continuous internal pedestrian access from basement car park is provided to each level of the building	Lift access provided.	YES
Car park entry is to be integrated within the building and located behind the building line.	Carpark entry is integrated and located behind the building line.	YES
Car parking design is to be in accordance with requirements for Silver and Platinum Level dwellings as required in this DCP and by the <i>Livable Housing Guidelines</i> . Circulation areas, roadways and ramps are to comply with AS2890.1. Where a conflict occurs, the <i>Livable Housing Guidelines 2012</i> is to take precedence.	Accessible residential car parking spaces are proposed.	YES

Car parking rates for residential flat developments on sites within 800m walking distance of a railway station entry: <table border="1" data-bbox="209 327 778 640"> <thead> <tr> <th>Type</th><th>Minimum</th><th>Maximum</th></tr> </thead> <tbody> <tr> <td>Studio</td><td>0 spaces</td><td>0.5 spaces</td></tr> <tr> <td>One bedroom</td><td>0.6 spaces</td><td>1 space</td></tr> <tr> <td>Two bedrooms</td><td>0.9 space</td><td>1.25 spaces</td></tr> <tr> <td>Three or more bedrooms</td><td>1.4 space</td><td>2 spaces</td></tr> </tbody> </table> Visitors: 1 per 6 units (at least one is accessible) Min 1 visitor parking space complies with the requirements of AS2890.6 Note: Any spaces provided which exceed the upper range in Control 9 above will be included as gross floor area. Note: A Traffic Impact Assessment is to accompany Development Applications that seek to vary the parking rates. This includes commercial or strata funded car share schemes in lieu of parking spaces.	Type	Minimum	Maximum	Studio	0 spaces	0.5 spaces	One bedroom	0.6 spaces	1 space	Two bedrooms	0.9 space	1.25 spaces	Three or more bedrooms	1.4 space	2 spaces	85 resident and 11 visitor car spaces proposed. Compliance is achieved. Refer to Engineering comments for additional commentary.	YES
Type	Minimum	Maximum															
Studio	0 spaces	0.5 spaces															
One bedroom	0.6 spaces	1 space															
Two bedrooms	0.9 space	1.25 spaces															
Three or more bedrooms	1.4 space	2 spaces															
At least one visitor car space is to be accessible and be provided within the site for every 6 apartments or part thereof and is to comply with the dimensional and locational requirements of AS2890.6.	Compliance is achieved.	YES															
A clearly signposted parking bay for temporary parking of service and removalist vehicles is to be provided. The space is to have the following standards: i) a minimum dimension of 3.5m x 6m; ii) a minimum manoeuvring area 7m wide.	Compliance is achieved.	YES															
One visitor parking bay is to be provided with a tap, to make provision for on-site car washing.	Compliance can be achieved.	YES															
At least one car share space is to be provided in the basement per 90 dwellings, or part thereof.	Compliance can be achieved.	YES															
Parking areas are to be designed and constructed so that electric vehicle charging points can be installed.	Compliance can be achieved.	YES															

7B.2 – Bicycle parking and support facilities provision		
Provide on-site, secure bicycle parking spaces and storage at the following rates: i) 1 bicycle parking space per 5 units or part thereof for residents within the residential car park area; and ii) 1 bicycle parking space (in the form of a bicycle rail) per 10 units for visitors in the visitor car park area.	Sheet no. DA.01.00 shows compliance.	YES
All on-site bicycle parking spaces and storage are to be designed to AS2890.3.	Sheet no. DA.01.00 shows compliance.	YES
7C – Building design and sustainability		
Part 7C.1 - Apartment Design Guide requirements		
All residential flat buildings are to comply with the objectives, Design Criteria and Design Guidance of the following <i>Apartment Design Guide</i> sections: 3F Visual Privacy 4A Solar and Daylight Access 4B Natural Ventilation 4C Ceiling Heights 4D Apartment Size and Layout 4E Private Open Space and Balconies 4F Common Circulation and Spaces 4G Storage	Refer to the ADG compliance table.	NO
7C.2 – Communal open space		
At least 10% of the site area must be provided as communal open space. Each parcel of communal open space is to have a minimum dimension of 5m.	Plan DA.05.60 demonstrates compliance.	YES
At least one single parcel of Primary communal open space with a minimum area of 80m ² and a minimum dimension of 8m is to be provided.	Compliance demonstrated.	YES
The Primary communal open space is to be directly accessible from the internal common circulation areas.	No direct access from the rear of the building.	NO
The Primary communal open space is to be located at or above finished ground level behind the building line. Roof top Primary communal open space may be provided where the ground level cannot meet performance requirements or is undesirable.	Primary space located at ground level within rear yard. Level 06 provides secondary common open space.	YES

Secondary communal open spaces are to have a minimum dimension of 5m and may be provided on roof tops.	Compliance demonstrated.	YES
Access to and within the Primary communal open space is to be provided for people with a disability Part 2 Section 7 of AS1428.	Compliant access provided.	YES
The location and design of the Primary communal open space is to optimise opportunities for active and passive social and recreation activities, solar access and orientation, summer shade, outlook, and maintain the privacy of residents on adjoining sites zoned differently for lower density residential development sites.	The primary communal open space, within the rear of the site, facilitates passive recreation and is partially shaded.	YES
At least 50% of the area of the Primary communal open space and any Secondary communal open space are to receive direct sunlight for at least two hours between 9am and 3pm on 21st June.	Shadow diagrams show compliance. However, a Site Analysis plan does not address compliance with any future likely TOD developments, which may impact the site.	NO
Communal open space is to be integrated with any significant natural feature(s) of the site and soft landscaping areas.	Communal open space is integrated with landscape features and tall trees.	YES
The communal open space is to have surveillance from at least two onsite apartments for safety reasons.	Passive surveillance primary communal open space from north facing apartments.	YES
Communal open space design is to avoid creation of concealment or entrapment areas. Note: Communal open space is to be well lit with an energy efficient lighting system to be used in conjunction with timers or daylight controls. All light spill is prohibited.	No entrapment spaces within the communal open space areas, which is acceptable.	YES
Shared facilities such as barbecue facilities, shade structures, play equipment and seating, are to be provided within the Primary communal open space. Note: Selected items within communal open spaces are to be appropriate to the space and demonstrate consideration of the amenity of nearby apartments.	Landscape plan L002 does not show all facilities within the primary communal open space.	NO
Garden maintenance storage areas, drainage and connections to water taps are to be provided with the Primary communal open	Compliance not demonstrated.	NO

space. Secondary communal open spaces are to have adequate connections to water for maintenance purposes. Note: Proposals are to demonstrate entry and access to communal open spaces and common areas for maintenance purposes. Note: Refer to Section A Part 1B Dictionary for definitions of Communal Open Space and Common Area.		
7C.3 – Ground floor apartments		
Ground floor apartments are to be separated from noise sources such as common areas, communal open space and the public domain.	Lower ground floor apartment LG.04 and Ground floor apartments 1.06 and L.07 overlook the common open space area but are separated by landscaping, terraces and balconies.	YES
Ground and podium level apartments are to have private outdoor areas differentiated from communal areas by at least one of the following: i) a change in level; ii) walls to deflect noise; iii) planting, such as hedges and low shrubs; iv) a fence/wall to a maximum height of 1.8m. Any solid wall component is to be a maximum height of 1.2m with at least 30% transparent component above.	Ground floor units facing the street have changes in levels separated by landscaping.	YES
A gate is to be provided from each ground floor apartment private open space into common areas where practical.	Two apartments meet this - LG.04 and 1.06. Along the western side boundary, a common pathway is proposed.	YES
No subterranean rooms to any part of any apartment	Subterranean storage room wall, not being a maintenance passage, adjoins LG.04.	NO
No ground floor apartments created because of excessive excavation.	No apartments are created because of excessive excavation.	YES
No part of any wall used to accommodate any residential apartment uses, including storage areas outside the apartment, is to be in direct contact with soil or rely on any form of tanking including spaces that act as tanking. Note: Tanking is only acceptable to basement parking levels.	Plan DA.01.11 shows a subterranean storage room, which is not a maintenance passage.	NO

Tanking may only be provided to basement parking levels. Where basement storage is located adjacent to external walls, they are to be separated from the tanked wall by an accessible maintenance passage. Note: See Figure 7C.3-2 of the DCP	The proposal includes subterranean residential storage with external walls below ground level in direct contact with soil, without separation from the tanked wall by an accessible maintenance passage. This results in a poor design outcome and is inconsistent with Objective 1 of this control, which seeks to ensure efficient basement design.	NO
The internal finished floor level of any part of a ground floor apartment and/or private open space is not to be more than 0.9m below existing ground level at the building line.	Insufficient information provided to demonstrate compliance, which forms one of the reasons for refusal.	NO
Where the internal finished floor level of a ground floor apartment and/or private open space is not more than 0.9m below the existing ground level at the building line, the ground level adjacent to the building is to be levelled to the finished floor level for a distance of 3.0m from the building line. Note: See Figure 7C.3-2 of the DCP	Insufficient information provided to demonstrate compliance, which forms one of the reasons for refusal.	NO
All obstructions, such as retaining walls or fences, are to be located below a 45° control plane, drawn from the finished ground level at the building line. Landscaping plants may project beyond the 45° control plane. Note: See Figure 7C.3-2 of the DCP	Insufficient information provided to demonstrate compliance, which forms one of the reasons for refusal.	NO
7C.4 – Apartment mix and accessibility		
Range of apartment sizes (one, two, three bedroom) included within the development	1, 2, 3, and 4 bedroom apartments proposed, as shown DA00.01 Rev A.	YES
Mix of 1-, 2- & 3-bedroom apartments located on the ground level.	1 x 1 Bed, 2 x 2 Bed, and 3 x 3 Bed units at Ground level	YES
All apartments are to be designed to Silver Level under the Livable Housing Design Guidelines.	Compliance not demonstrated.	NO

At least 15% of the dwellings (or part thereof) are to be designed to Platinum Level under the Livable Housing Design Guidelines.	Compliance not demonstrated.	NO
At least 70% of all dwellings are visitable.	Compliance demonstrated.	YES
7C.5 – Building entries		
The residential flat building entry is to be clearly expressed using appropriate architectural elements.	The external main pedestrian entry is lined with solid walls, with no heights, with direct access from Pockley Avenue. No mailboxes are shown.	NO
Buildings are to address the street by providing visible entry points with the following: i) main building entrances that are level and directly accessible from the street; or, ii) where site configuration is conducive to having a side entry, the path to the building entrance is readily visible from the street, and the building entrance is signalled with appropriate architectural elements.	Separate walled private pathways, with enclosed garden beds, are located within a common front landscape area impacting deep soil areas. Refer to landscape comments within the Internal Referral section for additional commentary.	NO
Entry foyers are to be no more than 1m above ground level. Any ramped access required is to be integrated into the design of the building or landscape. Mechanical chairlifts and the like will not be accepted.	A ramp is designed into the building.	YES
Buildings are to have a clearly visible building entry for each vertical circulation core with clear way-finding signs integrated into the external circulation pathway system.	The entry is visible from Pockley Avenue.	YES
The building entry is to be legible and integrated with horizontal and vertical building facade architectural elements. At street level, the entry is to be articulated with awnings, porticos, recesses or projecting bays for clear identification.	Front building entry recessed.	YES
All entry areas are to be well lit and designed to avoid any concealment or entrapment areas and avoid dog leg entry foyers. All light spill is prohibited.	Fire stair and internal corridor provide entrapment areas contrary to this requirement.	NO
Lifts are to be directly visible from the building entry doorway.	Not directly visible from building entry doorway, however, way-finding signage to be provided and is acceptable on this basis, which is acceptable on merit.	YES
Lockable mailboxes are to be:	Mailboxes not shown.	NO

provided close to the street; and be at 90 degrees to the street and to Australia Post standards; and integrated with front fences or building entries.		
On large development sites comprising multiple separate buildings, each building is to have its own clear entry with good sightlines. Way-finding signs are to be provided.	Single building proposed.	YES
All entries are to be integrated into the external circulation pattern of the development.	No external circulation provided.	NO
Building entry paths are to be minimum 1.2m wide and located within the common area with a minimum dimension of 1.2m on either side for landscape planting. Paths are to provide extra width at building entries to allow easy passing between pedestrians and to allow effective turning.	Compliance demonstrated.	YES
All common circulation corridors are to be at least 1.5m wide, and the area outside lifts is to be at least 1.8m wide.	Compliance demonstrated.	YES
7C.6 – Building Form and Facades		
All building facades at ground level are to be designed to avoid the creation of entrapment areas.	Compliance demonstrated.	YES
No single wall plane is to exceed 81m ² in area.	Compliance demonstrated.	YES
The following are to be avoided on all building elevations: i) large flat walls; ii) undifferentiated window openings; iii) applied treatments; iv) one single predominant finish or material.	Compliance demonstrated.	YES
All facades are to place entries, habitable room windows, and balconies so that they maximise outlook and passive surveillance of the street and to common areas surrounding the building.	Compliance demonstrated.	YES
All building elements including shading devices, signage, drainage pipes awnings/colonnades and communication	Compliance demonstrated.	YES

devices are to be coordinated and integrated into the overall facade design. Note: Refer to Section A Part 12 Signage and Advertising for other signage controls.		
Air conditioning condensers are to be located within the basement or within the roof structure of the upper most roof. Air conditioning condensers are not to be located on: i) the building façade; ii) the top of a flat roof; iii) terraces; iv) private or communal open spaces; or v) balconies.	Located on individual balconies. Insufficient information to mitigate noise. Conditions are recommended if development is to be approved.	NO
Screening between adjacent apartments is to be integrated into the overall building design.	Compliance demonstrated.	YES
Notches, slots or indentations in the perimeter of the building are to be at least as wide as they are deep.	Compliance demonstrated, to provide balcony privacy, as shown within plans DA.05.90 and DA.05.91.	YES
Facade elements that result in poor architectural design outcomes for internal spaces, such as snorkel windows, are not permitted.	Compliance achieved. Snorkel windows provided with balcony walls to mitigate balcony privacy.	YES
All facades are to be designed to minimise on-going maintenance and weathering through measures such as: i) selecting appropriate robust materials/finishes; and ii) including appropriate building edge, balcony edge, sill, head and parapet detailing that demonstrates protection from prevailing weather and harsh solar aspects.	Facades comprise natural concrete coloured light grey, metal cladding coloured bronze brown, and glass as shown on plan DA.05.90 and DA.05.91.	YES
<i>Facade Articulation</i>		
All building facades are to be articulated with wall planes varying in depth by not less than 0.6m, and supplemented with architectural elements.	Compliance demonstrated.	YES
Facade articulation is to be well composed with attractive proportions and coherent rhythms and integrated into the building form and structure. Methods of achieving articulated facades include:	Compliance demonstrated.	YES

i) defining a base, middle and top relating to the overall proportion of the building; ii) expressing the internal building layout or structure, such as vertical bays or party walls; iii) using a variety of window types to create rhythm or express the building uses; iv) using recessed balconies and deep windows to add visual depth; v) use of eaves, louvres and sun shading devices to openings. vi) using elements that cast shadow and accentuate the appearance of depth; vii) using changes of material, texture and colour integrated with the building articulation to break down large or repetitive facades and reduce the bulk and scale of the building.		
Blade walls are not to be the sole element used to provide articulation.	Compliance demonstrated.	YES
All developments are to utilise shading/glare control devices to articulate the facade and contribute to the streetscape. Design solutions can include: i) providing external horizontal shading to north-facing windows, such as eaves, overhangs, pergolas, awnings, colonnades, upper floor balconies, and/or deciduous vegetation; ii) providing vertical shading to east and west windows, such as sliding screens, adjustable louvres, blinds and/or shutters; iii) providing shading to glazed and transparent roofs; iv) integration of shading devices with solar energy collection technology.	Compliance demonstrated.	YES
Building Length		
The continuous length of a single building on any elevation is not to exceed 36m.	The building design façade divides the structure into sections that vary across the different levels.	YES
The length of a single building elevation facing the side or rear boundary may exceed 36m provided that:	Compliance demonstrated.	YES

i) the façade is recessed in depth and width to appear as distinctive and separate building bays or wings; and ii) the recess is retained as common area with landscaping which includes at least one medium tree (at least 8m canopy diameter at maturity).														
Balconies														
Balcony or terrace design may incorporate building elements such as pergolas, sun screens, shutters, operable walls and the like to respond to the street context, building orientation and residential amenity. The use of such building elements are not to enable the balcony or terrace to be used as a habitable room.	Not proposed.	YES												
Balconies that run the full length of the building facade are not permitted.	Compliance demonstrated.	YES												
Continuous transparent or translucent balustrades are not permitted to balconies or terraces.	Compliance demonstrated.	YES												
Balconies are not to project more than 1.5m from the outermost wall of the building facade.	Compliance demonstrated.	YES												
7C.7 – Building storeys														
Sites with the following maximum building heights under the KLEP are to have a maximum number of storeys above the basement as in the table below: <table><tr><th>Maximum building height</th><th>Maximum number of storeys</th></tr><tr><td>11.5m</td><td>3</td></tr><tr><td>14.5m</td><td>4</td></tr><tr><td>17.5m</td><td>5</td></tr><tr><td>20.5</td><td>6</td></tr><tr><td>23.5m</td><td>7</td></tr></table> Note: The 1st storey is measured from a maximum 1m above the existing ground level. Also see figure 7C.7-1 in the DCP.	Maximum building height	Maximum number of storeys	11.5m	3	14.5m	4	17.5m	5	20.5	6	23.5m	7	N/A – SEPP Housing applies. Proposal contains 8 storeys, as the ground floor above the basement is more than 1 metre above natural ground level, consequently it is defined as a storey.	N/A
Maximum building height	Maximum number of storeys													
11.5m	3													
14.5m	4													
17.5m	5													
20.5	6													
23.5m	7													
On steep sites, the size of the floor plate is to reflect the topographic constraints.	Complies. However, Plan DA.01.11 shows a large	YES												

Note: Smaller stepping floor plates can assist to negotiate the topography. Note: Accommodating building storey levels through excavation and creation of subterranean rooms to ground floor apartments will not be accepted	subterranean room being part of the upper ground level. The exceedance of building height stems from the building not being stepped down within the natural slope of the land.	
7C.8 – Top storey design and roof forms		
The top storey of a building is to be designed so that: i) the GFA of the top storey of a residential flat building does not exceed 60% of the GFA of the storey immediately below it; and ii) for the purposes of this section, the top storey applies to the building as a whole and does not apply to the top level of each part of a stepped building. Note: See figures 7C.8-1 and 7C.8-2 in the DCP.	45.7%	YES
The top storey of a building is to be set back a minimum of 2.4m from the outer face of the floors below on all sides (roof projection is allowed beyond the outer face of the top storey). Note: Lift cores are to be located internally within the building to facilitate the top storey setback	North, east and southern side setbacks of the top storey measure approximately 2 metres. No dimensions shown on plans.	NO
The upper storeys of residential buildings are to be articulated with differentiated roof forms, maisonettes or mezzanine penthouses and the like.	Compliance demonstrated.	YES
Service elements are to be integrated into the overall design of the roof and not be visible from the public domain or any surrounding development. These elements include lift overruns, plant equipment, air conditioning units, chimneys, vent stacks, water storage, communication devices and signage.	The lift-run is visible.	NO
Roof design is to respond to solar access and prevailing weather with the use of eaves, skillion roofs, awnings and the like with a minimum overhang of 0.6m	Plan DA.01.08 does not demonstrate compliance	NO
Roof top gardens for private or communal use are encouraged.	Compliance demonstrated.	YES

7C.9 – Laundry and air clothes drying facilities		
Each apartment is required to have access to an external air clothes drying area, such as a screened balcony, a terrace or clothes lines within the common area. Note: see Figure 7C.9-1 in the DCP.	Rear common area does not show drying areas. Not detailed on architectural plans for each apartment.	NO
All external air clothes drying areas are to be screened and not be visible from any public domain area.	Compliance not demonstrated.	NO
Storage volume calculation within laundries is to exclude the space required to accommodate a washing tub, washing machine and dryer.	Plan DA.05.70 shows colour coding, with Plan DA.05.71 showing each apartment with numeric areas.	YES
Where clothes drying is provided within private open space within a communal open space, its area is to be additional to that required for the private open space or communal open space.	Compliance not demonstrated.	NO
7C.10 – Fencing		
Front boundary fences and walls (to a public street) and side boundary fences within the street setback are not to be higher than: i) 0.9m if of closed construction (such as masonry, lapped and capped timber or brushwood fences); or ii) 1.2m if of open construction (such as open paling and picket fences).	Front fences are proposed, however, plans shown no dimensions.	NO
Closed front fences with a maximum height of 1.8m may be considered where the site fronts a busy road or other sources of undesirable noise. These fences are to be set back at least 2m from the front boundary and screened by landscaping.	Plan DA.02.00 does not show all building heights for roof top elements at Levels 5, 6, and 7.	NO
Fences and walls are to step down and follow the natural contours of the site.	Plan DA.02.00 shows solid front fence follows natural ground level, however, no dimensions indicated.	NO
Hedges and shrub planting are preferred to the street frontage, but no higher than 1.2m along the entire front boundary, or 1.8m on a site fronting a busy road.	No continuous hedges provided, as front courtyards terraced with multiple pathways.	NO
All fencing is to be designed to highlight	Insufficient detail provided	NO

entrances and be compatible with buildings and letterbox areas.	on landscape plan.	
External finishes for fencing are to be robust and graffiti resistant.	Insufficient detail provided on landscape plans.	NO
Ground floor private open space, courtyard and terrace wall and fence heights are not to exceed i) 1.2m to any street frontage ii) 1.8m to any side or rear boundary with a maximum 1.2m high solid component and a minimum 30% transparent component above.	Insufficient detail provided on landscape plans.	NO
7C.11 – Acoustic Privacy		
Noise levels associated with air conditioning, kitchen, bathroom, laundry ventilation, other mechanical ventilation systems and other plant are to comply with the requirements in Part 23.8 of the DCP.	Compliance has not been demonstrated; however, conditions can be recommended seeking compliance.	YES

As identified within the above table, the proposal does not meet all the provisions of Part 7 of KDCP. As commented previously, the applicant did not respond to the issues raised within Council's RFI letter, and on this basis, as identified within **Attachment 11**, these form the reasons for refusal.

Ku-ring-gai Development Control Plan

Section B

Part 17 – Riparian Lands

Referring to **Figure 10**, the site is mapped as riparian land along the western side boundary of the site.

Council's Ecological Assessment Officer is satisfied that the proposed development has been designed to minimise impacts on the riparian area.

Part 18 – Biodiversity

The site is mapped as land comprising biodiversity significance.

Council's Ecological Assessment Officer is satisfied that the proposed development will not result in a significant detrimental impact contrary to the objectives of these provisions in relation to the diversity and condition of native vegetation, fauna and habitat. Refer to the referral comments earlier in the report for further details in this regard.

Part 19 – Heritage and Conservation Areas

The subject site does not contain a heritage item and is not within a heritage conservation area but is located within 100 metres of heritage items at Nos. 6, 12, 16 and 33 Shirley Road.

The impacts of the proposed development on nearby heritage items have been considered and are deemed acceptable.

Ku-ring-gai Development Control Plan

Section C

Development Control	Proposed	Complies
Part 21 General Site Design		
21.1 – Earthworks and slope		
Development to consider site topography, drainage, soli landscapes, flora, fauna and bushfire hazard by: - Stepping buildings down the site - Locate finished ground level as close to the natural ground level as practicable - Level changes to occur primarily within building footprint - Minimum 0.6 metres width between retaining walls - Maintain existing ground level within 2m from any boundary - Limit slope for embankments to 1:6 (grassed) and 1:3 (soil stabilising vegetation) - No fill and excavation within sensitive environments - Minimise altered groundwater flows	Western side ground floor plate elevated. Excavation proposed. Single ground level floor plate. Altered groundwater flows. Refer to Engineering and Landscape referral comments within the Internal Referral section of this report for additional commentary.	NO
21.2 – Landscape Design		
Appropriate and sensitive site planning and design Existing appropriate screen planting is retained	Control 5 of this Part is not satisfied. Refer to Landscaping referral comments within the Internal Referral section of this report for additional commentary.	NO

Part 22 - General access and parking		
22.1 – Equitable Access		
Compliance with DDA demonstrated Entry access ramps located within the site and does not dominate the front façade Access ways for pedestrians and for vehicles are separated	Separate vehicular and pedestrian accessways are provided. However, multiple front pathways impact deep soil areas and are visually intrusive. Refer to Landscape referral comments within the Internal Referral section of this report for additional commentary.	NO
Residential only Multi Dwelling Housing, Residential Flat Buildings and Shop Top Housing within Mixed Use developments provide access to, and between, dwellings and parking in accordance with the Livable Housing Guidelines as stipulated in Part 6 Multi Dwelling Housing, Part 7 Residential Flat Buildings and Part 8 Mixed Use Development.	Compliance demonstrated.	YES
22.2 – General vehicle access		
- Minimise width and number of vehicle access points - Access driveways set back at least 10m from street intersections and 3m from pedestrian entrances - Vehicle and pedestrian access to buildings clearly distinguished and separated - Vehicle crossing width is acceptable for intensity of use proposed - Vehicles must exit in a forward direction - Vehicle entries are integrated into the external façade and are finished in a high quality material - Retaining walls associated with driveways maximum height of 1.2m - No driveways are longer than 30m unless a passing bay is provided	The vehicle access point provides two-way ingress and egress in a forward direction and is integrated into the external façade. The driveway has an approximate length of 13 metres and is compliant. A sight triangle to meet AS2890.1:2004 can be conditioned.	YES
22.3 – Basement car parking		
Logical and efficient basement design AS2890.1	Compliance demonstrated.	YES

Appropriate ceiling floor to ceiling heights and ventilation provided: 2.5m for parking area for people with a disability; 2.6m for residential waste collection and manoeuvring area 4.5m for commercial waste collection and manoeuvring area	Ventilated grilles and or shafts not shown. Plan DA.03.00 shows Basement floor to the floor above at 3 metres. No commercial premises proposed.	YES
Basement is fully tanked to prevent unnecessary subsurface or ground water extraction.	The proposal does not include a tanked system.	NO
Unimpeded access to visitor parking and waste recycling rooms	Compliance demonstrated.	YES
Ventilation grilles and screening devices are integrated into the landscape design	Not shown on landscape plans.	NO
Vehicles access ways are not near doors and windows of habitable rooms	Bed 3 of Unit LG.01 located above driveway entrance.	NO
Safe and accessible intercom access provided	Compliance is achievable with conditions.	YES
22.4 – Visitor parking		
Visitor parking located behind a security grille with an intercom system to gain entry At least one visitor space is accessible and designed in accordance with AS2890.6	Compliance is achievable with conditions.	YES
22.5 – Parking for people with a disability		
Accessible spaces are signposted and have a continuous path of travel to the principal entrance or a lift	Compliance is achievable with conditions.	YES
22.6 – Pedestrian Movement within Car Parks		
Pathways designed in accordance with AS1428.1	Compliance is achievable with conditions.	YES
Marked pedestrian pathways have clear sightlines, appropriate lighting, are visible, conveniently located and constructed of non-slip material	Compliance is achievable with conditions.	YES
22.7 – Bicycle Parking and facilities		
Bicycle parking and storage facilities satisfy AS2890.3	Compliance is achievable with conditions.	YES

Bicycle access paths have a minimum width of 1.5 metres	Compliance is achievable with conditions.	YES
Part 23 – Building Design and Sustainability		
23.3 – Sustainability of Building Materials and 23.4 – Materials and Finishes		
External walls constructed of high quality and durable materials	Compliance is achievable with conditions.	Complies
Use of materials and colours creates well-proportioned facades and minimises visual bulk	Compliance is achievable with conditions.	Complies
23.5 – Roof Terraces and Podiums		
Podiums and roof terraces are trafficable and support landscaping	Trafficable and plans show landscaping; however, insufficient information of soil depth and top of wall levels to planters to meet Control 7 of this Part.	NO
Roof & terrace common areas design encourage usage	Landscape plan “LP06” shows common area at Level 5.	YES
23.6 – Building Services		
Services and related structures are appropriately located to minimise streetscape impact	The location of air conditioning condensers are located on private balconies, however, requires visual screening.	NO
Air-conditioning units are well screened and do not create adverse noise impacts	The location of air conditioning condensers are located on private balconies, however, noise compliance has not been demonstrated. Refer to Health referral.	NO
23.7 – Acoustic Privacy		
Design minimises impact of internal and external noise sources	No significant noise sources within locality.	YES
Noise levels associated with air conditioning, kitchen, bathroom, laundry ventilation, or	If approval were recommended, this	NO

other mechanical ventilation systems and plant either as an individual piece of equipment or in combination shall not be audible within any habitable room in any residential premises before 7am and after 10pm. Outside of these restricted hours noise levels associated with air conditioning, kitchen, bathroom, laundry ventilation, or other mechanical ventilation systems and plant either as an individual piece of equipment or in combination shall not emit a noise level greater than 5dB(A) above the background noise (LA90, 15 min) when measured at the boundary of the nearest potentially affected neighbouring properties. The background (LA90, 15 min) level is to be determined without the source noise present.	matter could be addressed with standard conditions.	
23.8 – Visual Privacy		
Visual privacy maintained for occupants and for neighbouring dwellings	Future occupants along the eastern side of the development will be impacted by future development on the adjoining land due to the slope of the land and downward overlooking opportunities will be present looking into eastern facing windows, which do not show privacy devices.	NO
23.9 – Construction, Demolition and Disposal		
Satisfactory Environmental Site Management Plan	Plan is provided.	YES
24 – Water Management		
This Part facilitates development in achieving the requirements of the clause titled 'Stormwater and water sensitive urban design' in KLEP 2015.	Refer to the Engineering referral within the Internal Referral section of this report.	NO

As identified within the above table, the proposal does not meet all the provisions of KDCP. As commented previously, the applicant did not respond to the issues raised within Council's RFI letter, and on this basis, as identified within **Attachment 11**, these form the reasons for refusal.

Ku-ring-gai Contributions Plan 2010

If the application were recommended for approval, contributions would be payable per the requirements of this plan.

Housing Productivity Contributions

If the application were recommended for approval contributions would be payable per the requirements of the Ministerial Order.

Environmental Planning & Assessment Regulation 2021

The proposed development relates to a development for which a BASIX certificate was required. The submitted BASIX Certificate is not consistent with the plans and this included forms one of the reasons for refusal. The requirements of Section 27 of the EP&A Regulation 2021 are not satisfied.

The proposed development relates to residential apartment development, where the development is required to be accompanied by a design verification statement from a qualified designer under Section 29 of the EP&A Regulation 2021. A design verification statement, prepared by a qualified designer, has been submitted with the application.

Section 61(1) of the EP&A Regulation 2021 requires the consent authority to consider the provisions of Australian Standard AS 2601-2001: The demolition of structures. If the application were recommended for approval, a condition requiring that demolition works be in accordance with Australian Standard AS 2601-2001: The demolition of structures would be recommended.

Section 86A 'Residential flat buildings and shop top housing in Transport Oriented Development Areas' requires that certain conditions be imposed in relation to the 2% affordable housing component required under Section 156 of the Housing SEPP. Whilst approval is not recommended for other reasons, these conditions could not be imposed as the application documentation does not advise that any affordable housing is provided, although there should be.

LIKELY IMPACTS

The likely impacts of the development have been considered within this report and are deemed to be unacceptable, as outlined within the reasons of refusal.

SUITABILITY OF THE SITE

The site is not suitable for the proposed development.

PUBLIC INTEREST

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

CONCLUSION

Having regard to the provisions of section 4.15 of the EP&A Act 1979, the proposed development is unsatisfactory for the reasons detailed throughout this report.

RECOMMENDATION

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

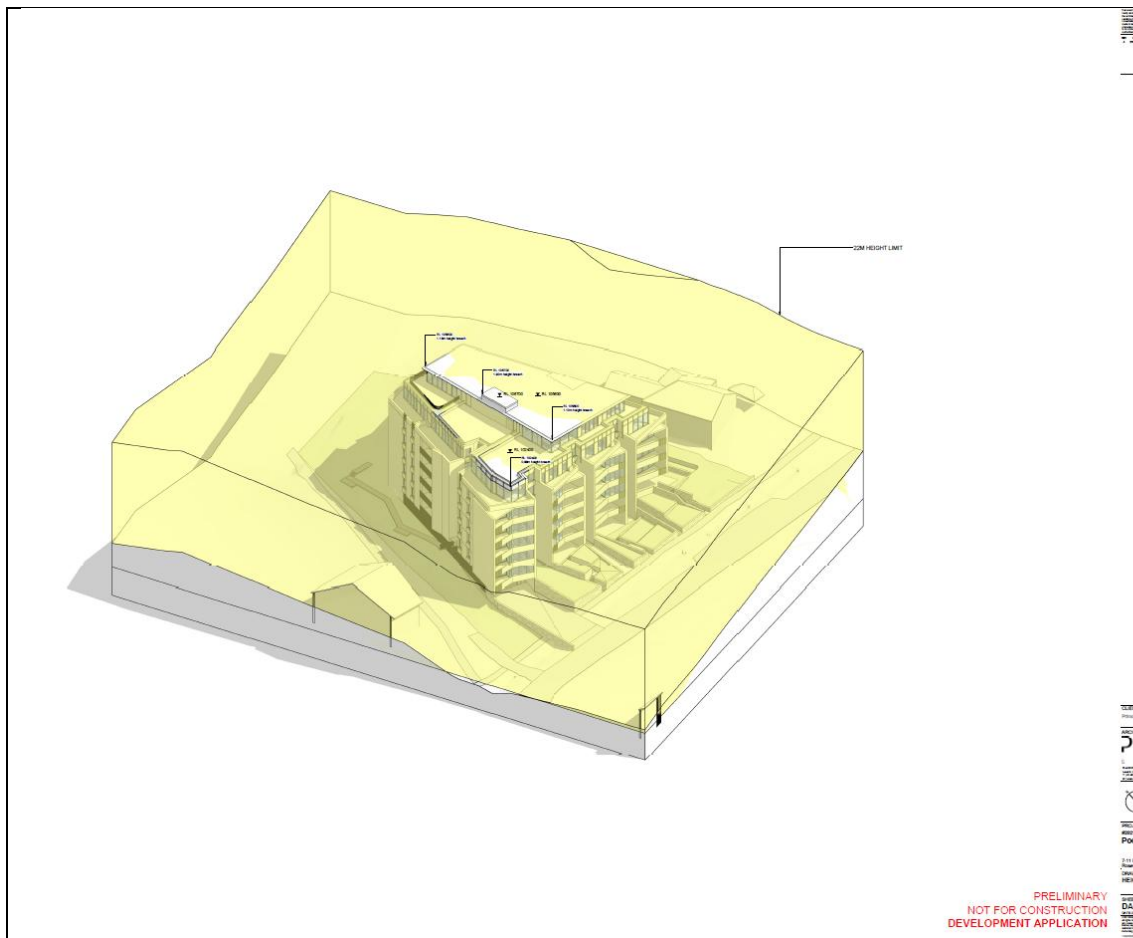
THAT the Sydney North Planning Panel, exercising the functions of Ku-ring-gai Council, as the consent authority, pursuant to Section 4.16 of the Environment Planning and Assessment Act 1979, refuse development consent to eDA0189/25 for demolition of existing structures, lot consolidation and construction of a residential flat building development with basement car parking and associated works on land at No. 7-11 Pockley Avenue Roseville, for the following reasons:

1. Non-compliant building height

The proposal exceeds the maximum building height permitted under section 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.



***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.
- d) 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.
- e) 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 southwest 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 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.
- b) The proposed development fails to provide a Temporary on-site Bulky Goods Collection Point in accordance with Part 25B.2 of the KDCP. A separate hardstand area is not permitted. The location of the loading area must not obstruct access to and from the basement level car park, with at least one travel lane maintained at all times. At least one on-site loading space is required to accommodate a 6.7 metre service vehicle, with such spaces line-marked and/or signposted as designated loading areas.

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:
 - 1. 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
 - 2. 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.

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 Development Application.

- c) 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.

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. No Parking Restrictions

- a) In accordance with section P of the Council's Traffic and Transport Policy, 'No Parking' restrictions for 6 metres on either side of the driveway are to be implemented prior to occupation. Council's fees and charges for referral to the Ku-ring-gai Traffic Committee and installation of signs apply.
- b) 'No Parking' restrictions for 6 metres on either side of the driveway are to be implemented prior to Occupation. The proponent is required to submit an application to the Ku-ring-gai Traffic Committee for approval of the parking restrictions prior to issuing the Occupation Certificate.
- c) Council's fees and charges for referral to the Ku-ring-gai Traffic Committee and installation of signs are to be paid by the proponent.

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.

Particulars:

- 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.

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:

