

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSNH-727
<b>DA Number</b>	eDA0470/25
<b>LGA</b>	Ku-ring-gai
<b>Proposed Development</b>	Tree removal, construction of a 9 storey residential flat building over 3 levels of basement parking plus associated landscaping and civil works
<b>Street Address</b>	4 Cherry Street, Warrawee
<b>Applicant</b>	Celesteem Turramurra Development Pty Ltd
<b>Date of DA lodgement</b>	04/09/2025
<b>Total number of Submissions</b> <b>Number of Unique Objections</b>	62 objections received during notification period 7 objections received during renotification period
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria: Schedule 6 of the SEPP (Planning Systems) 2021</b>	Estimated development cost of greater than \$30 million
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979</li> <li>• Environmental Planning and Assessment Regulation 2021</li> <li>• Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>• State Environmental Planning Policy (Sustainable Buildings) 2022</li> <li>• State Environmental Planning Policy (Housing) 2021</li> <li>• Ku-ring-gai Local Environmental Plan 2015</li> <li>• Ku-ring-gai Development Control Plan</li> </ul>
<b>Attachments</b>	<ol style="list-style-type: none"> <li>1. Location Sketch <a href="#">2026/113145</a></li> <li>2. Zoning Extract <a href="#">2026/113146</a></li> <li>3. Architectural Plans <a href="#">2025/272827</a></li> <li>4. Landscape Plans <a href="#">2025/272862</a></li> <li>5. Stormwater Plans <a href="#">2025/272875</a></li> <li>6. Detail Survey <a href="#">2025/272865</a></li> <li>7. Statement of Environmental Effects <a href="#">2025/272863</a></li> <li>8. Clause 4.6 Variation Request <a href="#">2025/272853</a></li> <li>9. Design Verification Statement <a href="#">2025/272857</a></li> <li>10. Statement of Facts and Contentions <a href="#">2026/120554</a></li> </ol>
<b>Summary of submissions</b>	<ul style="list-style-type: none"> <li>• Excessive bulk and scale compared to No. 2 Cherry Street</li> <li>• Excessive building height and insufficient Clause 4.6 height variation request</li> <li>• Traffic and parking impacts</li> <li>• Impact on local character and desired future character</li> <li>• Privacy and overlooking</li> <li>• Impacts specific to No. 2 Cherry Street, including overlooking, acoustic impacts and solar impacts</li> <li>• Insufficient building separation</li> </ul>

	<ul style="list-style-type: none"> <li>• Heritage impacts, including upon Nos 1, 2, 3, 5 Laurel Avenue and No. 8 King Street</li> <li>• Stormwater and groundwater impacts</li> <li>• Excavation and geotechnical impacts</li> <li>• Impacts from demolition and construction</li> <li>• Impacts upon vegetation and local biodiversity</li> <li>• Inadequate open space at ground level</li> </ul>
<b>Report prepared by</b>	Asmaa Rabiee
<b>Report date</b>	28/04/2026

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

## PURPOSE OF REPORT

Pursuant to Schedule 6 of the State Environmental Planning Policy (Planning and Systems) 2021, the development has an estimated development cost of greater than \$30m being \$41,174,894, consequently the application is referred to the Sydney North Planning Panel (SNPP), as the consent authority in accordance with Section 4.5(b) and Clause 9(b) in Schedule 2 of the Environmental Planning and Assessment Act 1979.

Sydney district and regional planning panels are being phased out, transferring decision-making for regionally significant developments (typically >\$30m) back to local councils and their local planning panels, effective from 16 January 2026. Under the Environmental Planning and Assessment Amendment (Regionally Significant Development) Regulation 2025, regional panels will continue to determine some matters, including but not limited to those under appeal, which is the case in this instance.

## 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

- Excessive bulk, scale and density
- Non-compliant height and unsatisfactory Clause 4.6 variation request
- Inaccurate GFA calculations
- Inadequate site analysis and urban response
- Insufficient side setbacks
- Inadequate deep soil zone
- Inadequate landscape setting
- Inadequate internal amenity
- Inadequate visual privacy
- Inadequate apartment mix
- Inadequate water management
- Inadequate visitor bicycle parking and provision for bulky goods collection and a loading area
- No preliminary construction traffic management submitted

Impact on Council's infrastructure  
Impact on heritage items and heritage conservation area  
No Owners' consent for proposed fence  
Insufficient fence details  
Insufficient information to assess tree impacts  
Inconsistent landscape BASIX commitments

**Land and Environment Court**

Deemed refusal appeal filed 12/12/2025

**Recommendation**

Refusal

**EXECUTIVE SUMMARY**

The Sydney North Planning Panel considered Council's draft Statement of Facts and Contentions (SOFAC) (**Attachment 10**) prior to these being filed with the Land and Environment Court. The reasons for refusal arising from this assessment report are not identical to the contentions in the SOFAC, the reasons for this are explained below:

- a) Contention No. 2 'Non-compliant height' relates to the Clause 4.6 variation request. The variation request does not adequately address the requirements of Clause 4.6(3)(a) and (b). Further detail has been included to clarify this, particularly in relation to Particulars (g) and (h). These updates are reflected in Reason for Refusal No. 2.
- b) Contention No. 3 'Non-compliant minimum lot area dimensions' refers to Clause 6.6(2)(b) of Ku ring gai Local Environmental Plan 2015 (KLEP) in relation to minimum lot width. However, the standard does not require the minimum width to be achieved at the street frontage. Rather, compliance is achieved where the site can accommodate a 30 metres by 30 metres square within its boundaries. On this basis, the site is capable of complying with the minimum lot width requirement. Accordingly, this contention has not been included in the recommended Reasons for Refusal.
- c) Contention No. 4 'Non-compliant number of storeys' relates to the 6 storeys maximum in Section 175(2) of the SEPP (Housing) 2021 (SEPP Housing). This provision does not apply to a building which exceeds a height of 22 metres. As the height of the building exceeds 30 metres, the standard has no operative effect. Accordingly, this contention has not been included in the Reasons for Refusal.
- d) Contention No. 8 'Inadequate deep soil zone' refers to the deep soil zone requirement under Section 19(2)(c) of the SEPP Housing. However, as Chapter 4 of the SEPP Housing applies to the development, Section 19(3) provides that this requirement does not apply. Accordingly, the reference to this subsection has been removed from recommended Reason for Refusal No. 6.
- e) Contention No. 21 'Insufficient information addressing site isolation' relates to the potential isolation of No. 6 Cherry Street. For the reasons explained under the heading 'Part 3 – Land consolidation and subdivision' on page 67 of this report, No. 6 Cherry Street is not an 'isolated site'.

## HISTORY

### Site history

The site has a history of residential use.

### Previous applications history

The site is subject to an existing development consent (DA0087/17) and a Construction Certificate (24/0247/01) and work has already commenced, including the demolition of structures on the site. Council's records show a history of applications relating to the site as follows:

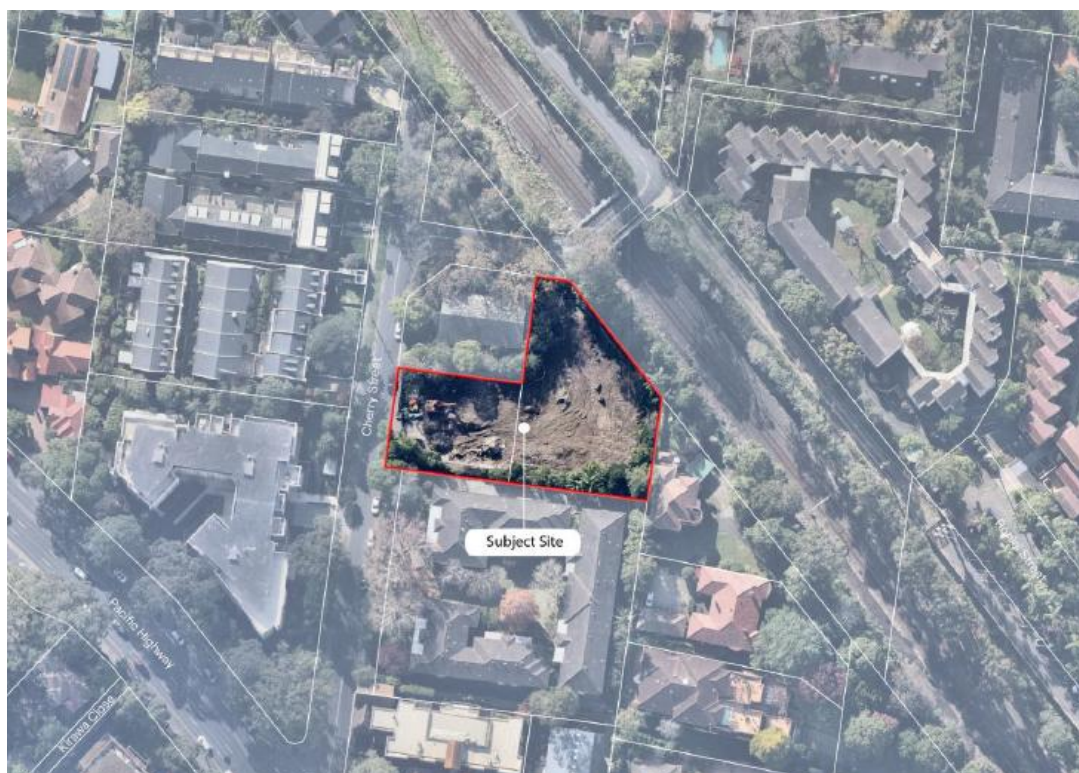
Type	Application	Description	Decision	Date
BA	BA96/00938	Addition of Breakfast & Family Rooms Plus Pergola	Approved	13/08/1996
DA	DA0087/17	Demolish existing structures and construct residential flat building comprising 35 apartments, basement parking and associated landscaping	LEC Approved	15/03/2017
Sec 96	MOD0077/18	Modification to Land & Environment Court Appeal 2017/00225212 (DA0087/17) proposing various design changes including location of air conditioning plant on roof and additional car parking to basement	Approved	21/05/2018
Sec 96	MOD0212/18	Modification to Land & Environment Court Approval 2017/00225212 (DA0087/17) proposing various alterations including change to facade detailing and inclusion of site facilities	Approved	29/11/2018
CDC	CCPCA0072/25	Demolish existing structures and construct residential flat building comprising 35 apartments, basement parking and associated landscaping. CC01 Scope: Works associated to the construction of part of a new driveway - Excluding: All works not contained within the CC01 scope as indicted	Issued	18/03/2025

### Current Development Application History

Date	Action
04/09/2025	Application lodged.

18/09/2025	The application was notified to neighbouring property owners for 30 days.
28/11/2025	A letter was sent to the applicant seeking additional information.
12/12/2025	A deemed refusal was filed in the Land and Environment Court.
14/01/2026	The applicant provided a revised site hydrology report and dewatering management plan, resulting in the development being identified as Nominated Integrated Development.
12/02/2026	The application was re-notified to neighbouring property owners as Nominated Integrated Development for a period of 28 days.
10/02/2026	Council filed the Statement of Facts and Contentions as the Respondent.
25/02/2026	Referral to WaterNSW was sent.
10/04/2026	General Terms of Approval from WaterNSW were received.

## THE SITE



**Figure 1 – Aerial view of the subject site. source: Statement of Environmental Effects**

### Site description

The site is legally described as Lot 1 in DP 1306205 and is known as No. 4 Cherry Street, Warrawee as shown in **Figure 1**. The site is an L-shaped allotment which borders the corner lot (No. 6 Cherry Street) to the north and west. The site has a frontage to Cherry Street on both the northern and western boundaries.

The site's southern boundary with No. 2 Cherry Street is 71.835 metres. The site's eastern boundary to the North Shore Railway Line is 40.18 metres. The site's northern boundary to Cherry Street is 9.08 metres, and its western boundary is 27.585 metres. The total area of the site is approximately 2,672 m<sup>2</sup>.

The site was previously occupied by two dwellings, which were demolished under Complying Development Certificate PCA0072/25.



## THE PROPOSAL

The application proposes a residential flat development, as follows:

- a) Three levels of basement, comprising:
  - i) 87 car parking spaces, including 70 x resident parking spaces, 6 x spaces allocated to affordable housing units, 10 x visitor parking spaces (including 1 x accessible space) and 1 x car share vehicle space
  - ii) stormwater detention tank and pump room;
  - iii) bulky waste area;
  - iv) waste room; and
  - v) 61 x bicycle spaces (55 x resident spaces & 6 x visitor spaces).
- b) Nine storeys of residential units (55 units in total), comprising:
  - i) 3 x studio units
  - ii) 4 x one-bedroom units
  - iii) 10 x two-bedroom units
  - iv) 37 x three-bedroom units
  - v) 1 x four-bedroom units
- c) rooftop and ground floor communal open space
- d) rooftop plant room
- e) basement service areas
- f) vehicular access from Cherry Street
- g) separate pedestrian access from Cherry Street
- h) stormwater works, including an on-site detention tank and rainwater tank in basement
- i) associated landscaping and civil works

Architectural and associated plans, along with supporting documentation detailing the above works are contained in the attachments, as listed on the cover page of this report.

## 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. *Y Zhang, address not provided*
2. *GM Worrall, 25/9 Cherry Street*
3. *L Wang, 6/1- 3 Cherry Street*
4. *Mrs JL Matthew, 10/1359 Pacific Highway*
5. *LC Jackson & CM Jackson, 13/5 Cherry Street*
6. *Y Zhang & W Yan, 14/9 Cherry Street*
7. *J Zeng, 114A Carrington Road*
8. *S Kung, 49/1-3 Cherry Street*
9. *B Kung, address not provided*
10. *Mrs ER Stanley, 6/2 Cherry Street*
11. *FA Quaglia, 1/1359 Pacific Highway*
12. *J Seddon, 10/9 Cherry Street*
13. *A & M McDougall, 7/2 Cherry Street*

14. *SJ Cornale, 33/1-3 Cherry Street*
15. *Ms MJ Heaven, 5/2 Cherry Street*
16. *Y Loh, 156 Murray Farm Road*
17. *T Ellicott, 15/2 Cherry Street*
18. *Mrs R Barrell, 6 Cherry Street*
19. *J Leung, 14/5 Cherry Street*
20. *E Yee, 22/9 Cherry Street*
21. *A Wong, 22/9 Cherry Street*
22. *T Adams, 1 Laurel Avenue*
23. *Dr V Lane-Roxanas RN, 20 Hastings Road*
24. *Mandy, address not provided*
25. *M.G. Roxanas, 20 Hastings Road*
26. *M Ference, 4/1-3 Cherry Street*
27. *M and J Fung, 2 Cherry Street*
28. *F Gill, 2 Cherry Street*
29. *M Yang, 18/9-15 Cherry Street*
30. *Z Triantafilis on behalf of V Triantafilis, 16/2 Cherry Street*
31. *K Jay, 16/1-3 Cherry Street*
32. *Mr K Tse, 20/2 Cherry Street*
33. *D Farrugia, 4 Laurel Avenue*
34. *Mrs J Gill, 7 Allawah Road*
35. *Mr J Keogh, 3 Laurel Avenue*
36. *Mr B Stinson, 17/2 Cherry Street*
37. *A Fabian, 13/1351 Pacific Highway*
38. *P Lee, 2/2 Cherry Street*
39. *E Lee, 2/2 Cherry Street*
40. *J Lee, 31/16-18 Boyd Street*
41. *L Hua, 9-15 Cherry Street*
42. *A Lee & K Bui, 11/2 Cherry Street*
43. *K Lam, 31/16-18 Boyd Street*
44. *M Livingstone, 61 Brentwood Avenue*
45. *D Read, 8/2 Cherry Street*
46. *V Stewart, 2 Cherry Street*
47. *A Carroll & N Lawson on behalf of unit owners at 16 & 18 Ray Street, 2/18 Ray Street*
48. *A Carroll and N Lawson, Unit 2/18 Ray St Turramurra*
49. *S Farrugia, 4 Laurel Avenue*
50. *C Holdaway, address not provided*
51. *T Banerjee, 16/1-3 Cherry Street*
52. *Mr F Gill, 7 Allawah Road*
53. *I Farrugia, 4 Laurel Avenue*
54. *Cr M Devlin, address not provided*
55. *E Howard, 24/9 Cherry Street*
56. *N Badawi, 3 Laurel Avenue*
57. *E Anne Hygert, 3/16 Ray Street*
58. *V Shum, 27/9 Cherry Street*
59. *B McKinnon, address not provided*
60. *D Larkin & V Tammetta, 9/1359 Pacific Highway*
61. *N Porter-Dole, address not provided*
62. *Mr GR Bull, 5 Lowther Park Avenue*

The submissions raised the following issues:

***The proposed building height is excessive and inconsistent with Warrawee's low- to mid-rise character, resulting in overdevelopment and failing to satisfy Objective 1(a) of Clause 4.3 of the KLEP.***

It is agreed that the proposed development is incompatible with the local character and the proposed height is not acceptable. This issue forms Reason for Refusal No. 2.

***The bulk, scale and visual prominence of the proposed building are inconsistent with the local character.***

This issue forms Reason for Refusal No. 1.

***The development is expected to increase winter overshadowing of No. 1359 Pacific Highway.***

The proposal will not result in significant overshadowing impacts on No. 1359 Pacific Highway as this property would only be overshadowed to a minor extent for a brief period after 9am on June 21.

***The proposal results in overshadowing impacts on the neighbouring property at No. 2 Cherry Street.***

This issue forms part of Reason for Refusal No. 2 and No. 5.

***The proposal results in overlooking impacts on the neighbouring property at No. 2 Cherry Street.***

This issue forms part of Reason for Refusal No. 5.

***Insufficient side setback and scale of development affecting the amenity and future development of the neighbouring properties at No. 2 and No. 6 Cherry Street***

This issue forms part of Reason for Refusal No. 5.

***The development would result in isolation of No. 6 Cherry Street.***

As Section 178 of SEPP (Housing) 2021 (SEPP Housing) states that a requirement specified in another environmental planning instrument or development control plan in relation to lot size and lot width does not apply to development that meets the standards in Section 180(2) or (3). Accordingly, No. 6 Cherry Street will retain similar development opportunities to the subject site.

***Concerns are raised regarding adverse impacts on trees along the boundary of No. 2 Cherry Street.***

Impacts on trees along the boundary of No. 2 Cherry Street have been assessed and considered acceptable by Council's Senior Landscape and Tree Assessment Officer.

***The site is not within the Low- and Mid-Rise Housing Inner Area, as the actual walking distance to Turramurra Station is approximately 500–600m.***

Measurements taken using the LMR viewer (**Figure 3**) indicate that the site is within approximately 223 metres of the area identified as Turramurra Railway Station and Town Centre.



**Figure 3: distance between subject site and area identified Turramurra station and town centre (LMR viewer)**

**The development does not satisfy Section 20(3) of Chapter 2 of SEPP Housing, as the development is not compatible with the local area**

This issue forms part of Reason for Refusal Nos. 1 and No. 4.

**Rooftop communal space is of limited usability (heat and design), and provides less functional open space for families than ground-level provision.**

The communal open space provision is consistent with the relevant development controls. Rooftop communal areas are an accepted design outcome for this form of development.

**The proposal fails to satisfy the SEPP Housing communal open space requirements. Its location on Level 8 and restricted resident-only access are questioned.**

The communal open space has been assessed against the relevant controls of SEPP Housing and is considered satisfactory in terms of its location and design. The communal open space is intended for use by residents of the development.

**The location of the car park stairs, building entry, and associated facilities near the boundary is considered to result in noise and activity impacts on adjoining properties.**

Noise generated from these parts of the building is unavoidable as these elements are consistent with the development of R4 High Density Residential zoned land.

**Removal of screening vegetation is unreasonable and inconsistent with Warrawee's character, given limited space for meaningful replacement planting between the site and No. 2 Cherry Street.**

The merits of the proposed tree removal have been assessed by Council's Senior Landscape and Tree Assessment Officer and are considered acceptable having regard to the relevant planning controls.

***Limited landscaping space will result in unbalanced planting, emphasising the building's scale and creating a 'walled-in' effect for neighbouring properties.***

The inconsistency with the established landscape character forms part of Reason for Refusal No. 6. The bulk and scale of the development form part of Reason for Refusal No. 1.

***A comprehensive geotechnical study should be undertaken at this stage to assess impacts on the railway embankment and ensure public safety.***

The application was referred to Sydney Trains, and recommendations have been provided. Should the development be approved, these recommendations would be incorporated into the conditions of consent.

***The swept path analysis does not consider potential conflicts with the driveway opposite, and increased traffic may create safety hazards on the narrow Cherry Street.***

The swept path analysis has been reviewed by Council's Development Engineer and is considered satisfactory.

***The applicant's Clause 4.6 variation request is inadequately justified, as it relies on generic arguments that do not demonstrate site-specific environmental planning grounds.***

Concerns regarding the Clause 4.6 variation request form part of Reason for Refusal No. 2.

***The waste management assessment lacks evidence-based justification, misrepresents vehicle movements and may not address access constraints and future waste collection requirements.***

No concerns regarding waste servicing have been identified in the assessment of the application by Council's Team Leader, Development Engineers.

***The claimed public benefits of the proposal are considered unsubstantiated, with insufficient evidence to demonstrate that impacts on surrounding residents are reasonable.***

The provision of affordable housing is recognised as a public benefit. However, the proposal is not acceptable for reasons including adverse amenity impacts on adjoining sites.

***Concerns are raised regarding water management and structural risks associated with the scale of excavation, including potential impacts on drainage, groundwater, nearby trees and adjoining properties.***

The application was referred to Water NSW and the information provided was deemed sufficient for assessment. General Terms of Approval (GTA) have been issued by Water NSW and could be incorporated into conditions of consent, if approved.

***The proposal involves the removal of a mature Eucalyptus saligna of high streetscape and biodiversity value, without adequate justification.***

The proposed tree removal is considered acceptable by Council's Senior Landscape & Tree Assessment Officer.

***Potential risks, including ground movement, vibration, groundwater impacts***

The submitted geotechnical report identifies potential impacts associated with the development and includes recommendations to mitigate those impacts. The report has been reviewed by Council's Team Leader, Development Engineers and is considered satisfactory.

***Insufficient deep soil, excessive site coverage and inconsistency with Ku-ring-gai's tree dominated streetscape***

This issue forms part of Reason for Refusal Nos. 5 and 6.

***Oversized apartment complexes are considered to adversely affect the area's character, appeal, and liveability.***

The proposal is not acceptable due to its excessive height and bulk. These issues forms part of Reasons for Refusal Nos 1 and 2.

***Trees had already been removed without Council's approval.***

No unauthorised tree removal has been reported to Council on the subject site.

***The dilapidation report fails to assess the existing subsurface conditions of the surrounding buildings, which is vital to their structural stability and safety.***

The geotechnical report recommends that, prior to demolition and construction, detailed dilapidation report be carried out on structures that fall within the zone of influence of the proposed basement excavation. If approval were recommended, conditions requiring dilapidation reports for adjoining buildings potentially impacted by the development would be imposed.

***The site's proximity to the railway line and surrounding development is considered to constrain access and limit its suitability for a development of this scale.***

The development is permissible on the subject land and alternative access routes to the train station may be utilised. Construction access and traffic arrangements would be assessed through a Construction Traffic Management Plan. However, this information has not been provided and this forms part of Reason for Refusal No. 14.

***The 3D renders are considered misleading and do not accurately represent the neighbouring development at No. 2 Cherry Street.***

The assessment of the proposal is based on the architectural plans and applicable planning controls, including potential future development, rather than the 3D renderings.

***Concerns are raised that the development will reduce the value of neighbouring properties due to overshadowing and impacts on private open space.***

Property values are not a relevant consideration in assessing a development application. Nevertheless, overshadowing impacts have been assessed.

***The submitted reports do not address potential impacts on local airflow due to the proposed building height.***

The potential impacts on local airflow are not considered relevant to a development of this

scale and nature.

***The development is expected to increase traffic, raising concerns about safety on the narrow Cherry Street and worsening access to the Pacific Highway.***

The likely increase in traffic generation is one additional vehicle movement every 7-10 minutes during the morning and evening peak periods. This is considered a minor traffic increase that would have minimal impacts on the surrounding road network.

***Concerns are raised that the proposal includes the removal of trees (T53) located on neighbouring properties without consent.***

The survey plans indicate that Tree T53 is located on the boundary between No. 8 Cherry Street and No. 2 Cherry Street. Council Senior Landscape and Tree Assessment Officer advised that this tree can be retained. The development is not recommended for approval but it would be addressed further if the development were to be approved.

***Existing footpaths are inadequate for increased demand. Additional traffic raises safety risks, including for children crossing Cherry Street near the Pacific Highway.***

The existing footpath is sufficient for residential use and public domain upgrades are outside the scope of the assessment of this development proposal. The development is suitable for the site and zoning. Traffic generation equates to one additional vehicle every 7–10 minutes during peak periods, which is minor; therefore, associated safety impacts are minimal.

***The proposed entry and exit points are poorly located near a bridge and blind corner, creating significant safety risks for vehicles and pedestrians.***

Pedestrian safety has been considered by Council's Team Leader Development Engineers, who has recommended the provision of appropriate sight triangles for vehicles exiting/entering the site. No concerns regarding the proximity of entry and exit point to the bridge and a corner have been identified.

***Concerns are raised that, under a previously approved development at 4 & 8 Cherry Street, the required dilapidation report for the entire north wing of No. 2 Cherry Street was not carried out. Instead, inspections were limited to Units 9 and 11, contrary to the approval requirements.***

Whether or not compliance with requirements of a separate development consent was achieved is not a matter relevant to the assessment of this application.

***There is a risk of traffic accidents on the bridge impacting Sydney Trains operations beneath it.***

The application was referred to Sydney Trains and recommendations were received. Should the development be approved, these recommendations would be incorporated into conditions of consent.

***The traffic report does not justify the 87 parking spaces. The excess is inconsistent with the nearby public transport and may worsen congestion on Cherry Street.***

The proposed development requires 76 spaces under the requirements of SEPP Housing. The proposal provides 86 residential car parking spaces comprising 76 residential spaces and 10 visitor spaces. The parking provision is compliant with the SEPP Housing and Ku ring gai Development Control Plan (KDCP).

***Construction impacts, including road damage, heavy vehicle traffic, use of cranes, waste management, and compliance oversight.***

***Cherry Street is unsuitable for construction traffic, raising safety and access risks.***

Matters relating to construction impacts, including heavy vehicles movements, road damage and site management are typically addressed in a Preliminary Construction Traffic Management Plan. This documentation has not been submitted and forms part of Reason for Refusal No. 14.

A Waste Management Plan could be addressed through appropriate conditions if the proposal were to be approved.

***Despite providing bicycle parking, the proposal does not adequately address safety concerns, as local road conditions and existing congestion make cycling unsafe.***

The safety of the broader local road network is not considered relevant to this application. The proposal provides bicycle parking spaces that comply with the applicable requirements.

***The proposed building provides a limited contribution to addressing the affordable housing shortage.***

The proposal provides a sufficient affordable housing component in accordance with SEPP Housing.

***The noise from the air-conditioning units would adversely affect the residents at No. 2 Cherry Street. Concerns have been raised that relying on conditions and management plans to control noise may be impractical and lead to compliance issues.***

It is standard practice for noise impacts from air conditioning units to be managed through conditions of consent. In the event of non-compliance this can be reported to Council and managed through appropriate compliance processes.

***The development is expected to place additional pressure on local infrastructure, including roads, public transport, utilities, schools, health services, and open space.***

These broader impacts have been considered under SEPP Housing in determining the suitability of the site for this type of development. As such, they are not considered a relevant matter for assessment under this development application. Further, should the application be approved, Section 7.11 contributions would be applicable, which goes towards some of this type of infrastructure.

***The street elevation diagram is considered misleading, as it depicts a hypothetical future envelope rather than the existing three-storey development at No. 2 Cherry Street.***

Both the existing and potential future development at No. 2 Cherry Street are shown in the street elevation diagram for comparative purposes.

***There is concern about whether a 9-storey building is permissible under the new SEPP, including within TOD areas with affordable housing provisions.***

The proposal is permissible however the site is not located within a TOD area and therefore TOD provisions do not apply.

**Concerns are raised that the proposal would result in the overshadowing of properties at Nos 14, 16 and 18 Ray Street.**

The submitted shadow diagrams demonstrate that these properties retain an acceptable degree of solar access between 9:00 am and 12:00 pm on 21 June.

**The geotechnical report raises concerns about potential structural risks to nearby buildings, trees and infrastructure, suggesting further investigation is required before the development proceeds.**

The submitted geotechnical report has been reviewed by Council's Team Leader, Development Engineers and is considered satisfactory.

**The development will generate prolonged construction noise, dust, and vibration.**

Construction impacts, such as dust, can be managed through appropriate conditions of consent to ensure compliance with relevant standards.

In addition, a condition of consent requiring the preparation of a Noise and Vibration Management Plan, addressing likely impacts from demolition, excavation, and construction, could be imposed if the development were approved.

**The proposal exceeds an acceptable density level. Concerns have been raised that the development is not justified, given the existing and increasing housing supply in the surrounding area.**

The proposal is consistent with the provisions of SEPP Housing, including compliance with FSR, and the provision of affordable housing. The proposal is also a permissible form of development.

Broader housing supply considerations in the surrounding area are not a matter for assessment under this development application

**The proposal may reduce sunlight to surrounding properties, including Nos 1–3 Cherry Street, due to its position relative to the sun.**

The submitted shadow diagrams demonstrate that these properties would receive compliant solar access between approximately 10:00 am and 3:00 pm on 21 June.

**The proposal should not compromise the future development potential of No. 2 Cherry Street, including building separation, and amenity.**

The issue relating to the proposed development constraining future development at Nos 2 and 6 Cherry Street forms part of Reason for Refusal No. 5.

**Rooftop communal open space may result in noise, visual privacy and light impacts on neighbouring properties.**

The space is intended for use by residents only and no unusual noise impacts are anticipated beyond what is typical for this type of development. Outdoor lighting could be managed through appropriate conditions of consent, if the development were to be approved.

**Concerns have been raised that the proposed material stockpiles/storage areas are insufficient and that the wheel washing bay is inadequate for the scale of the development.**

These matters could be addressed through appropriate conditions of consent, if the development were to be approved.

***Concerns have been raised concerning the need for controls to monitor and potential impact on trees and vegetation.***

This matter could be addressed through appropriate conditions of consent requiring tree protection measures, if the development were to be supported.

***Section C is inadequate. A north-east to south-west section is required to show the relationship between the proposal and the rail corridor slope.***

Section C provides a cross-section through the subject site and is considered sufficient for the purposes of assessment. A cross-section extending through the neighbouring property is not required.

***The proposal is inconsistent with the scale, streetscape and architectural character of nearby heritage properties and may adversely impact the heritage significance of the Turramurra area.***

This issue forms Reason for Refusal No. 16.

***There is a potential risk of asbestos exposure associated with the development.***

This matter could be addressed through standard conditions of consent requiring appropriate asbestos management if the development were to be approved.

***Flood Letter incorrectly identifies No. 6 Cherry Street as combined into Nos 4 & 8 Cherry Street.***

The flood letter identified the site as 4, 6 and 8 Cherry Street. Despite this error Council's Development Engineer considers the document satisfactory for the purposes of assessment against flooding requirements.

***Area transition is disputed. The proposal is inconsistent with the established and desired future character and KDCP garden setting requirement.***

The Low and Mid-Rise (LMR) Housing controls apply to land in proximity to the station and facilitate a transition in the area. Notwithstanding this, the proposed development would result in an incompatible streetscape and landscape character.

#### **Additional documentation lodged 14/02/2026**

The amended application was also notified. Submissions from the following were received:

1. *F Li, 22/1-3 Cherry Street*
2. *S Kung, 49/1-3 Cherry Street*
3. *L Wang, 6/1-3 Cherry Street*
4. *M Yang, 18/9-15 Cherry Street*
5. *D Larkin & V Tammetta, 9/1359 Pacific Highway*
6. *Mrs JL Matthew, 10/1359 Pacific Highway*
7. *Mr RJ Lee & FA Quaglia, 1/1359 Pacific Highway*

The submissions in response to the amended plans have not raised any additional issues

beyond those raised previously.

## Internal Referrals

## Urban Design

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

### **Executive Summary**

*The proposed development presents excessive bulk, non-compliant setbacks, and poor integration with surrounding properties. It compromises neighbour amenity, removes significant trees and lacks adequate site analysis. While some internal layouts are strong, others need refinement. A better response to context, landscape, and built form is required.*

### **Unit Schedule:**

*The proposal does not include the Infill affordable housing (IAH) provision for larger family-sized apartments. In this regard, there is an opportunity for improvement.*

### **Car Parking:**

*One carshare only. There is room for improvement.*

### **Site coverage:**

*Site coverage is permitted up to 30% of the site area, subject to achieving the deep-soil landscaping requirements in Section A, Part 7A.6. The proposed site coverage is 1,054m<sup>2</sup> (39.4%), representing a 9.4% exceedance. In addition, the deep soil requirements have not been met. Accordingly, the proposal does not comply with the relevant controls and is not supported in this regard.*

### **Deep soil:**

*The minimum deep soil requirement under the KLEP is 40%. The proposal provides 348.2m<sup>2</sup> (13%) and therefore does not comply.*

*The minimum deep soil requirement under the Apartment Design Guide (ADG) is 7%, and compliance is achieved.*

*The minimum deep soil requirement under Part 7A.5 of the KDCP is 40% (for sites less than 1,800m<sup>2</sup>), compliance is not achieved.*

## **Ku-ring-gai Development Control Plan**

<b>Ku-ring-gai Development Control Plan Compliance Table</b>		
<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
Front setback	10 metres	<b>YES</b>
Side setbacks	6 metres at upper levels, where 9 metres is required. The basement also appears to encroach.	<b>NO</b>

Rear setbacks	6 metres at upper levels, where 9 metres is required. Additional zone setback not provided.	NO
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### Apartment Design Guide

<b>Apartment Design Guide Compliance Table</b>		
<b>Control/Part</b>	<b>Proposed</b>	<b>Complies</b>
3A Site Analysis	Unsatisfactory site analysis. See Reason for Refusal No 4.	NO
3B Orientation	Satisfactory	YES
3C Public Domain Interface	Satisfactory	YES
3D Communal and Public Open Space	793m <sup>2</sup> (29% of site area)	YES
3E Deep Soil Zones	Insufficient deep soil Zone. See Reason for Refusal No 6.	NO
3F Visual Privacy	Min separation distance from rear and side boundary of 6 metres to habitable rooms (3 metres non-habitable) up to 12 metres (4 storeys). Increases to 9 metres (4.5 metres non-habitable) up to 25 metres (5-8 storeys). Additional 3 metres where abuts change in the zone.	NO
3G Pedestrian Access and Entries	The site analysis does not properly consider potential future development and the location of its driveway of adjoining site. (Refer to Reason for Refusal No. 4)	NO
3H Vehicle Access	One carshare only.	NO
3J Bicycle and car parking	Satisfactory	YES
4A Solar and daylight access	Satisfactory	YES
4B Natural Ventilation	Satisfactory	YES
4C Ceiling heights	Satisfactory	YES
4D Apartment size and layout	See comments provided under Design Principle 6.	NO
4E Private open space and balconies	See comments provided under Design Principle 1.	NO
4F Common circulation and spaces	See comments provided under Design Principle 1.	NO
4U Energy efficiency	Satisfactory	YES
4V Water management & conservation	Satisfactory	YES

### Design Principle 1: Context and Neighbourhood Character

The architectural and urban design documentation is, generally of a high standard.

The site analysis, however consists of plans only. Submitted site analysis plans show

*features such as neighbouring buildings (existing), sun angle paths, winter winds, notional landscape, and only the topography of the actual site. Overshadowing and privacy impacts on neighbours is omitted. This is important to analyse and document. Sectional elevations – refer to ADG - that illustrate neighbouring topographic, landscape and built form conditions would be beneficial to show both opportunities and constraints. In particular, the constraints are associated with side and rear setbacks. Site analysis should indicate both existing and likely future built-form scenarios.*

*The proposed development is also likely to result in the physical isolation of No. 6 Cherry Street and limit any opportunity for redevelopment at a similar scale. This is flagged from the perspective of urban form and not economics. The resulting L-shaped built form of the subject application will be a forbidding presence. The non-compliant setbacks reinforce this. Alternative solutions to better accommodate the changes in bulk, size, and scale between the two properties should receive greater attention.*

*Similar attention needs to be paid to the amenity of the existing residential development to the south at No. 2 Cherry Street. Sunlight to this building will be negatively impacted by the proposed development. Non-compliant side setbacks (above level 4) will arguably compound this problem. The site analysis should have given greater emphasis to this constraint.*

*Consideration should be given to relocating the main east-west entry path to the north, from its current location to the south of the building. With little, and sometimes nil, separation (UG04) between bedrooms and living areas, its location on the southern side compromises the amenity of the ground-floor units. This area might be better utilised if it were given to a combination of private open space (POS) for adjacent units and community open space (COS). A relocated northern side east-west entry might facilitate a better through connection to the east-facing COS access, with a similar landscape and architectural character to the north-south pathway. Opportunities to integrate existing important trees into the landscape plan should be explored, as part of this strategy.*

*The dual entries from Cherry Street to the north and east are commended. The north-south visual connection through the building (which is on axis with one of the entry pathways) at the ground floor entry is also commended. In addition, it would be good if a more generous access to COS and a similar visual connection could be made in an east-west direction through the building. This would require UG01 and UG02 to be moved slightly north or reduced in area.*

*The root zones of Tree 19 and 94 (neither of which are on the subject property) are likely to be affected by the build. They should all be retained.*

*As part of the above-mentioned design alterations, the driveway and carpark entry ramp should be moved slightly south of their current positions. This would necessitate reducing the size of UG06. Given that there are currently no 1-bedroom apartments in the building, this might be an opportunity to offer a more diverse offering.*

### **Recommendation**

1. *Expand site analysis beyond plans to include:*
  - i. *Overshadowing and privacy impacts on neighbouring properties.*

- ii. Sectional elevations showing topography, landscape, and built form of neighbouring sites (per ADG requirements).
  - iii. Analysis of existing and likely future built-form scenarios.
- 2. Place greater emphasis on constraints posed by non-compliant side and rear setbacks.
- 3. Better acknowledge and mitigate the potential physical isolation of No. 6 Cherry Street with alternative built form solutions to ease the scale transition.
- 4. Address amenity impacts on No. 2 Cherry Street: Non-compliant side setbacks above Level 4 increase overshadowing. No additional negative solar access impacts are supported beyond those that would be achieved in a fully-complying scheme.
- 5. Consider relocating the east-west entry path from the southern to northern side of the building to avoid amenity loss to southern ground-floor units (e.g., UG04); improve connection to COS on the east, and; enhance landscape continuity with north-south path character.
- 6. Consider re-allocating the southern side boundary area (currently proposed as entry pathway) to POS for adjacent units and/or additional COS.
- 7. Retain and enhance: dual entries from Cherry Street (north and east) — commended and north-south visual connection through building at ground level — commended.
- 8. Improve east-west access and visual connectivity through the building.
- 9. Consider shifting or resizing UG01 and UG02 slightly northward.
- 10. Revise landscape strategy to ensure retention of Trees 19 and 94 by avoiding encroachment into root zones.
- 11. Relocate driveway and carpark entry ramp slightly further towards south: reduces impact on northern boundary and supports tree retention and amenity improvements.
- 12. Resize or reconfigure UG06 to accommodate driveway shift: Potentially introduce a one bedroom apartment to diversify unit mix (none currently provided).

### **Design Principle 2: Built Form and Scale**

Major KDCP non-compliances are noted with regard to side and rear setbacks. This applies to the proposed 6 metres side and rear setbacks for Levels 4, 5, 6 and 7. These setbacks fall short of the requisite 9 metres by a notable 3 metres. Whilst ADG compliance is technically achieved with regard to 3F, the resulting built form does not contribute positively to the urban character of the area. The applicant seeks to resolve ADG 3F (Visual Privacy) by having no windows facing the boundary within this reduced setback. Windows are in niches at 90° to the façade. The only windows facing the boundary comply with the 9 metres setback. Any window located within the 9 metres ADG side setback is directed internally into these niches.

The impact of these setback non-compliances, which contribute to an excessively bulky built form, is especially notable on the building's exterior renderings and in Sections A and B.

Whilst this solution might effectively resolve the internal amenity issues arising within the subject development, it does not address the negative urban design implications for the bulk, mass, and presentation of the building in its context. Over the top 5 storeys of the building, where ordinarily a building might be expected to become visually lighter and more transparent (which is one of the benefits associated with having a wider setback on the top levels), the building presents solid blank walls to the neighbouring properties on the north, west and

south frontages to Nos. 2 and 6 Cherry Street. This situation is made worse by an unbroken building façade across all 9 storeys. It is a poor response to the urban context. Furthermore, it is not consistent with SEPP Housing , Section 20 Design requirements:

- (3) Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with—
- (a) the desirable elements of the character of the local area, or
  - (b) for precincts undergoing transition—the desired future character of the precinct.

The required 9 metres setback (above the 4<sup>th</sup> storey) should be adhered to on the northern and western sides of the inverted L-shape building. This is to provide a better urban design response to No. 6 Cherry Street. It might be possible to increase the length of the floor plan of the west-facing units (types 05-06) so that the living rooms are located closer to the 10 metres street setback. This might enable bedrooms to be set back behind the 9 metres while still allowing apartments of a similar size. A reconfiguration of unit type 01 would also be needed.

The same setback non-compliance is evident at the rear east-facing façade adjacent to the rail corridor. It does, however, create fewer problems on this side of the building since there are no residential buildings immediately adjacent, either existing or likely in the future. Some variation to the upper storey setback might therefore be acceptable along the east.

Notwithstanding the comments made above about the unsuitability of such an imposing unbroken façade along the southern side, the issue of overshadowing to No. 2 Cherry Street is another factor that needs scrutiny as part of any possible relaxation of the setback controls. Whilst some variation to the 9 metres setback at the upper levels might be possible along this frontage, the effects of a fully complying scheme versus the proposed need to be demonstrated. When considering it must be shown that there will be no additional negative overshadowing effects than what might be the case for a fully complying development.

The basement currently encroaches the side setback along the boundary with No. 6 Cherry Street. A reduction in the size of the basement to reduce site coverage and increase deep soil provision is recommended. If recommended changes to the location of the driveway entry are made (which would move it further to the south), along with the retention of important trees, it might be feasible to reduce the basement size along the northern wall (parallel with the boundary to No. 6 Cherry). This is to be encouraged.

### **Recommendation**

1. Site coverage exceedance of KDCP controls is not supported.
2. Maintain 9 metres setbacks on levels 4–7 (as per ADG 3F requirements), particularly to the northern and western sides.
3. Reconfigure upper levels to reduce building bulk and improve compliance:
  - i. Consider adjusting unit types 05-06 so living areas are brought closer to the 10 metres street setback, enabling bedrooms to sit behind a 9 metres side setback.

- ii. *Reconfigure unit type 01 as part of design amendments.*
- 4. *Windows in niches are not an acceptable substitute for full compliance with urban controls.*
- 5. *Avoid solid blank walls on upper storeys (levels 4–9), particularly to the northern, western, and southern façades.*
- 6. *Break up façade massing to achieve a lighter, more transparent upper-storey built form.*
- 7. *Current design presents excessive bulk and poor contextual integration—inconsistent with SEPP Housing, Section 20.*
- 8. *Eastern (rail corridor) setback: Some variation may be acceptable due to lack of adjacent residential development.*
- 9. *Southern (No. 2 Cherry Street) setback: Any relaxation of the 9 metres setback must be accompanied by overshadowing analysis comparing the proposed vs compliant scheme and demonstration of no additional overshadowing impact on No. 2 Cherry Street.*
- 10. *Reduce basement size to: minimise encroachment into the side setback (adjacent to No. 6 Cherry Street) and increase deep soil planting area.*
- 11. *Consider relocation of driveway entry further into the site towards the southern boundary: facilitates basement reduction and supports tree retention and site landscape outcomes.*
- 12. *Ensure revised design: improves compatibility with surrounding built form; reduces visual bulk and maintains amenity of neighbouring properties, and aligns fully with ADG and KDCP provisions.*

### **Design Principle 3: Density**

*The development is compliant with the SEPP Housing.*

### **Design Principle 4: Sustainability**

*Acceptable.*

### **Design Principle 5: Landscape**

*The root zones of Trees 19 and 94 (neither of which are on the subject property) are likely to be affected by the build. They should all be retained.*

### **Design Principle 6: Amenity**

*Overall planning looks to be of a high standard with generally good levels of internal amenity. Most bedrooms are well-proportioned and have good-sized windows, including some with access to secondary, smaller balconies. Of particular note is U101. Provision of a separate, partitioned, well-ventilated, and naturally lit recreation/second living space is supported. It offers greater living flexibility. The combined living/dining/kitchen of some apartments, however (for example, U108 and U107), looks undersized and could benefit from re-planning. The second living area in U108 might be better placed if it were swapped with one of the bedrooms and located closer to the combined dining/living area, so that the living space has the potential to grow in size if needed. The awkward/inefficient entries to U107 and U104 (eating into the areas of U106 and U105, respectively), and to U108 and U103, could be improved if the front door placement were moved further into the footprint of these apartments and the apartment forms were given a more uniform square shape. The planning resolution of U102, where it meets the angled façade, could benefit from further refinement.*

*The size, location, character and amenity of COS are supported.*

**Recommendation**

- 1. Overall planning quality is high, with generally good internal amenity.*
- 2. Well-proportioned bedrooms with good windows and some secondary balconies are commendable.*
- 3. Unit 101 (U101): strong support for inclusion of partitioned, naturally lit and ventilated second living/recreation room as it enhances flexibility of living arrangements.*
- 4. U108 and U107 could benefit from refinement as the combined living/dining/kitchen areas appear undersized.*
- 5. Consider replanning some layouts for improved functionality, for instance, in U108: swap the second living area with a bedroom to locate it closer to the main living/dining, which can create flexibility to expand the main living area.*
- 6. Entry layout and apartment shape improvements sought to U107, U104, U108, and U103: entry configurations are inefficient and compromise usable area. Suggestion: move front doors further into the apartment footprint and reconfigure units into more uniform, square shapes to improve spatial efficiency.*
- 7. U106 and U105: indirectly affected by inefficient entry layouts of adjacent apartments, refinements may improve their planning.*
- 8. Better façade integration U102: apartment layout at angled façade transition point requires further design refinement for better spatial resolution.*

**Design Principle 7: Safety**

*The proposal is satisfactory, and no safety concerns are associated with the layout design.*

**Recommendation**

*The proposal is satisfactory.*

**Design Principle 8: Housing Diversity And Social Interaction**

*The provision of a large number of 3-bedroom units is supported. No IAH provision for larger family-sized apartments. Some increase to smaller units is also recommended.*

**Recommendation**

*See above.*

**Design Principle 9: Aesthetics**

*Good selection of materials and consideration of materiality generally.*

**Conclusion**

*The architectural and urban design documentation for the proposed development is generally of a high standard; however, the site analysis is insufficient, lacking overshadowing and privacy assessments, as well as sectional elevations. The proposal risks physically isolating No. 6 Cherry Street due to its L-shaped, bulky form and non-compliant setbacks, resulting in poor urban integration. The impact on No. 2 Cherry Street's amenity, particularly overshadowing, has not been adequately addressed. Design modifications are recommended, including*

*relocating the east-west entry path to the northern side, reconfiguring southern areas for private or communal open space, and retaining significant trees. The bulk and scale above Level 4 do not align with the desired urban character, presenting solid, imposing façades. Full compliance with 9 metres setbacks above Level 4 is recommended to reduce bulk and improve contextual fit. Basement size and driveway location should be revised to improve landscape outcomes and the deep soil area. Internally, apartments provide good amenity, but some units require better layout efficiency and spatial planning. The inclusion of a second living space in Unit 101 is praised. Aesthetic and material choices are commendable. While the number of 3-bedroom units is supported, greater housing diversity, including smaller apartments, is recommended. Sustainability and safety measures are acceptable.*

The assessment undertaken by Council's Urban Design Consultant is concurred with.

## **Heritage**

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

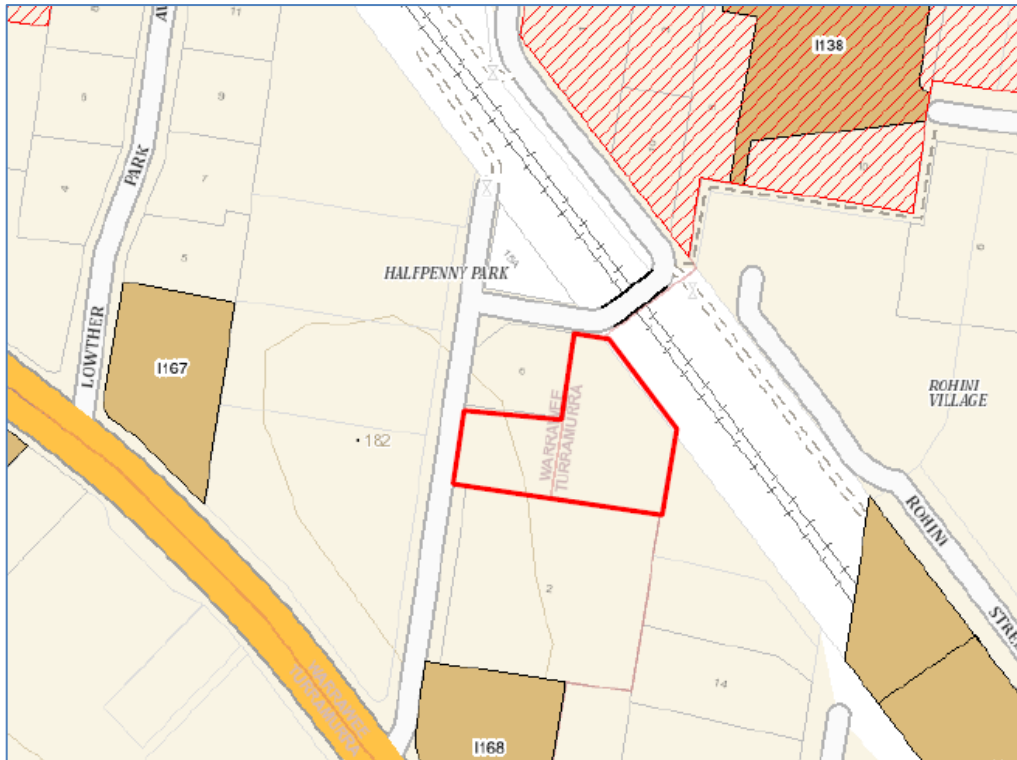
### ***Ku-ring-gai Local Environmental Plan 2015***

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

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

### **Heritage Status**

<i>Local Heritage Item</i>	<i>NO</i>
<i>Heritage Conservation Area</i>	<i>NO</i>
<i>Immediate vicinity of a heritage item</i>	<i>NO</i>
<i>Immediate vicinity of Heritage Conservation Area (HCA)</i>	<i>YES</i>
<i>Interim Heritage Order</i>	<i>NO</i>
<i>SHR</i>	<i>NO</i>



**Figure 4 – location of the subject site relative to the adjacent heritage items and the Laurel Avenue / King Street Heritage Conservation Area**

The site has no heritage significance, however, it is in the vicinity and in the visual catchment of the following:

- Laurel Avenue / King Street Heritage Conservation Area (LEP HC Area C5) about 40 metres to the north-west. The Heritage Conservation Area is located across the railway corridor, and unobstructed views exist between particular points in the heritage conservation area and the development site.
- LEP item 138, Bellwood dwelling house, 12 King Street, Turramurra, approximately 70 metres to the north.
- LEP item 168, Cherrywood Nursing Home, 1359 Pacific Highway, Warrawee, approximately 60 metres to the south.
- LEP item I161, Rohini House Gates, approximately 70 metres to the east.
- LEP item I111, which is approximately 60 metres to the south.

### **Controls**

The following controls and objectives of the KDCP apply:

<b>Development Control</b>	<b>Complies</b>
<b>19F. Development in the Vicinity of Heritage Items or Heritage Conservation Areas</b>	
<b>19F.1 Local Character and Streetscape</b>	
<p><i>General</i></p> <p>1. All development in the vicinity of a Heritage Item or HCA is to include a Heritage Impact Statement (HIS). The HIS is to address the effect of the proposed development on a Heritage Item or HCA and demonstrate that the proposed works will not adversely impact upon significance, including any related heritage features within the identified curtilage and setting.</p>	<b>YES</b>
<b>Built Form</b>	
<p>2. Development on sites that either directly adjoin or are in the vicinity of a Heritage Item or an HCA is to have regard to:</p> <p>i) the form of the existing building or buildings including height, roofline, setbacks and building alignment;</p> <p>ii) dominant architectural language such as horizontal lines and vertical segmentation;</p> <p>iii) proportions including door and window openings, bays, floor-to-ceiling heights and coursing levels;</p> <p>iv) materials and colours;</p> <p>v) siting and orientation;</p> <p>vi) setting and context;</p> <p>vii) streetscape patterns.</p>	<p><b>NO</b></p> <p><b>NO</b></p> <p><b>YES</b></p> <p><b>NO</b></p> <p><b>YES</b></p> <p><b>NO</b></p> <p><b>YES</b></p>
<b>Views</b>	
<p>5. New development in the vicinity of a Heritage Item or Heritage Conservation Area is to demonstrate that it will not reduce or impair important views to and from the Heritage Item from the public domain.</p>	<b>NO</b>

### **19F.1 Local Character and Streetscape**

#### **General, built form and views comments;**

##### *Objectives*

1. To consider the impact on the historic curtilage and setting of the Heritage Item or Heritage Conservation Area and related heritage features such as views, streetscape context, historical subdivisions, garden settings, alienated trees and other landscape features.
2. To retain the significance of Heritage Items or HCAs in their settings.
3. To ensure that the scale of new development does not dominate, detract from or compete with Heritage Items or HCAs in the vicinity.
4. To ensure that new development respects and conserves the significance of any nearby Heritage Items or Heritage Conservation Area and their settings.
5. To ensure that new development does not visually dominate the adjoining or nearby Heritage Item or Heritage Conservation Area.
6. To ensure that the scale of new development in the vicinity of a heritage item and Heritage Conservation Area is in harmony with the streetscape and does not dominate, detract from or compete with the Heritage Item or Heritage Conservation Area.
7. To protect significant views and vistas to and from the Heritage Item or Heritage Conservation Area.

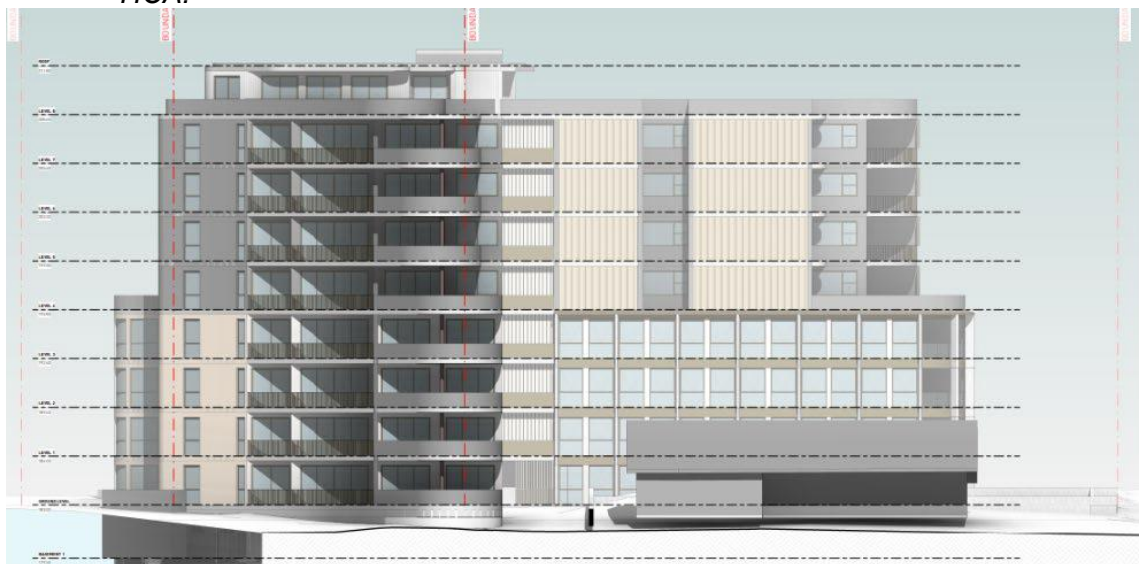
To provide context the northern elevation is detailed below in **Figure 5** and the proposed material in **Figure 6**.

For the following reasons, the broad objectives of the controls are not achieved:

- i. As the proposed development is approximately 30 metres high, its upper levels would be visible from the significant items and areas. The proposed building mass has deep recesses (**Figure 4**), will result in a strong visual contrast between shaded areas in the balconies versus bright sunlit areas on the northern elevation, which is facing the HCA and against the sky.
- ii. The proposed building design utilises materials which are not compatible with traditional imagery of the context, including metal façade elements and profiled concrete elements (**Figures 5 and 6**).

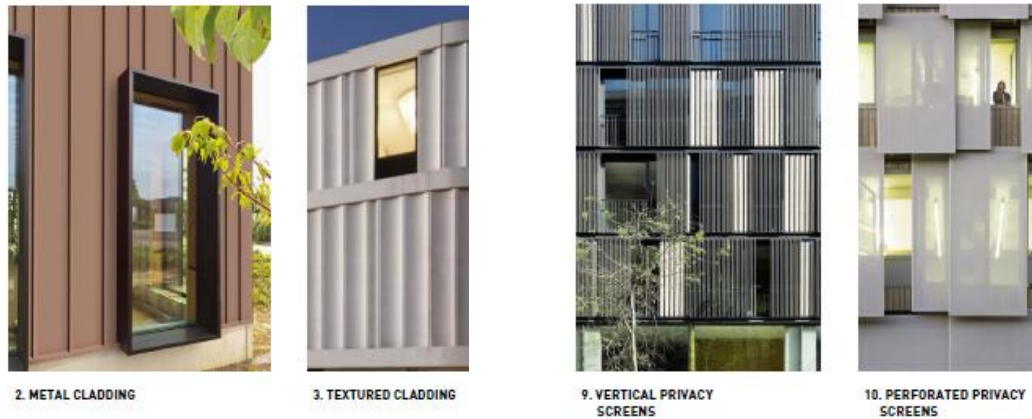
Specifically, the proposed development is inconsistent with the following objectives:

- i. Objective 1: The proposed building mass will have impact on the historic curtilage and setting of the Heritage Item and HCA and related heritage features such as views.
- ii. Objective 2: The proposed building mass will impact on the historic visual curtilage and setting of the Heritage Item and HCA and related heritage features such as views.
- iii. Objective 6: The scale and design of the proposed development dominates, detracts from or competes with the Heritage Item and HCA.
- iv. Objective 7: The scale and design of the proposed development will not protect significant views and vistas to and from the Heritage Item and HCA.



ELEVATION NORTH

**Figure 5 – North elevation of the proposed development, facing the Laurel Avenue / King Street HCA**



**Figure 6 – Proposed materials**

**Conclusion**

*The proposed development will have a significant adverse impact on the heritage conservation area, including items in the vicinity of the site and is not acceptable from a heritage perspective.*

The above assessment is concurred with and the issues raised by Council’s Heritage Advisor form **Reason for Refusal No. 16**.

**Landscaping**

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

<b>SEPP (Sustainable Buildings: BASIX) 2022</b>																			
<b>Part 3 Aims</b>	<b>Proposed</b>	<b>Satisfies</b>																	
<i>To encourage sustainable residential development</i>	<p>Certificate 1803843M dated 11/07/25 is submitted with the application.</p> <table border="1"> <tr> <td><b>Stated in certificate</b></td> </tr> <tr> <td><b>Common Areas</b></td> </tr> <tr> <td>Common Lawn area – 90.82m<sup>2</sup></td> </tr> <tr> <td>Common garden area - 904.85m<sup>2</sup></td> </tr> <tr> <td>Indigenous/low water - Not required</td> </tr> <tr> <td><b>Private areas</b></td> </tr> <tr> <td>Unit 102 – Not specified</td> </tr> <tr> <td>Unit 401 - 15.13m<sup>2</sup></td> </tr> <tr> <td>Unit 403 - 8.77m<sup>2</sup></td> </tr> <tr> <td>Unit 404 - 8.77m<sup>2</sup></td> </tr> <tr> <td>Unit 405 - 17.61m<sup>2</sup></td> </tr> <tr> <td>Unit 406 - 17.61m<sup>2</sup></td> </tr> <tr> <td>Unit 501 - 13.92m<sup>2</sup></td> </tr> <tr> <td>Unit 504 – Not specified</td> </tr> <tr> <td>Unit 601 – 13.92m<sup>2</sup></td> </tr> <tr> <td>Unit 701 – 13.92m<sup>2</sup></td> </tr> <tr> <td>Unit 801 – 3.11 m<sup>2</sup></td> </tr> </table> <p><i>Insufficient and inconsistent information does not enable a full assessment. The following</i></p>	<b>Stated in certificate</b>	<b>Common Areas</b>	Common Lawn area – 90.82m <sup>2</sup>	Common garden area - 904.85m <sup>2</sup>	Indigenous/low water - Not required	<b>Private areas</b>	Unit 102 – Not specified	Unit 401 - 15.13m <sup>2</sup>	Unit 403 - 8.77m <sup>2</sup>	Unit 404 - 8.77m <sup>2</sup>	Unit 405 - 17.61m <sup>2</sup>	Unit 406 - 17.61m <sup>2</sup>	Unit 501 - 13.92m <sup>2</sup>	Unit 504 – Not specified	Unit 601 – 13.92m <sup>2</sup>	Unit 701 – 13.92m <sup>2</sup>	Unit 801 – 3.11 m <sup>2</sup>	<b>NO</b>
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<b>SEPP (Sustainable Buildings: BASIX) 2022</b>		
<b>Part 3 Aims</b>	<b>Proposed</b>	<b>Satisfies</b>
	<p>additional information and amended BASIX Certificate must be submitted.</p> <p>A Landscape BASIX Compliance Plan is to be included in the landscape plan set. The Plan should clearly define and calculate each of the common and private garden and lawn areas from the ground floor to Level 8.</p> <p>The BASIX Certificate does not indicate private garden areas for Units 102 and 504.</p> <p>The BASIX Certificate is to be amended to be consistent with the areas and calculations indicated on the BASIX Compliance Plan to be provided by the Landscape Architect.</p>	

<b>SEPP Housing – Chapter 2</b>		
<b>Clause</b>	<b>Proposed</b>	<b>Satisfies</b>
Section 19(2)	The proposal satisfies this part.	<b>YES</b>
(b) a minimum landscaped area that is the lesser of— (ii) 30% of the site area	Landscape Area Calculation Plan LA-202 complies with this part, with a landscaped area of 36.5% or 975.89m <sup>2</sup> .	

<b>Apartment Design Guide</b>														
<b>Objectives/ Design Guide</b>	<b>Proposed</b>	<b>Complies</b>												
<p><b>Objective 3E-1</b> <b>Deep soil zones</b></p> <p><b>Figure 3E.4</b></p>	<p>Deep soil zones are to meet the following requirements:</p> <table border="1"> <thead> <tr> <th>Site Area</th> <th>Min dimension</th> <th>Deep Soil Zone (DSZ) (% of Site area)</th> </tr> </thead> <tbody> <tr> <td>&lt; 650m<sup>2</sup></td> <td>-</td> <td rowspan="4">7%</td> </tr> <tr> <td>650m<sup>2</sup> – 1500m<sup>2</sup></td> <td>3 metres</td> </tr> <tr> <td>&gt; 1500m<sup>2</sup></td> <td>6 metres</td> </tr> <tr> <td>&gt; 1500m<sup>2</sup> with significant existing tree cover</td> <td>6 metres</td> </tr> </tbody> </table> <p>Deep Soil Plan DA402E identifies a DSZ of 348.2 m<sup>2</sup> (13%), which meets the minimum 7% requirement under Part 3E-1 of the ADG. However, three of the four designated deep soil zones incorporate impervious pedestrian pathways in excess of the allowance permitted</p>	Site Area	Min dimension	Deep Soil Zone (DSZ) (% of Site area)	< 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1500m <sup>2</sup>	3 metres	> 1500m <sup>2</sup>	6 metres	> 1500m <sup>2</sup> with significant existing tree cover	6 metres	<b>NO</b>
Site Area	Min dimension	Deep Soil Zone (DSZ) (% of Site area)												
< 650m <sup>2</sup>	-	7%												
650m <sup>2</sup> – 1500m <sup>2</sup>	3 metres													
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> 1500m <sup>2</sup> with significant existing tree cover	6 metres													

<b>Apartment Design Guide</b>		
<b>Objectives/ Design Guide</b>	<b>Proposed</b>	<b>Complies</b>
	<p>under Figure 3E.4 of Part 3E-1, which limits pedestrian pathways and paving, where specifically designed to facilitate tree root growth to a maximum of 10% of the DSZ.</p> <p>The affected DSZ areas are located on the western and eastern sides of Unit UG01 and the eastern side of Unit UG03. These areas comprise a combined DSZ of approximately 240m<sup>2</sup>, within which pedestrian pathways occupy approximately 49m<sup>2</sup>, equating to 20% of the DSZ. As 240m<sup>2</sup> of claimed deep soil cannot be included the deep soil provision is 108.2m<sup>2</sup> (4%) – a non-compliance with the control.</p>	
<b>Design Guidance</b>	<p>The proposal does not satisfy this part. Design solutions may include:</p> <ul style="list-style-type: none"> <li>• basement and sub-basement car park design that is consolidated beneath building footprints</li> <li>• use of increased front and side setbacks</li> <li>• adequate clearance around trees to ensure long-term health</li> <li>• co-location with other deep soil areas on adjacent sites to create larger contiguous areas of deep soil.</li> </ul> <p>Amended plans are required to resolve the following issues:</p> <ul style="list-style-type: none"> <li>• Potential unacceptable impacts to trees T19 and T94 located within the adjoining property. See comments below under Part 13 discussion.</li> <li>• The deep soil provision within the southern and northern setbacks is inadequate to establish effective landscaping that will soften the built form and provide a suitable residential amenity. Amended plans will be required to address the following issues:</li> </ul> <p><u>Southern setback</u></p> <p>The southern elevation of the building is approximately 29 metres high and 55 metres long, with very little articulation.</p> <p>Although the 6 metres setback provides adequate space for canopy expansion, the basement extending to within 3 metres of the boundary will limit root growth for the proposed 4 × <i>Liriodendron tulipifera</i> (Tulip Tree). Consequently, with a</p>	<b>NO</b>

<b>Apartment Design Guide</b>		
<b>Objectives/ Design Guide</b>	<b>Proposed</b>	<b>Complies</b>
	<p>mature height of 15–18 metres, their stability cannot be assured.</p> <p>Contiguous deep soil within the adjoining property cannot be relied upon to offset the lack of deep soil on the subject site due to the presence of retaining structures and a driveway.</p> <p><u>Northern setback</u></p> <p>The 2 metres setback proposed within the northern setback does not meet the definition of deep soil under SEPP Housing, the ADG or the KDCP, and this deficiency is compounded by the driveway extending beyond the built form.</p>	
<b>40-1 Landscape Design</b>	<p>The proposal satisfies this part.</p> <p>Table 4 - Tree planting in deep soil zones</p> <p>Site area greater than 1500m<sup>2</sup></p> <p>One large tree or two medium trees per 80m<sup>2</sup> of deep soil zone</p> <p>ADG Deep soil: 7% or 187.05m<sup>2</sup> Required Trees: 2 large or 4 medium Proposed Trees: 13 large</p>	<b>YES</b>
<b>Objective 40-2</b>	<p>Landscape design responds to the existing site conditions, including changes of levels, views and significant landscape features, including trees and rock outcrops.</p>	<b>YES</b>
<b>4P Planting on structures</b>	<p><b>Large trees:</b> (12-18 metres high, 16 metres crown spread) Soil volume – 150 cubic metres Soil Depth – 1200mm Soil area – 10 metres x 10 metres</p> <p><b>Medium trees:</b> (8-12 metres high, 8 metres crown spread) Soil volume – 35 cubic metres Soil Depth – 1000mm Soil area – 6.0 metres x 6.0 metres</p> <p><b>Small trees:</b> (6-8 metres high, 4 metres crown spread) Soil volume – 9 cubic metres Soil Depth – 800mm Soil area – 3.5 metres x 3.5 metres or equivalent</p> <p><b>Shrubs:</b> 500-600mm soil depth <b>Ground cover:</b> 300-450mm soil depth <b>Turf:</b> 200mm</p>	<b>YES</b>

**Tree Canopy Guide for Low and Mid Rise Housing Feb 2025**

<b>Objective 3E-1 Deep soil zones</b>	<b>Proposed</b>	<b>Complies</b>												
<b>Table 7</b>	<p><i>The proposal satisfies this part.</i></p> <table border="1" data-bbox="609 416 1241 622"> <thead> <tr> <th>Site Area</th> <th>Tree canopy (min % site area)</th> <th>Deep Soil (min % site area)</th> </tr> </thead> <tbody> <tr> <td>&lt;650m<sup>2</sup></td> <td>15%</td> <td>7%</td> </tr> <tr> <td>650-1500m<sup>2</sup></td> <td>15%</td> <td>10%</td> </tr> <tr> <td>&gt;1500m<sup>2</sup></td> <td>20%</td> <td>15%</td> </tr> </tbody> </table> <p><i>The proposal provides an assessment under Table 7, with details provided on Plan LA-201 Issue B and Plan DA402E.</i></p> <p><i>Required DSZ is 15% or 400.84m<sup>2</sup> Proposed DSZ is 16% or 429.6m<sup>2</sup></i></p>	Site Area	Tree canopy (min % site area)	Deep Soil (min % site area)	<650m <sup>2</sup>	15%	7%	650-1500m <sup>2</sup>	15%	10%	>1500m <sup>2</sup>	20%	15%	<b>YES</b>
Site Area	Tree canopy (min % site area)	Deep Soil (min % site area)												
<650m <sup>2</sup>	15%	7%												
650-1500m <sup>2</sup>	15%	10%												
>1500m <sup>2</sup>	20%	15%												
<b>Guidance for RFB's</b>	<p><i>To satisfy the guidance objectives, residential flat buildings and shop-top housing should be located in contiguous deep soil areas to maximise the number of trees that can be planted.</i></p>	<b>YES</b>												
<b>Table 7</b>	<p><i>A development can meet the guidance objectives by planting trees at the tree-planting rate, or by planting a combination of trees that achieves the tree canopy percentage target, using the assumed canopy areas for small, medium, and large trees in Table 2. Assumed tree sizes at maturity.</i></p> <p><i>Tree canopy requirement:</i></p> <table border="1" data-bbox="609 1263 1260 2011"> <thead> <tr> <th>Site Area</th> <th>Tree canopy (min % site area)</th> <th>Tree planting rate</th> </tr> </thead> <tbody> <tr> <td>&lt;650m<sup>2</sup></td> <td>15%</td> <td><i>For every 350 m<sup>2</sup> of site area or part thereof, plant at least one small tree in the deep soil area.</i></td> </tr> <tr> <td>650 - 1500m<sup>2</sup></td> <td>15%</td> <td><i>For every 350 m<sup>2</sup> of site area or part thereof, plant at least one medium tree in the deep soil area.</i></td> </tr> <tr> <td>&gt;1500m<sup>2</sup></td> <td>20%</td> <td><i>For every 575 m<sup>2</sup> of site area, or part thereof, plant at least 2 medium trees or one large tree in the deep soil area</i></td> </tr> </tbody> </table>	Site Area	Tree canopy (min % site area)	Tree planting rate	<650m <sup>2</sup>	15%	<i>For every 350 m<sup>2</sup> of site area or part thereof, plant at least one small tree in the deep soil area.</i>	650 - 1500m <sup>2</sup>	15%	<i>For every 350 m<sup>2</sup> of site area or part thereof, plant at least one medium tree in the deep soil area.</i>	>1500m <sup>2</sup>	20%	<i>For every 575 m<sup>2</sup> of site area, or part thereof, plant at least 2 medium trees or one large tree in the deep soil area</i>	<b>YES</b>
Site Area	Tree canopy (min % site area)	Tree planting rate												
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<b>Tree Canopy Guide for Low and Mid Rise Housing Feb 2025</b>		
<b>Objective 3E-1</b>	<b>Proposed</b>	<b>Complies</b>
<b>Deep soil zones</b>	<p>The proposal provides an assessment under Table 7, with details provided on Plan LA-201 Issue B.</p> <p>The required area is 20% or 534.5m<sup>2</sup>.</p> <p>The tree canopy provided is 29% or 777.2m<sup>2</sup>.</p>	

<b>KDCP COMPLIANCE TABLE</b>								
<b>Control</b>	<b>Proposed</b>	<b>Complies</b>						
<b>Part 7A.6 Deep Soil Landscaping and Part 13 Tree and Vegetation Preservation</b>								
<b>Control 1</b>	<p>The proposal does not satisfy this part.</p> <table border="1"> <thead> <tr> <th>Site Area</th> <th>Minimum Deep Soil Landscaping</th> </tr> </thead> <tbody> <tr> <td>Less than 1800m<sup>2</sup></td> <td>40% of the site</td> </tr> <tr> <td>1800m<sup>2</sup> or more</td> <td>50% of the site</td> </tr> </tbody> </table> <p>DSL required is 50% or 1336m<sup>2</sup>. Plan DA402E indicates a DSL of 25% or 657.6 m<sup>2</sup> which does not satisfy this control.</p> <p>It will not be possible to satisfy this control due to the increased site coverage permitted under SEPP Housing and the Apartment Design Guide. However, it is recommended that amendments be carried out to satisfy the design criteria under Objective 3E-1 of the ADG, and Objectives 1, 2, 3 and 7 and Controls 3, 4 and 5 of this part.</p>	Site Area	Minimum Deep Soil Landscaping	Less than 1800m <sup>2</sup>	40% of the site	1800m <sup>2</sup> or more	50% of the site	<b>NO</b>
Site Area	Minimum Deep Soil Landscaping							
Less than 1800m <sup>2</sup>	40% of the site							
1800m <sup>2</sup> or more	50% of the site							
<b>Control 2</b>	<p><b>Tree removal</b></p> <p>The proposal includes the removal of 28 trees including: T4, T5, T10, T13, T14, T17, T18, T21, T37, T39-44, T53, T56, T58, T60, T62, T63, T66, T72, T75, T85, T91-93.</p> <p><u>Acceptable tree removal</u></p> <p>The removal of all above trees is acceptable as they are either of low retention value or exempt under Part 13 from requiring approval for their removal.</p> <p><b>Tree impacts</b></p> <p>The following trees are impacted by the proposal:</p> <p><u>T19 – Jacaranda mimosifolia (Jacaranda)</u></p> <p>T19 is located within the adjoining property; therefore is a material constraint of the site.</p> <p>The arborist has calculated that a boundary wall will encroach within 27% of the Tree protection</p>	<p><b>YES</b></p> <p><b>NO</b></p>						

<b>KDCP COMPLIANCE TABLE</b>		
<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
	<p><i>Zone (TPZ); however, the plans do not appear to indicate any details of the subject wall. As this is a major encroachment under AS4970-2025, confirmation of the proposed boundary wall is required to enable further assessment.</i></p> <p><i>An updated impact assessment is required to include any potential impacts on the Structural Root Zone (SRZ) and TPZ from the proposed stormwater works.</i></p> <p><u><i>T94 – Quercus robur (English Oak)</i></u></p> <p><i>T94 is located within the adjoining property and, therefore, is a material constraint of the site.</i></p> <p><i>An updated assessment of impact is required to confirm that the DBH of T94 is accurate and to ascertain the SRZ.</i></p> <p><i>The arborist has calculated that a boundary wall will encroach within 13% of the TPZ; however, the plans do not appear to indicate any details of the subject wall. As this is a moderate encroachment under AS4970-2025 and due to the visual significance of the tree, confirmation of the proposed boundary wall is required to enable further assessment.</i></p> <p><i>An updated assessment of impact is required to include any potential impacts on the SRZ and TPZ by the proposed stormwater works. Design changes may be required to reduce the impacts to an acceptable level.</i></p>	<b>NO</b>
<b>Control 3</b>	<p><i>The deep soil provision within the southern and northern setbacks is inadequate to establish effective landscaping that will soften the built form and provide a suitable residential amenity.</i></p> <p><u><i>Southern setback</i></u></p> <p><i>The southern elevation of the building is approximately 29 metres high and 55 metres long, with very little articulation.</i></p> <p><i>Although the 6 metres setback provides adequate space for canopy expansion, the basement extending to within 3 metres of the boundary will limit root growth for the proposed 4 × Liriodendron tulipifera (Tulip Tree). Consequently, with a mature height of 15–18 metres, their stability cannot be assured.</i></p>	<b>NO</b>

<b>KDCP COMPLIANCE TABLE</b>										
<b>Control</b>	<b>Proposed</b>	<b>Complies</b>								
	<p><i>Contiguous deep soil within the adjoining property cannot be relied upon to offset the lack of deep soil on the subject site due to the presence of retaining structures and a driveway.</i></p> <p><u><i>Northern setback</i></u></p> <p><i>The 2 metres setback proposed within the northern setback does not meet the definition of deep soil under SEPP Housing, the Apartment Design Guide or KDCP, and this deficiency is compounded by the driveway extending beyond the built form.</i></p>									
Control 4	<i>Refer to comments above at Control 3.</i>	<b>NO</b>								
Control 5	<p><i>The driveway will have a 2 metres setback to the northern boundary, resulting in the removal of existing trees worthy of retention and restricting effective deep soil landscaping that will compromise the existing landscape character.</i></p> <p><i>Refer to comments above at Control 3.</i></p>	<b>NO</b>								
Control 7	<p><i>Lots with the following sizes are to support a minimum number of tall trees capable of attaining a mature height of at least 18 metres on shale, transitional soils and 15 metres on sandstone derived soils.</i></p> <table border="1" data-bbox="584 1207 1243 1491"> <thead> <tr> <th><i>Lot Size</i></th> <th><i>Number of Tall Trees</i></th> </tr> </thead> <tbody> <tr> <td><i>1,200m<sup>2</sup> (or less)</i></td> <td><i>1 per 400m<sup>2</sup> of site area or part thereof</i></td> </tr> <tr> <td><i>1,201m<sup>2</sup> - 1,800m<sup>2</sup></i></td> <td><i>1 per 350m<sup>2</sup> of site area or part thereof</i></td> </tr> <tr> <td><i>1,801m<sup>2</sup> +</i></td> <td><i>1 per 300m<sup>2</sup> of site area or part thereof</i></td> </tr> </tbody> </table> <p><i>The proposal requires 9 trees to attain a height of 18 metres. The proposal provides 12 trees that will attain 18 metres.</i></p> <p><i>While the proposal seeks to comply with this control, there is insufficient deep-soil landscaping to accommodate the lateral root growth required to support the trees, particularly within the southern and northern setbacks, where the basement is set back only 2 to 3 metres from the boundary.</i></p> <p><i>See further comments at Control 3.</i></p>	<i>Lot Size</i>	<i>Number of Tall Trees</i>	<i>1,200m<sup>2</sup> (or less)</i>	<i>1 per 400m<sup>2</sup> of site area or part thereof</i>	<i>1,201m<sup>2</sup> - 1,800m<sup>2</sup></i>	<i>1 per 350m<sup>2</sup> of site area or part thereof</i>	<i>1,801m<sup>2</sup> +</i>	<i>1 per 300m<sup>2</sup> of site area or part thereof</i>	<b>NO</b>
<i>Lot Size</i>	<i>Number of Tall Trees</i>									
<i>1,200m<sup>2</sup> (or less)</i>	<i>1 per 400m<sup>2</sup> of site area or part thereof</i>									
<i>1,201m<sup>2</sup> - 1,800m<sup>2</sup></i>	<i>1 per 350m<sup>2</sup> of site area or part thereof</i>									
<i>1,801m<sup>2</sup> +</i>	<i>1 per 300m<sup>2</sup> of site area or part thereof</i>									
Control 8	<i>Inadequate and inappropriate planting within setbacks to provide softening of the built form, thereby reducing amenity impacts on the</i>	<b>NO</b>								

<b>KDCP COMPLIANCE TABLE</b>		
<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
	<p>streetscape and neighbouring properties. In particular:</p> <ul style="list-style-type: none"> <li>• The hedge of <i>Viburnum</i> sp. and ground covers within the northern setback adjacent to the driveway will not grow to a sufficient height.</li> <li>• The <i>Liriodendron</i> sp., <i>Lagerstroemia</i> sp. and <i>Cercis</i> sp. within the southern setback are all deciduous species, which will not provide sufficient softening of the building. A variety of evergreen and deciduous species are required.</li> <li>• The hedge of <i>Photinia fraseri</i> 'Red Fence' along the southern boundary, with a height of 1.5 metres, will not provide adequate screening.</li> <li>• Insufficient variety of mid-layer shrub planting (5-8 metres) within the eastern setback. Excessive monoculture planting of <i>Syzygium australe</i> 'Resilience'</li> </ul>	
Control 9	<p>The proposal satisfies this part on merit.</p> <p>A total of 9 trees must be planted. While trees are proposed within all setbacks, the front setback is narrow; therefore, there is insufficient space to establish 3 trees.</p> <p>Two trees can be planted within the front setback, thereby satisfying the objective.</p>	<b>YES</b>
<b>Part 7C.5 Building Entries</b>		
Control 12	<p>The proposed building entry path along the southern boundary is considered excessive and will require removing T4 and T5. The entry path is 2.5 metres wide in the front setback which exceeds the minimum 1.2 metres required under this control.</p>	<b>NO</b>
<b>Part 21.1 Earthworks and Slope</b>		
Control 3	<p>No landscape cut or fill is proposed.</p>	<b>YES</b>
Control 4	<p>The proposal satisfies this control.</p>	<b>YES</b>
Control 5	<p>Existing ground level has been maintained for 2 metres from any boundary</p>	<b>YES</b>
Control 8	<p>Refer to comments under Part 13.</p>	<b>NO</b>

<b>KDCP COMPLIANCE TABLE</b>		
<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
<b>21.2 Landscape Design</b>		
<i>Control 9</i>	<p><i>Inadequate and inappropriate planting within setbacks to provide softening of the built form, thereby reducing amenity impacts on the streetscape and neighbouring properties. In particular:</i></p> <ul style="list-style-type: none"> <li><i>• The hedge of Viburnum sp. and ground covers within the northern setback adjacent to the driveway will not grow to a sufficient height.</i></li> <li><i>• The Liriodendron sp., Lagerstroemia sp. and Cercis sp. within the southern setback are all deciduous species, which will not provide sufficient softening of the building. A variety of evergreen and deciduous species are required.</i></li> <li><i>• The hedge of Photinia fraseri 'Red Fence' along the southern boundary, with a height of 1.5 metres, will not provide adequate screening.</i></li> <li><i>• Insufficient variety of mid-layer shrub planting (5-8 metres) within the eastern setback. Excessive monoculture planting of Syzygium australe 'Resilience'</i></li> </ul> <p><i>To satisfy the objectives of Part 7A.6 at least 2 canopy trees are to be planted in the front setback.</i></p> <p><i>The entry path within the front setback exceeds the minimum 1.2 metres required under Control 12 of Part 7C.5 and will require the removal of Trees T4 and T5. Amendments are required to reduce the width of the path to 1.2 metres and provide an adequate setback to preserve Trees T4 and T5.</i></p> <p><i>There is an excessive amount of monoculture planting (one species) along boundaries. Planting should include a diversity of species and heights, including trees, shrubs, and ground covers.</i></p>	<b>NO</b>
<b>Part 23.5 Roof terraces and podiums</b>		
<i>Control 1</i>	<i>The planting on the podium and within the terraces is appropriate with adequate soil depths.</i>	<b>YES</b>

The concerns raised by Council's Landscape and Tree Assessment Officer are concurred with and form **Reasons for Refusal 8, 9, 22 and 23.**

### **Engineering**

Council's Team Leader, Development Engineers commented on the proposal as follows:

#### **Water management**

*The site is arranged in an irregular L-shape at the corner of Cherry Street. The site has two frontages to Cherry Street, along its northern and western boundaries. The site is not mapped as subject to flooding. A Flood letter confirms that the subject site is not identified as being affected by flooding during a 1% Annual Exceedance Probability (AEP) and Probable Maximum Flood (PMF) storm event. Accordingly, no flood planning controls are applicable to this development.*

*Stormwater Management Plans, prepared by Smart Structures Australia, have been submitted. The proposal provides for a combined belowground on-site detention tank (OSD) and retention tank (OSR) of 62.34m<sup>3</sup> and 15,600l respectively, located under the landscaped / pathway along the western side of the units. The overflow from the detention tank is conveyed by a 225 millimetres diameter pipe to a grated boundary pit located at the northern-western corner prior to discharging to the existing kerb inlet pit via a 300 millimetres diameter pipe in Cherry Street.*

*An emergency overland flow from OSD will surcharge from a 900 millimetres square pit downslope from the OSD and fall towards the road reserve via gravity. There is also adequate fall from the upper landscaped areas to convey the emergency overflow to the street.*

*The sizing of the detention system as well as the permitted site discharge, complies with Part 24C.5 of KDCP. The location of the access pits to the detention and retention system can be readily accessible externally to the building.*

*A BASIX Certificate has been submitted, with the water commitments requiring a central water tank of 15,080l to collect runoff from at least 300m<sup>2</sup> of roof area and irrigation of 90.82m<sup>2</sup> of common land to scaped areas which is be reused for 2 car washing bays. The stormwater plan shows a total of 15,600l rainwater tank storage volume with re-use to be provided for irrigation purposes only. The water balance model proposes to reduce the site runoff days by 55.9%, which satisfies Council's streamflow objectives under Part 24C.3 of KDCP.*

*A pump-out pit of 15m<sup>3</sup> within the basement has been shown to capture the driveway ramp and dish drain outlets from the perimeter of the basement of approximately 110m<sup>2</sup>. The pumps rising main will discharge to the Stormfilter chamber, which is acceptable. The pump-out tank complies with the 100 year 2 hour storm event, as required under Part 24B.5 of KDCP.*

*The pollutant load standards set out in Part 24C.6 of KDCP have been satisfied with a proprietary pollution device OCEAN PROTECT '6 x OceanGuards' within the landscape pits and a 'Stormfilter' located within the stormwater chamber prior to direct connection to Council's public drainage system.*

### **Vehicular access and accommodation arrangements**

#### **Car Parking Rates**

*The proposal seeks the construction of a residential flat building with a total of 55 dwellings, including:*

- 13 affordable housing dwellings, comprising:*

- 3 x studio affordable housing dwelling;
  - 4 x one-bedroom affordable housing dwelling; and
  - 6 x two-bedroom affordable housing dwelling.
- 42 residential dwellings, comprising:
- 4 x two-bedroom dwellings; and
  - 38 x three and four-bedroom dwellings.

The development is within 800 metres of Turramurra and Warrawee Railway Stations. The application relies upon, Section 19 'minimum parking requirements for infill affordable housing' of SEPP Housing, which provides the following car parking rates:

SEPP Housing - Car Parking Requirements

Affordable

Studio bedroom unit: 0.4 space per unit (3 x 0.4 = 1.2)  
 1 bedroom unit: 0.4 space per unit (4 x 0.4 = 1.6)  
 2-bedroom unit: 0.5 space per unit (6 x 0.5 = 3)

Non-affordable

2 bedroom unit: 1.0 spaces per unit (4 x 1 = 4)  
 3-4 bedroom unit: 1.5 spaces per unit (38 x 1.5 = 57)

In comparison, the KDCP provides the maximum car parking rates for residential flat buildings that are within 800 metres walking distance of a railway station entry.

It should be noted that the KDCP does not differentiate between affordable and standard residential dwellings.

KDCP: Part 7B.1 Car Parking Provision

Studio bedroom unit: 0.5 space per unit (3 x 0.5 = 1.5)  
 1 bedroom unit: 1 space per unit (4 x 1 = 4)  
 2 bedroom unit: 1.25 space per unit (10 x 1.25 = 12.5)  
 3-4 bedroom unit: 2 spaces per unit (38 x 2 = 76)  
 Visitor parking: 1 space per 4 units (55 / 6 = 9)

These controls take precedence over KDCP requirements. According to the KDCP controls, the proposal would require 94 residential spaces. The proposed development requires 76 spaces under the SEPP Housing however, the proposal provides 86 residential car parking spaces, comprising 76 residential spaces and 10 visitor spaces. The parking requirements have been met.

The KDCP does require that one (1) visitor parking space be provided as an accessible parking space, which has been provided.

KDCP: Part 7B.2 Bicycle Parking Provision

The development proposal requires 55 residential bicycle spaces and 6 visitor bicycle spaces. The proposal seeks the provision of 55 residential bicycle spaces

located within a secure room located on basement levels 1, 2 and 3 in the form of bicycle racks and storage cages, along with 10 visitor bicycle spaces located on basement level 1, thereby satisfying KDCP requirements.

For the resident bicycle parking spaces in the basement levels, it is noted that the car park ramps connecting the basement levels have gradients of up to 1:5 (20%), which will generally exceed the capability of many bicycle users to remain mounted and stable (1:12, or 8%, is practical). Therefore, the lifts, lobbies and accessways should be conditioned to be of a suitable size such that residents can transport their bicycles between the bicycle parking area and ground/street level without using the internal car park ramps. The traffic impact assessment and architectural plans indicate some resident bicycle parking spaces in the form of bicycle racks, but for residents' bike parking, AS2890.3 requires Security level B, which is a secure room or structure. This can be included as a condition of consent.

Visitor bicycle parking is also provided in the basement and similar ramp grade accessibility issues as residents arise, and there is the practicality and convenience of visitors entering the secure parking area to access the bicycle parking from the main car park entry ramp. Refer to **Reason for Refusal No. 13**.

#### Vehicular access

The proposed vehicle crossing width of 6.1 metres complies with Category 1 of AS2890.1:2004. The submitted driveway longitudinal section (Drawing No. DA312/B) complies with AS2890.1:2004, as well as providing a 5% grade for the first 6 metres within the site entry.

A swept path for the B99 and B85 vehicles has been provided within the appendix of the report, which demonstrates vehicles capable of passing one another along the entry and exit driveway access, which is acceptable.

The minimum sight lines 2 metres x 2.5 metres for pedestrian safety as per Figure 3.3 of AS2890.1:2004 has been demonstrated (Drawing No. DA203/H) to ensure that there is no obstructing structures / landscaping at the front property boundary on the exit approach. However, due to the narrow footpath on Cherry Street and absence of a central median in the driveway, the sight triangle should also be provided on the northern side of the access driveway, for safety of pedestrians. Refer to **Reason for Refusal No. 13**.

An accessible residential parking space is required under Control 9 of Part 6B.2 of KDCP, which states that car parking must be provided in accordance with the Livable Housing Guidelines. The KDCP stipulates that 15% of the units are to be Platinum level. Platinum dwellings (of which 9 are required) by the Guidelines require a car space measuring 3.8 metres x 6 metres. The accessible residential parking spaces have been met by complying with AS2890.6:2009 as well as referred to by the Access Consultant, which satisfies the intent of the Livable Housing Guidelines.

The driveway gradients comply with Australian Standard 2890.1 (2004) "Off-Street car parking" as do the dimensions of the parking bay, blind aisle and aisle widths.

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 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 which is at least 3.5 metres wide is to be provided to cater for a minimum 6.7 metres long service vehicle. This would require the width of the driveway next to the median to be modified. The loading space/s should be line-marked and/or signposted as a designated loading area. The main Cherry Street frontage of the site is currently signposted with weekday and Saturday 2P restrictions, and is subject to high demand due to proximity to Turrumurra station and shops. Requests for an on-street Loading Zone in Cherry Street will not be considered.

### Electric Vehicles (EVs)

The KDCP requires that all car parking spaces within the building be EV ready, 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's electricity meter. This requirement can be included as a condition of consent.

### Car share spaces

The KDCP requires 1 car share in the basement space per 90 car parking spaces, or part thereof, for residential developments. The proposal seeks to provide 87 car parking spaces resulting in 1 car sharing parking space located in Basement 1 to provide access to additional travel options and reduce reliance on on-street parking. The car share space requirement of KDCP has been met. The following conditions could be imposed:

- At least 1 space on Basement Level 1 is to be reserved for car share operation, with no charge to the car share operator to use the space/s.
- The space/s must be available 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.
- 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.
- Car share vehicles must be operational within 4 weeks of the issue of an Occupation Certificate
- The agreement must ensure appropriate insurance and vehicle maintenance are in place, including public liability.
- Since car share spaces are 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.

### Traffic generation

The TfNSW GTIA 2024 provides the traffic generation rates for high-density residential dwellings within high public transport accessibility (within 800 metres of a railway station) at a rate of 0.19 and 0.15 vehicle trips per hour during the morning and evening peak periods, respectively. Application of these rates to the proposed 55 dwellings results in net traffic generation of 9 vehicle trips during the morning peak and 6 vehicle trips during the evening peak.

*As a result, the traffic generation equates to a single additional vehicle every 7-10 minutes during the morning and evening peak periods. This is considered a minor traffic volume that would have minimal impacts on the surrounding road network.*

### **Waste management**

*A proposed garbage and recycling storage area is located within the communal bin room in Basement 1 that can accommodate 35 bins (10x660L for waste, 14x240L comingle recycling, 5x660L paper recycling and 6x240L FOGO). The bin requirements have been met.*

*A swept path analysis is provided for a 6.7 metres long small rigid vehicle in accordance with AS2890.2:2018. The vehicle enters the site in a forward direction, is required to enter the aisle, reverse into the loading bay area and to leave in a forward direction. The proposal is acceptable in this regard.*

*A dedicated service bay measuring 3.5 metres by 6 metres, with a manoeuvring area 7 metres wide, has been provided.*

*A ramp longitudinal section (Drawing No. DA312/B) has been submitted demonstrating that a clear head height of 2.9 metres (greater than the 2.6 metres requirement) can be provided on the access ramp and also throughout the basement carpark along the path of travel for Council's small waste collection vehicle. A 20% driveway grade for the small waste collection vehicle has also been shown to comply with Part 25 of KDCP.*

### **Impacts on Council infrastructure**

*A footpath exists along the site frontages of Nos 4 and 8 Cherry Street. The proposed works will require a new 300 millimetres pipeline to Council's stormwater pit. The new pipeline and possibly a new kerb inlet pit may need to be reconstructed, subject to the discretion of Council's Operations Engineers. Detailed design drawings for these works will be assessed by Council's Operations Department for approval under the Roads Act.*

### **Construction traffic management**

*A preliminary Construction Traffic Management Plan (CTMP) must be included in the traffic report. The plan is to show the construction vehicle routes, largest vehicle to be used entering and exiting the site for the demolition, excavation and construction stages, stockpiles and all necessary tree protection fencing. Given the narrow nature of the road, a work zone along the site frontage would not be appropriate.*

*Parking at present along the site frontage is restricted with 'No Stopping', as well as being restricted by 'No Parking' restrictions and '2P Parking' signposting. The site frontage to the dead end of Cherry Street can be conditioned to be a Work Zone.*

*It is also noted that, from Cherry Street towards the bridge over the railway line, the road is restricted to a 3-tonne limit. Furthermore, all construction vehicle movements at Pacific Highway/Cherry Street are restricted to left turns, given the 'No Right Turn' restriction. The applicant would need to apply to the Ku-ring-gai Transport Forum and pay the associated reporting and processing fees.*

### **Geotechnical assessment**

*A geotechnical assessment has been carried out to assess the subsurface conditions. The proposed excavation of the basement would be between 9 metres to 11.2 metres below the existing ground level.*

*Fieldwork for the geotechnical investigation was carried out, comprising the drilling of four boreholes ranging from 11.1 metres (BH4) to 15 metres (BH3) in depth. Two of the boreholes (BH1 and BH4) were subsequently extended to their final depths using rotary diamond coring techniques, with water flush to depths of 20.27 metres (BH1) and 25 metres (BH4). Groundwater observations were made during and on completion of drilling each borehole and during a return visit.*

*Based on the observations from the geotechnical investigation, the sub-surface profile within the footprint of the proposed development can be generalised as follows:*

- Fill was encountered at the surface in all boreholes to a maximum depth of approximately 0.8 metre (BH3). The fill typically comprised of silty clay, although in BH3 initially comprised of silty sandy fill.*
- Residual silty clays were encountered below the fill extending to the top of bedrock.*
- Siltstone bedrock was encountered in all boreholes below the residual clays at depths ranging between approximately 3.2 metres and 3.3 metres. The bedrock was initially extremely weathered and of hard soil strength. The extremely weathered siltstone extended to depths ranging from 6.7 metres to 10 metres before then improving to distinctly weathered, very low strength bedrock.*

*Groundwater seepage was observed in both BH1 and BH3 at depths of 8.2 metres and 7.5 metres, respectively, during auger drilling. On completion or shortly after the completion of auger drilling, groundwater was measured in BH1, BH2 and BH3 at depths ranging from 6.2 metres to 13 metres. BH4 was dry on completion of augering. Based on the groundwater level monitoring results, the proposed basement excavation will extend below the groundwater table, however inflow rates are expected to be low, pending further longer term groundwater monitoring and a seepage analysis to estimate inflows.*

*The stormwater plans state that the basement would be a tanked structure.*

*Given the proximity of neighbouring structures, the geotechnical report recommends that, prior to demolition and construction, detailed dilapidation surveys be carried out on structures within the zone of influence of the proposed basement excavation. Based on this, the zone of influence will likely encompass parts of the neighbouring properties to the south, east and west, as well as Cherry Street. A pre and post dilapidation report should be conditioned as well as a dilapidation survey of Council's public infrastructure and possibly of the rail corridor if recommended by Sydney Trains.*

*Any geotechnical recommendations regarding excavation support, vibration monitoring, dilapidation reporting and foundation design should be carried out during construction, as specified within the report.*

The proposed basement is tanked with no accessible maintenance passage provided (Refer to **Reason for Refusal No. 10**). The concerns raised by Council's Development Engineer have been considered and form **Reasons for Refusal 14, 15, 16 and 17**.

## **Building**

Council's Senior Building Surveyor has advised that the proposed development would generally be capable of achieving compliance with the BCA requirements. Conditions have been recommended. A detailed BCA assessment would need to be undertaken by the Certifier at the Construction Certificate stage.

## **Environmental health**

Council's Environmental Health Officer reviewed the proposal and considered it satisfactory, subject to conditions.

## **External Referrals**

### **Sydney Trains**

As the subject site adjoins a rail corridor and the proposed development involves excavation to a depth of at least 2 metres, the application was referred to Sydney Trains in accordance with Section 2.99 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021*. The following comments were received:

*I refer to Council's referral via the NSW Planning Portal requesting concurrence for the above Development Application (DA) in accordance with Section 2.99 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP).*

*Council is advised that TfNSW, via Instruments of Delegation, has been delegated to act as the rail authority for the heavy rail corridor operated by Sydney Trains (including infrastructure), and to process the concurrence for this Development Application.*

*As such, TfNSW (as Rail Authority) advises that the proposed development has been assessed in accordance with the requirements of Section 2.99(4) of the Transport and Infrastructure SEPP, being:*

- a) the potential effects of the development (whether alone or cumulatively with other development or proposed development) on:
  - i. the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and*
  - ii. the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and**
- b) what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.*

*We have taken the above requirements into consideration and have decided to grant concurrence to the development proposed in Development Application eDA0470/25 subject to Council imposing the operational conditions as written in Attachment A that will need to be complied with.*

If approval of the application were recommended, the conditions from Transport NSW (TfNSW) acting as the Rail Authority would need to be included in any consent.

## **Transport for NSW (TfNSW)**

The proposed development involves new residential with access to road (Cherry Street) that connects to classified road (Pacific Highway). Accordingly, the application was referred to TfNSW in accordance with Section 2.122 of State Environmental Planning Policy (Transport and Infrastructure) 2021. The following comments were received:

*Reference is made to Council's referral regarding the abovementioned Development Application (DA) which was referred to Transport for NSW (TfNSW) for comment under Clause 2.122 of the State Environmental Planning Policy (Transport and Infrastructure) 2021.*

*TfNSW has reviewed the DA and has no requirements as the proposed development is not expected to have a significant impact on the classified road network.*

## **Water NSW**

The proposed development includes dewatering activities, which require a Water Supply Work Approval under the *Water Management Act 2000*.

Pursuant to Section 90(2) of the *Water Management (WM) Act*, the application was referred to Water NSW. On 10 April 2026 General Terms of Approval were provided by Water NSW. If approval of the application were recommended, the General Terms of Approval would be included in the recommended conditions.

## **STATUTORY PROVISIONS**

### **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 low-density 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**

A valid BASIX certificate has been submitted. However, the proposal is inconsistent with commitments identified in the certificate. The issue forms **Reason for Refusal 22**.

### **State Environmental Planning Policy (Transport and Infrastructure) 2021 – Division 15 Railways**

Section 2.99 of State Environmental Planning Policy (Transport and Infrastructure) 2021 requires the consent authority to give written notice of the application to the rail authority where the application involves ground penetration to a depth of 2 metres or more within 25 metres of the rail corridor. Accordingly, the subject application was referred to Sydney Trains and the response is detailed above under External Referrals.

### **State Environmental Planning Policy (Transport and Infrastructure) 2021 – Division 17 Roads and traffic**

Section 2.122 of State Environmental Planning Policy (Transport and Infrastructure) 2021 requires the consent authority to give written notice of the application to the TfNSW where the application involves new residential development with access to a classified road or to a road that connects to a classified road (if access within 90 metres of connection, measured along alignment of connecting road). Accordingly, the subject application was referred to

TfNSW, and the response is provided above under External Referrals.

## 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 flat building on land that is zoned R4 High Density Residential. The site is located within the 'Low and Mid Rise Inner Area' as defined in Section 163 (a)(i) of Chapter 6, being land within 400 metres walking distance of land identified as Turramurra town centre. Additionally, the subject application seeks to provide in-fill affordable housing under Chapter 2, more than the minimum affordable housing requirements under Chapter 6.

The relevant sections of Chapters 2, 4 and 6 of SEPP Housing are considered below:

### Chapter 2 – Affordable housing

The subject application involves residential development in the form of a residential flat building. A residential flat building is permitted on this site under KLEP. The affordable housing component of the development is 15%. The proposal satisfies Section 15C of Part 2 of SEPP Housing.

The affordable housing requirements for additional FSR and building height, as well as the non-discretionary development standards are considered in the table below:

SEPP Housing COMPLIANCE TABLE – Chapter 2		
Section	Proposed	Complies
<b>16 – Affordable housing requirements for additional floor space ratio</b>		
(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the development on the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).  The maximum FSR under Section 180(2)(a) is 2.2:1 (5878.4 m <sup>2</sup> ) The maximum FSR including the 30% is 2.86:1 (7641.92 m <sup>2</sup> )	Applicant's calculations: 7159.2m <sup>2</sup> (2.68:1).  Exclusions are disputed ( <b>Reason for Refusal No. 3</b> ), compliance cannot be confirmed.	<b>NO</b>
(2) The minimum affordable housing component (minimum 10%) is calculated as follows: Affordable housing component = Additional FSR(%) /2	Applicant's calculations: Affordable GFA is 1155.5m <sup>2</sup> (15%).  Total GFA is not confirmed; therefore, the Affordable housing component GFA cannot be verified ( <b>Reason for Refusal No. 3</b> ).	<b>NO</b>

<b>SEPP Housing COMPLIANCE TABLE – Chapter 2</b>		
<b>Section</b>	<b>Proposed</b>	<b>Complies</b>
<p>(3) The maximum building height for a building used for residential flat buildings is the maximum permissible building height for the development on the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).</p> <p>The maximum height under Section 180(2)(b) is 22 metres.</p> <p>The maximum Height including additional 30% (as per subsection 1) is 28.6 metres.</p>	<p>30.215 metres</p> <p>A Clause 4.6 variation request has been provided and is considered below.</p>	<b>NO</b>
<b>19 – Non-discretionary development standards—the Act, s 4.15</b>		
(2)(a) the minimum site area is 450m <sup>2</sup>	2672m <sup>2</sup>	<b>YES</b>
(2)(b) Minimum landscape area, the lesser of – (i) 35m <sup>2</sup> per dwelling, or (ii) 30% of the site area,	The total landscape area is 36.5%.	<b>YES</b>
(2)(e) Number of parking spaces for dwellings used for affordable housing— (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, (iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space	Complies	<b>YES</b>
(2)(f) Number of parking spaces for dwellings not used for affordable housing – (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 1 parking space, (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces	Complies	<b>YES</b>
(2)(g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development	See the ADG table.	<b>YES</b>
<b>20 – Design requirements</b>		
(3)The design of the residential development is compatible with – (a) the desirable elements of the character of the local area, or (b) for precincts undergoing transition—the desired future character of the precinct.	The design is incompatible with the existing and future character of the area <b>(Reason for Refusal No. 8).</b>	<b>NO</b>
<b>21 – Must be used for affordable housing for at least 15 years</b>		
(1) Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development—	A letter indicating a potential future agreement between the applicant and a registered community housing provider has been submitted.	<b>YES</b>

<b>SEPP Housing COMPLIANCE TABLE – Chapter 2</b>		
<b>Section</b>	<b>Proposed</b>	<b>Complies</b>
(a) the development will include the affordable housing component required for the development under Section 16, 17 or 18, and (b) the affordable housing component will be managed by a registered community housing provider.		

#### **Chapter 4 – Design of residential apartment development**

##### **Section 142 - Aims of chapter**

Due to multiple non-compliances with the ADG objectives and design criteria, the proposal is inconsistent with the aims of the Chapter (Section 142(1)(b) and (c)), resulting in an unsatisfactory built form, adverse streetscape impacts, and unacceptable amenity outcomes, as detailed in this report.

##### **Section 144 – Application of chapter**

Pursuant to Section 144(3) of SEPP Housing, the proposal is one to which the provisions of Chapter 4 of the SEPP Housing apply.

##### **Section 147 – Determination of development applications and modification applications for residential apartment development**

Pursuant to Section 147(1)(a) of SEPP Housing, consideration is given below to the quality of the design of the residential apartment development when evaluated in accordance with the design principles set out in Schedule 9 of SEPP Housing.

Pursuant to Section 147(1)(b) of SEPP Housing, consideration has also been given in the table below to the ADG.

<b>Apartment Design Guide COMPLIANCE TABLE</b>		
<b>Objective/Design Criteria</b>	<b>Proposed</b>	<b>Complies</b>
<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	Unsatisfactory site analysis	<b>NO</b>
<i>Objective 3B-1</i> Building types and layouts respond to the streetscape and site while optimising solar access within the development	Acceptable building orientation.	<b>YES</b>
<i>Objective 3B-2</i> Overshadowing of neighbouring properties is minimised during mid-winter	Unacceptable overshadowing impacts on No. 2 Cherry Street.	<b>NO</b>
<i>Objective 3C-1</i> Transition between private and public domain is achieved without compromising safety and security	Acceptable safety and security measures proposed.	<b>YES</b>
<i>Objective 3C-2</i> Amenity of the public domain is retained and enhanced	Satisfactory	<b>YES</b>
<i>Objective 3D-1</i>	Satisfactory	<b>YES</b>

<b>Apartment Design Guide COMPLIANCE TABLE</b>				
<b>Objective/Design Criteria</b>			<b>Proposed</b>	<b>Complies</b>
An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping				
<b>Design Criteria</b>				
1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3) 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)			The communal open space area is 793m <sup>2</sup> (29.6%).	<b>YES</b>
<i>Objective 3D-2</i> Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting			Satisfactory	<b>YES</b>
<i>Objective 3D-3</i> Communal open space is designed to maximise safety			Satisfactory	<b>YES</b>
<i>Objective 3E-1</i> 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			Refer to the landscaping comments.	<b>NO</b>
<b>Design Criteria</b>				
Deep soil zones are to meet the following minimum requirements:			Refer to the landscaping comments.	<b>NO</b>
<b>Site area</b>	<b>Minimum dimensions</b>	<b>Deep soil zone (% of site area)</b>		
< 650m <sup>2</sup>	-			
650m <sup>2</sup> - 1,500m <sup>2</sup>	3m			
> 1,500m <sup>2</sup>	6m	7%		
> 1,500m <sup>2</sup> with significant existing tree cover	6m			
<i>Objective 3F-1</i> Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy			Inadequate building separation proposed.	<b>NO</b>
<b>Design Criteria</b>				
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:			The development does not demonstrate compliance with the design criteria listed in this Part.	<b>NO</b>
<b>Building height</b>	<b>Habitable rooms &amp; balconies</b>	<b>Non-habitable rooms</b>	Refer to Urban Design comments.	

<b>Apartment Design Guide COMPLIANCE TABLE</b>				
<b>Objective/Design Criteria</b>			<b>Proposed</b>	<b>Complies</b>
up to 12m (4 storeys)	6m	3m		
up to 25m (5-8 storeys)	9m	4.5m		
over 25m (9+ storeys)	12m	6m		
<p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties</p>				
<p><i>Objective 3F-2</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</p>			Satisfactory	<b>YES</b>
<p><i>Objective 3G-1</i> Building entries and pedestrian access connects to and addresses the public domain</p>			Satisfactory	<b>YES</b>
<p><i>Objective 3G-2</i> Access, entries and pathways are accessible and easy to identify</p>				<b>YES</b>
<p><i>Objective 3H-1</i> Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes</p>			Satisfactory	<b>YES</b>
<b>Design guidance</b>				
<p>Car park access should be integrated with the building's overall facade. Design solutions may include:</p> <ul style="list-style-type: none"> <li>the materials and colour palette to minimise visibility from the street</li> <li>security doors or gates at entries that minimise voids in the facade</li> <li>where doors are not provided, the visible interior reflects the facade design and the building services, pipes and ducts are concealed</li> </ul>			Satisfactory	<b>YES</b>
<p><i>Objective 3J-1</i> 1. Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas</p>			Satisfactory	<b>YES</b>
<b>Design Criteria</b>				
<p>1. For development on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area the minimum car parking requirement for residents and visitors is set out in</p>			Satisfactory	<b>YES</b>

<b>Apartment Design Guide COMPLIANCE TABLE</b>		
<b>Objective/Design Criteria</b>	<b>Proposed</b>	<b>Complies</b>
the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street		
<i>Objective 3J-2</i> Parking and facilities are provided for other modes of transport	Satisfactory	<b>YES</b>
<i>Objective 3J-3</i> Car park design and access is safe and secure	Satisfactory	<b>YES</b>
<i>Objective 3J-4</i> Visual and environmental impacts of underground car parking are minimised	Satisfactory	<b>YES</b>
<i>Objective 3J-5</i> Visual and environmental impacts of on-grade car parking are minimised	Satisfactory	<b>YES</b>
<i>Objective 3J-6</i> Visual and environmental impacts of above ground enclosed car parking are minimised	Satisfactory	<b>YES</b>
<i>Objective 4A-1</i> To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space	Satisfactory	<b>YES</b>
<b>Design Criteria</b>		
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 3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	Some 70% of units would receive at least two hours of solar access, while 13% would receive no direct sunlight.	<b>YES</b>
<i>Objective 4A-2</i> Daylight access is maximised where sunlight is limited	Satisfactory	<b>YES</b>
<i>Objective 4A-3</i> Design incorporates shading and glare control, particularly for warmer months	Satisfactory	<b>YES</b>
<i>Objective 4B-1</i> All habitable rooms are naturally ventilated	Satisfactory	<b>YES</b>
<i>Objective 4B-2</i> The layout and design of single aspect apartments maximises natural ventilation	Satisfactory	<b>YES</b>
<i>Objective 4B-3</i> The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents	Satisfactory	<b>YES</b>
<b>Design Criteria</b>		
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	Satisfactory	<b>YES</b>

<b>Apartment Design Guide COMPLIANCE TABLE</b>		
<b>Objective/Design Criteria</b>	<b>Proposed</b>	<b>Complies</b>
balconies at these levels allows adequate natural ventilation and cannot be fully enclosed 2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line		
<i>Objective 4C-1</i> Ceiling height achieves sufficient natural ventilation and daylight access	Satisfactory	<b>YES</b>
<b>Design Criteria</b>		
Measured from finished floor level to finished ceiling level, minimum ceiling heights are:  <b>Minimum ceiling height for apartment and mixed use buildings</b> Habitable rooms            2.7m Non-habitable                2.4m	Satisfactory	<b>YES</b>
<i>Objective 4C-2</i> Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms	Satisfactory	<b>YES</b>
<i>Objective 4C-3</i> Ceiling heights contribute to the flexibility of building use over the life of the building	Satisfactory	<b>YES</b>
<i>Objective 4D-1</i> The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity	Refer to Urban Design comments.	<b>NO</b>
<b>Design Criteria</b>		
1. Apartments are required to have the following minimum internal areas:  The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m <sup>2</sup> each  A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m <sup>2</sup> each  <b>Apartment type            Minimum internal area</b> Studio                        35m <sup>2</sup> 1 bedroom                    50m <sup>2</sup> 2 bedroom                    70m <sup>2</sup> 3 bedroom                    90m <sup>2</sup>  2. 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	Satisfactory	<b>YES</b>
<i>Objective 4D-2</i> Environmental performance of the apartment is maximised	Satisfactory	<b>YES</b>

<b>Apartment Design Guide COMPLIANCE TABLE</b>																				
<b>Objective/Design Criteria</b>	<b>Proposed</b>	<b>Complies</b>																		
<b>Design Criteria</b>																				
1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height 2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	Satisfactory	<b>YES</b>																		
<b>Objective 4D-3</b> Apartment layouts are designed to accommodate a variety of household activities and needs	Satisfactory	<b>YES</b>																		
<b>Design Criteria</b>																				
1. Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space) 2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space) 3. Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> <li>• 3.6m for studio and 1 bedroom apartments</li> <li>• 4m for 2 and 3 bedroom apartments</li> </ul> 4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Refer to Urban Design comments.	<b>NO</b>																		
<b>Objective 4E-1</b> Apartments provide appropriately sized private open space and balconies to enhance residential amenity	Satisfactory	<b>YES</b>																		
<b>Design Criteria</b>																				
1. All apartments are required to have primary balconies as follows: <table border="1" data-bbox="199 1209 877 1624"> <thead> <tr> <th><b>Dwelling type</b></th> <th><b>Min area</b></th> <th><b>Min depth</b></th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m<sup>2</sup></td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m<sup>2</sup></td> <td>2.4m</td> </tr> <tr> <td colspan="2">The minimum Balcony depth to be counted as contributing to the balcony area is 1m</td> <td>Balconies width 2m</td> </tr> </tbody> </table>	<b>Dwelling type</b>	<b>Min area</b>	<b>Min depth</b>	Studio apartments	4m <sup>2</sup>	-	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m	The minimum Balcony depth to be counted as contributing to the balcony area is 1m		Balconies width 2m	Satisfactory	<b>YES</b>
<b>Dwelling type</b>	<b>Min area</b>	<b>Min depth</b>																		
Studio apartments	4m <sup>2</sup>	-																		
1 bedroom apartments	8m <sup>2</sup>	2m																		
2 bedroom apartments	10m <sup>2</sup>	2m																		
3+ bedroom apartments	12m <sup>2</sup>	2.4m																		
The minimum Balcony depth to be counted as contributing to the balcony area is 1m		Balconies width 2m																		
2. 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 <sup>2</sup> and a minimum depth of 3m																				
<b>Objective 4E-2</b> Primary private open space and balconies are appropriately located to enhance liveability for residents	Satisfactory	<b>YES</b>																		
<b>Objective 4E-3</b>	Satisfactory	<b>YES</b>																		

<b>Apartment Design Guide COMPLIANCE TABLE</b>		
<b>Objective/Design Criteria</b>	<b>Proposed</b>	<b>Complies</b>
Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building		
<i>Objective 4E-4</i> Private open space and balcony design maximises safety	Satisfactory	<b>YES</b>
<i>Objective 4F-1</i> Common circulation spaces achieve good amenity and properly service the number of apartments	Satisfactory	<b>YES</b>
<b>Design Criteria</b>		
1. The maximum number of apartments off a circulation core on a single level is eight.	Refer to the Urban Design comments.	<b>YES</b>
<i>Objective 4F-2</i> Common circulation spaces promote safety and provide for social interaction between residents	Satisfactory	<b>YES</b>
<i>Objective 4G-1</i> Adequate, well designed storage is provided in each apartment	Satisfactory	<b>YES</b>
<b>Design Criteria</b>		
1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <b>Dwelling type</b> <b>Storage size volume</b>  Studio apartments                      4m <sup>3</sup> 1 bedroom apartments                      6m <sup>3</sup> 2 bedroom apartments                      8m <sup>3</sup> 3+ bedroom apartments                      10m <sup>3</sup>  At least 50% of the required storage is to be located within the apartment	Refer to the Urban Design comments.	<b>YES</b>
<i>Objective 4G-2</i> Additional storage is conveniently located, accessible and nominated for individual apartments	Satisfactory	<b>YES</b>
<i>Objective 4H-1</i> Noise transfer is minimised through the siting of buildings and building layout	Satisfactory	<b>YES</b>
<i>Objective 4H-2</i> Noise impacts are mitigated within apartments through layout and acoustic treatments	Satisfactory	<b>YES</b>
<i>Objective 4J-1</i> In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings	Satisfactory	<b>YES</b>
<i>Objective 4J-2</i> Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission	Satisfactory	<b>YES</b>
<i>Objective 4K-1</i>	Satisfactory	<b>YES</b>

<b>Apartment Design Guide COMPLIANCE TABLE</b>		
<b>Objective/Design Criteria</b>	<b>Proposed</b>	<b>Complies</b>
A range of apartment types and sizes is provided to cater for different household types now and into the future		
<i>Objective 4K-2</i> The apartment mix is distributed to suitable locations within the building	Satisfactory	<b>YES</b>
<i>Objective 4L-1</i> Street frontage activity is maximised where ground floor apartments are located	Satisfactory	<b>YES</b>
<i>Objective 4L-2</i> Design of ground floor apartments delivers amenity and safety for residents	Satisfactory	<b>YES</b>
<i>Objective 4M-1</i> Building facades provide visual interest along the street while respecting the character of the local area	Colours of materials are unacceptable given proximity to the HCA. Refer to Heritage comments	<b>NO</b>
<i>Objective 4M-2</i> Building functions are expressed by the façade	Satisfactory	<b>YES</b>
<i>Objective 4N-1</i> Roof treatments are integrated into the building design and positively respond to the street	Satisfactory	<b>YES</b>
<i>Objective 4N-2</i> Opportunities to use roof space for residential accommodation and open space are maximised	Satisfactory	<b>YES</b>
<i>Objective 4N-3</i> Roof design incorporates sustainability features	Satisfactory	<b>YES</b>
<i>Objective 4O-1</i> Landscape design is viable and sustainable	Refer to Landscaping comments	<b>YES</b>
<i>Objective 4O-2</i> Landscape design contributes to the streetscape and amenity	Refer to Landscaping comments	<b>YES</b>
<i>Objective 4P-1</i> <i>Appropriate soil profiles are provided</i>	Refer to Landscaping comments.	<b>YES</b>
<i>Objective 4P-2</i> <i>Plant growth is optimised with appropriate selection and maintenance</i>	Refer to Landscaping comments.	<b>YES</b>
<i>Objective 4P-3</i> Planting on structures contributes to the quality and amenity of communal and public open spaces	Refer to Landscaping comments.	<b>YES</b>
<i>Objective 4Q-1</i> Universal design features are included in apartment design to promote flexible housing for all community members	Satisfactory	<b>YES</b>
<i>Objective 4Q-2</i> A variety of apartments with adaptable designs are provided	Satisfactory	<b>YES</b>
<i>Objective 4Q-3</i> Apartment layouts are flexible and accommodate a range of lifestyle needs	Satisfactory	<b>YES</b>
<i>Objective 4U-1</i>	Refer to Urban Design comments.	<b>YES</b>

<b>Apartment Design Guide COMPLIANCE TABLE</b>		
<b>Objective/Design Criteria</b>	<b>Proposed</b>	<b>Complies</b>
Development incorporates passive environmental design		
<i>Objective 4U-2</i> Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer	Refer to Urban Design comments.	<b>YES</b>
<i>Objective 4U-3</i> Adequate natural ventilation minimises the need for mechanical ventilation	Refer to Urban Design comments.	<b>YES</b>
<i>Objective 4V-1</i> Potable water use is minimised	Satisfactory	<b>YES</b>
<i>Objective 4V-2</i> Urban stormwater is treated on site before being discharged to receiving waters	Satisfactory	<b>YES</b>
<i>Objective 4W-1</i> Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents	Satisfactory	<b>YES</b>
<i>Objective 4W-2</i> Domestic waste is minimised by providing safe and convenient source separation and recycling	Satisfactory	<b>YES</b>
<i>Objective 4X-1</i> Building design detail provides protection from weathering	Satisfactory	<b>YES</b>
<i>Objective 4X-2</i> Systems and access enable ease of maintenance	Satisfactory	<b>YES</b>
<i>Objective 4X-3</i> Material selection reduces ongoing maintenance costs	Satisfactory	<b>YES</b>

The specific departures from the ADG requirements, identified in the table above form part of the Reasons for Refusal (**1, 6, 7, 8, 10 and 11**).

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

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

The proposed development complies with the three non-discretionary development 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 has no effect if the ADG also specifies a requirement, standard or control in relation to the same matter:

- (a) visual privacy,
- (b) solar and daylight access,
- (c) common circulation and spaces,
- (d) apartment size and layout,
- (e) ceiling heights,
- (f) private open space and balconies,
- (g) natural ventilation,
- (h) storage.

The proposed development does not comply with the design criteria of the ADG in relation to visual privacy, solar and daylight access and apartment size and layout. Refer to the Urban Design comments for further details.

### Chapter 6 – Low and mid rise housing

<b>SEPP Housing COMPLIANCE TABLE – Chapter 6</b>		
<b>Section</b>	<b>Proposed</b>	<b>Complies</b>
<b>175 – Development standards—low and mid rise housing inner area</b>		
(1) This section applies to land in a low and mid rise housing inner area in Zone R3 Medium Density Residential or R4 High Density Residential.	The site is zoned R4 and is located within a low and mid rise housing inner area	<b>Noted</b>
(3) The maximum building height for a building used for residential flat buildings is the maximum permissible building height for the development on the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).  The maximum height under Section 180(2)(b) is 22 metres. The maximum height including additional 30% (as per subsection 1) is 28.6 metres.	30.215 metres  A Clause 4.6 variation request has been provided and is considered below.	<b>NO</b>
(4) In this section, a storey does not include a basement within the meaning of the standard instrument.	Noted	<b>Noted</b>
<b>177 – Landscaping—residential flat buildings or shop top housing</b>		
(2) Development consent must not be granted for development for the purposes of residential flat buildings or shop top housing unless the consent authority has considered the <i>Tree Canopy Guide for Low and Mid Rise Housing</i> , published by the Department in February 2025.	Refer to Landscaping comments	<b>YES</b>
<b>178 – Minimum lot size for residential flat buildings or shop top housing</b>		
(2) A requirement specified in another environmental planning instrument or development control plan in relation to the following does not apply to development that meets the standards in section 180(2) or (3)—	Non-compliant with Section 180(2) (height). However, the lot size and width is compliant	<b>YES</b>

<b>SEPP Housing COMPLIANCE TABLE – Chapter 6</b>		
<b>Section</b>	<b>Proposed</b>	<b>Complies</b>
(a) minimum lot size, (b) minimum lot width.	with Clause 6.6 of KLEP 2015.	

### **Any inconsistencies with other Environmental Planning Instruments**

The development standards referred to in the above table prevail to the extent of any inconsistency with another Environmental Planning Instrument including KLEP.

The following controls under KLEP are not inconsistent with the above-mentioned SEPP Housing provisions and as such they continue to apply to the assessment of the subject application.

### **Ku-ring-gai Local Environmental Plan 2015**

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

#### **Part 1 Preliminary**

##### **Clause 1.2 – Aims of Plan**

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

#### **Part 2 Permitted or prohibited development**

##### **Clauses 2.1 – 2.3 Zoning & permissibility**

The site is zoned R4 High Density Residential under the KLEP. The proposed development is defined as a Residential Flat Building, which is a permissible form of development within the zone. The objectives of this zone are:

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

The proposal is generally consistent with the R4 objectives as it is a residential flat building that increases density within an accessible area.

#### **Part 4 Principal development standards**

The proposed development breaches the building height requirement development standards contained within the KLEP. Per Section 8(1) of SEPP Housing, where there is any inconsistency between SEPP Housing and another environmental planning instrument, the provisions of SEPP Housing prevail. Consequently, the building height development standard of the SEPP prevails over the KLEP. Under Section 180(2)(b) of the SEPP Housing, the maximum permissible building height is 22 metres. With the application of the affordable housing bonus under Section 16, a maximum height of up to 28.6 metres may be permitted. The proposed development has a maximum building

height of 30.215 metres, which represents a variation of approximately 5.6% above the maximum permissible height under the SEPP Housing.

The applicant has submitted a Clause 4.6 variation request for the building height (**Attachment 8**). The request is considered below.

#### **Clause 4.6 Exceptions to development standards**

Clause 4.6 provides flexibility in applying certain development standards. An assessment of the requests to vary the development standards, as noted earlier, is provided below:

*(1) The objectives of this clause are as follows:*

*(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention by demonstrating:*

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Director-General has been obtained.*

The following is an assessment of the Clause 4.6 variation request for Building Height.

#### **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) established in this case to demonstrate that compliance with the Height of Building development standard is unreasonable and unnecessary for the following reasons (summarised):

- *The proposed residential flat building development consistent with the objectives and principles of SEPP Housing because:*
  - i. The proposal is located approximately 400m walking distance from Turramurra Town Centre.*
  - ii. The development provides 13 affordable housing units. The units cater to very low, low, and moderate income households.*
  - iii. Provides 13 affordable housing units, including family-sized dwellings for diverse housing needs.*
  - iv. Located close to Turramurra Town Centre and railway station, supporting accessibility to services and transport.*
  - v. Consistent with existing land use and built form in the area.*
  - vi. Height exceedance relates mainly to non-habitable rooftop plant and does not cause unreasonable impacts.*
  - vii. Design prioritises internal amenity (light, ventilation, layout) and maximises compliant apartments.*
  - viii. No significant impacts on privacy, views, or overshadowing.*

The applicant's submission primarily addresses the objectives and principles of the SEPP Housing, rather than the specific objectives of the height of buildings development standard under the KLEP. In the context of a Clause 4.6 variation, it is essential that the applicant demonstrate that compliance with the height development standard is unreasonable or unnecessary, having regard to the objectives of that specific standard. Addressing broader policy objectives, such as those under the SEPP Housing, does not satisfy this requirement. The applicant's response does not adequately address the objectives of the height of buildings control. In particular:

- The proposed building exhibits excessive bulk and scale, resulting in a built form that is not compatible with the size of the site. These issues form **Reasons for Refusal Nos 1 and 2**. The built form is considered bulky, leading to a development outcome that is not compatible with the surrounding context.

Accordingly, the applicant has not demonstrated that compliance with the maximum building height development standard is unreasonable and unnecessary. The proposal fails to achieve the objectives of the height of buildings standard and results in an unacceptable built form outcome.

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

The applicant states that the following environmental planning grounds exist to justify contravention of the development standard (summarised):

- i. Development is compatible with the emerging higher-density character of the area.*
- ii. Height variation increases dwelling yield, including affordable housing, without unacceptable impacts.*
- iii. Exceedance supports SEPP Housing objectives and R4 zone intent.*

- iv. *Height exceedance relates to non-habitable elements (roof, services, lift overrun) that are critical to the delivery of the affordable housing component.*
- v. *Provides public benefit through additional housing supply near transport.*
- vi. *Aligns with State planning objectives to increase housing diversity and supply.*
- vii. *Contributes to the vitality of Warrawee and nearby Turramurra Town Centre.*

The applicant also submits that the proposed development achieves the objectives of Section 1.3 of the *EP&A Act 1979*, specifically:

- i. *Provides over 1,155.4m<sup>2</sup> of affordable housing in a well-located area near Turramurra Railway Station.*
- ii. *Height exceedance relates to non-habitable elements (roof, plant, solar panels, lift overrun), only accessible by authorised personnel for maintenance purposes*
- iii. *Strict compliance would reduce density and affordable housing yield.*
- iv. *High-quality architectural design that responds to the site context, with minimal visual impact from non-compliant elements.*

The above mentioned elements of the development (roof structure, building services, solar panels, and lift overrun), are standard components of the overall building form. These elements are not a consequence of, nor directly attributable to, the provision of affordable housing but rather are typical requirements for a development of this scale and nature. The reasonableness of elements that breach the height plane is also questioned, for example the plant area on the roof of Level 8 has a footprint of 122m<sup>2</sup>, however there is also a plant area at the floor level below which accommodates 58 air conditioning units. No layout or plant details for the equipment proposed on the roof of level 8 has been provided.

Additionally, as demonstrated in the building envelope submitted with the Clause 4.6 variation request and accompanying architectural plans, the height exceedance is not limited to non-habitable rooftop elements. The breach associated with Unit 801 ranges from approximately 50mm to 890mm above the maximum building height plane. The breach extends into the walls and roof of Unit 801, which is not identified as an affordable housing unit.

The proposal exceeds the 22 metres (Chapter 6) plus 30% (Chapter 2) height development standard. A 30% increase in building height is the maximum allowable under Chapter 2. The basis for the assumption that the emerging character of the area will be buildings over 28.6 metres in height is unclear, as there are no proposed planning controls that envisage this change to development standards. It is noted that the subject site has recently been cleared of structures and is relatively flat, therefore the height breach is not a consequence of topographical constraints.

The environmental planning grounds advanced by the applicant are not sufficient to justify the proposed breach to the maximum building height development standard.

## **Part 5 Miscellaneous provisions**

### **Clause 5.10 – Heritage conservation**

The subject site does not contain a heritage item, is located within 100 metres of Item (I138, I168, I161 and I111), and is not within a heritage conservation area. The subject site is located within the vicinity and visual catchment of Laurel Avenue / King Street HCA (C5). The proposed works do not affect any known archaeological or Aboriginal objects or Aboriginal places of heritage significance.

The application has been reviewed by Council's Heritage Advisor, who advised that the proposed development will have adverse impact on the heritage conservation area and items in the vicinity of the site.

The development is therefore inconsistent with Objective 1(b) of Clause 5.10 of the KLEP, which seeks to conserve the heritage significance of HCAs, including their associated views.

## **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**

Clause 6.2 (3) requires the consent authority to consider:

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development*
- (b) the effect of the development on the likely future use or redevelopment of the land*
- (c) the quality of the fill or the soil to be excavated, or both*
- (d) the effect of the development on the existing and likely amenity of adjoining properties*
- (e) the source of any fill material and the destination of any excavated material*
- (f) the likelihood of disturbing relics*
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development*

As outlined above, the proposed excavation and level changes within the setback areas limit the available area for meaningful deep soil landscaping, resulting in adverse amenity and landscape character impacts. These issues form Reasons for Refusal Nos 7 and 8.

### **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 as per the requirements of the KLEP.

### **Clause 6.5 - Stormwater and water sensitive urban design**

The objectives of this Clause are to avoid or minimise the adverse impacts of urban stormwater on the land on which development is to be carried out, adjoining properties, native bushland, waterways and groundwater systems.

The works proposed under the Development Application will not avoid, minimise or mitigate adverse impacts to adjoining properties, contrary to Clause 6.5 'Stormwater and water sensitive urban design' of the KLEP. This matter forms **Reasons for Refusal 14**.

### Clause 6.6 - Requirements for multi dwelling housing and residential flat buildings

<b>KLEP COMPLIANCE TABLE – Principal development standards</b>		
<b>Development standard</b>	<b>Proposed</b>	<b>Complies</b>
<b>CI 6.6 - Requirements for multi dwelling housing and residential flat buildings:</b> Minimum site area of 1,200m <sup>2</sup> and minimum dimensions (width and depth) of 30 metres if the area of the land is less than 1,800m <sup>2</sup>	The site frontage is 27.585m; however, the control does not require the minimum width at the frontage. The site can accommodate a 30m x 30m square within its boundaries.	<b>YES</b>

### Policy Provisions (DCPs, Council policies, strategies and management plans)

#### Ku-ring-gai Development Control Plan

#### Part 1A.5 – General aims of the DCP

The proposed development has been assessed against the general aims of the KDCP and is not considered acceptable, having regard to the various non-compliances and issues identified throughout this report

#### Part 2 – Site analysis

The table below addresses the assessment criteria contained under Part 2 of the KDCP.

<b>KDCP COMPLIANCE TABLE – PART 2</b>		
<b>Development control</b>	<b>Proposed</b>	<b>Complies</b>
<b>Part 2 Site Analysis</b>		
Development applications are to contain a site analysis	The site analysis fails to adequately demonstrate that the design response is well-founded (Refer to <b>Reason for Refusal No. 4</b> )	<b>NO</b>

#### Part 3 – Land consolidation and subdivision

Part 3B provides guidance on land consolidation, in particular, when land consolidation is required. The subject site is a consolidation of two allotments. The development site does not include No. 6 Cherry Street which is a site that does not adjoin any other lot except for the development site, however this site is not an 'isolated site' in planning terms. Section 178 in Chapter 6 of SEPP Housing, states:

- (2) A requirement specified in another environmental planning instrument or development control plan in relation to the following does not apply to development that meets the standards in section 180(2) or (3)—
- (a) minimum lot size,
  - (b) minimum lot width.

Accordingly, the redevelopment of No. 6 Cherry Street for the purposes of a residential flat building would not be subject to the minimum lot size and dimension requirements in Clause 6.6 of the KLEP if that development meets the standards in section 180(2).

## Part 7 – Residential Flat Buildings

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 has no effect if the Apartment Design Guide also specifies a requirement, standard or control in relation to the same matter—*

- (a) visual privacy,
- (b) solar and daylight access,
- (c) common circulation and spaces,
- (d) apartment size and layout,
- (e) ceiling heights,
- (f) private open space and balconies,
- (g) natural ventilation,
- (h) storage.

The table below addresses the assessment criteria contained under Part 7 of the KDCP.

<b>KDCP COMPLIANCE TABLE – PART 7</b>		
<b>Development Control</b>	<b>Proposed</b>	<b>Complies</b>
<b>Part 7 Residential Flat Buildings</b>		
<b>7A.1 – Local character and streetscape</b>		
All Residential Flat Buildings are to be designed by an architect registered with the NSW Architects Registration Board.	Compliance is demonstrated	<b>YES</b>
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.	Compliance is demonstrated	<b>YES</b>
Design components of new development are to be based on the existing predominant and high quality characteristics of the local neighbourhood.	Design components do not reflect high quality characteristics of neighbourhood, including sufficient deep soil zone <b>(Reason for Refusal No. 6).</b>	<b>NO</b>
The appearance of the development is to maintain the local visual character by considering the following elements: <ul style="list-style-type: none"> <li>i. visibility of on-site development when viewed from the street, public reserves and adjacent properties; and</li> <li>ii. relationship to the scale, layout and character of the tree dominated streetscape of Ku-ring-gai.</li> </ul>	Compliance is demonstrated	<b>YES</b>

**KDCP COMPLIANCE TABLE – PART 7**

<b>Development Control</b>	<b>Proposed</b>	<b>Complies</b>
The predominant and high-quality characteristics of the local neighbourhood are to be identified and considered as part of the site analysis.	The submitted site analysis is insufficient (Refer to <b>Reason for Refusal No. 4</b> ).	<b>NO</b>
Development is to integrate with surrounding sites by: <ul style="list-style-type: none"> <li>i. being of an appropriate scale retaining consistency with the surrounds when viewed from the street, public domain or adjoining development;</li> <li>ii. minimising overshadowing; and</li> <li>iii. integrating built form and soft landscaping (gardens and trees) within the tree canopy that links the public and private domain throughout Ku-ring-gai.</li> </ul>	The proposed development is not of an appropriate scale (Refer to <b>Reason for Refusal No. 1</b> ).	<b>NO</b>
Development on visually prominent sites is to: <ul style="list-style-type: none"> <li>i. be of high architectural and aesthetic quality;</li> <li>ii. be integrated into the existing landscape through the site planning process and avoid tall and bulky structures;</li> <li>iii. have a selection of external colours and finishes that are sensitive to the site and locality;</li> <li>iv. retain significant landscape and vegetation elements;</li> <li>v. consider views to the site as well as those from the site; and</li> <li>vi. soften visual impact by extensive landscaping including tall and medium trees and shrubs.</li> </ul>	The site is visually prominent however the proposed development is not of high aesthetic quality and a proper size (Refer to <b>Reason for Refusal Nos 1 and 16</b> ).	<b>NO</b>
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.	Proposed colours and materials are inconsistent with the HCA.	<b>NO</b>
<b>7A.2 – Site layout</b>		
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: <ul style="list-style-type: none"> <li>i. building location and orientation on the site optimising northern aspect; relationship with neighbouring developments; building setbacks; geographical aspect; views; access etc;</li> <li>ii. response of building development in maintaining site characteristics within the subject site, such as topography,</li> </ul>	The proposed development does not appropriately respond to the contextual surrounding of the site (Refer to <b>Reason for Refusal No. 4</b> ).	<b>NO</b>

<b>KDCP COMPLIANCE TABLE – PART 7</b>		
<b>Development Control</b>	<b>Proposed</b>	<b>Complies</b>
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.		
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.	Unsatisfactory site analysis provided (Refer to <b>Reason for Refusal No. 4</b> ).	<b>NO</b>
Development near noise sources is to comply with Section B Part 20 Development Near Rail Corridors and Busy Roads of the DCP.	Acoustic Assessment been provided which considers the KDCP controls.	<b>YES</b>
Any building with a frontage to the street is to address that street.	The development appropriately addresses both street frontages of Cherry Street.	<b>YES</b>
Where a site has two or more frontages, the buildings are to address and provide building entry points from all street frontages.	Pedestrian accesses from both No. 4 and No. 8 are provided.	<b>YES</b>
Soft landscaping, including tall trees, is to be provided between onsite buildings, fences and courtyard walls.	Insufficient soft landscaping (Refer to <b>Reason for Refusal No. 5</b> ).	<b>NO</b>
Hard landscaping is to be minimised and to maximise opportunities for landscape planting.	Excessive hard surfaces within the sites. (Refer to <b>Reason for Refusal No. 5</b> )	<b>NO</b>
Long straight driveways are not permitted, except where necessary for battle-axe sites. Driveways are to be designed to be of minimal visual impact.	The proposed driveway is not a long straight driveway.	<b>YES</b>
Provide a single pedestrian entry point into the development from the street. Other entries may be permitted where several buildings address the street along an extended street or where there are dual frontage sites.	Pedestrian accesses from both No. 4 and No. 8 are provided.	<b>YES</b>
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 <ul style="list-style-type: none"> <li>i. existing residential flat buildings and multi-dwelling housing on adjoining lots, and</li> <li>ii. residential development in adjoining lower density zones.</li> </ul>	Overshadowing on No 2 Cherry Street (Refer to <b>Reason for Refusal No. 5</b> )	<b>NO</b>
Overshadowing should not compromise the development potential of the adjoining yet to be redeveloped sites.	Overshadowing on No 2 Cherry Street (Refer to <b>Reason for Refusal No. 5</b> )	<b>NO</b>

<b>KDCP COMPLIANCE TABLE – PART 7</b>		
<b>Development Control</b>	<b>Proposed</b>	<b>Complies</b>
<b>7A.3 – Building setbacks</b>		
Residential flat buildings are to meet the following street setback requirements: <ul style="list-style-type: none"> <li>i. 10m from the street boundary;</li> <li>ii. on corner sites and sites with multiple street frontages at 10m setback is to be provided on all street frontages.</li> </ul>	9.5 metres (Refer to <b>Reason for Refusal No. 5</b> )	<b>NO</b>
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.	Satisfactory	<b>YES</b>
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 building lines are parallel to the street frontages.	<b>YES</b>
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: <ul style="list-style-type: none"> <li>i. a minimum of 6m from the side boundary for all levels up to the fourth storey.</li> <li>ii. a minimum of 9m to the fifth storey and above.</li> </ul>	Southern and western elevations encroach up to 0.5 metres into the required front and side setbacks. Levels 5-8 have 6 metres setback on southern and northern sides (Refer to <b>Reason for Refusal No. 5</b> ).	<b>NO</b>
Side setback areas behind the building line are not to be used for driveways or for vehicular access into the building.	Northern side setbacks (2.5m) are occupied by driveways/vehicular access and are insufficient to function as a viable Deep Soil Zone (Refer to <b>Reasons for Refusal Nos 6 and 7</b> ).	<b>NO</b>
Driveways are to be set back a minimum of 6m from the side boundary within the street setback to allow for deep soil planting.	See above	<b>NO</b>
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.	The site analysis does not properly consider potential future development and the location of its driveway of adjoining site. (Refer to <b>Reason for Refusal No. 4</b> )	<b>NO</b>
Basements do not encroach into any setback areas	The basement encroaches into the side setback along the boundary with No. 6 Cherry Street (Refer to <b>Reason for Refusal No. 5</b> )	<b>NO</b>
Ground floor private terraces/courtyards may encroach into the setback areas (see Figure 7A.3-6) provided there is a minimum setback to the terrace edge/courtyard wall of: <ul style="list-style-type: none"> <li>i. 8m from the street boundary;</li> <li>ii. 4m from the side and rear boundaries;</li> </ul>	Ground floor balconies contained with the required front, side and rear setbacks	<b>YES</b>

<b>KDCP COMPLIANCE TABLE – PART 7</b>		
<b>Development Control</b>	<b>Proposed</b>	<b>Complies</b>
iii. 7m from the side and rear boundaries where adjoining land is zoned differently for lower density residential development		
No encroachments are permitted where minimum side setbacks have not been achieved.	Minimum side setbacks for the ground floor balconies are achieved	<b>YES</b>
No more than 15% of the total area of the street setback area is to be occupied by private terraces/courtyards	Ground floor balconies are not proposed within the front setback areas.	<b>YES</b>
In addition to the above encroachments, the following elements may encroach into the setback areas where they do not increase the apparent bulk of the building or create visual clutter: <ul style="list-style-type: none"> <li>i. eaves;</li> <li>ii. open pergolas;</li> <li>iii. blades, fins, columns.</li> </ul>	Columns and blade elements encroach up to 0.5m into required front, side and rear setbacks, without increasing perceived bulk or visual clutter.	<b>YES</b>
<b>7A.4 – Building Separation</b>		
The minimum separation between residential buildings on the development site is to comply with the following controls: <p><b>Up to 4<sup>th</sup> storey:</b></p> <ul style="list-style-type: none"> <li>i. 12m between habitable rooms/balconies</li> <li>ii. 9m between habitable rooms/balconies and non-habitable rooms</li> <li>iii. 6m between non-habitable rooms</li> </ul> <p><b>5<sup>th</sup> storey &amp; above:</b></p> <ul style="list-style-type: none"> <li>iv. 18m between habitable rooms/balconies</li> <li>v. 13.5m between habitable rooms/balconies and non-habitable rooms</li> <li>vi. 9m between non-habitable rooms</li> </ul>	Refer to Urban design comments ( <b>Reason for Refusal No. 5</b> )	<b>NO</b>
Buildings are to be located so that apartments benefit from views into and through onsite landscaped gardens.	A satisfactory view is provided from the proposed units.	<b>YES</b>
<b>7A.5 – Site coverage</b>		
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.	Site coverage is 39.4%. Deep Soil Landscaping has not been met (Refer to <b>Reason for Refusal No. 5</b> ).	<b>NO</b>
<b>7A.6 – Deep soil landscaping</b>		
A minimum deep soil landscaping area of 50% for a site area of 1800m <sup>2</sup> or more.	Refer to Landscaping referral	<b>NO</b>
Deep soil zones are to be configured to retain healthy and significant trees on the site and adjoining sites, where possible.	Refer to Landscaping referral	<b>NO</b>
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.	Refer to Landscaping referral	<b>NO</b>

<b>KDCP COMPLIANCE TABLE – PART 7</b>		
<b>Development Control</b>	<b>Proposed</b>	<b>Complies</b>
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.	Refer to Landscaping referral	<b>YES</b>
Driveways are not to dominate the street setback area. Deep soil landscaping areas in the street setback are to be maximised.	Satisfactory	<b>YES</b>
Lots greater than 1088m <sup>2</sup> are to support a minimum of '1 tall tree per 300m <sup>2</sup> or part thereof' of tall trees capable of attaining a mature height of at least 18m on shale, transitional soils and 15m on sandstone derived soils.	Refer to Landscaping referral	<b>NO</b>
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.	Refer to Landscaping referral	<b>YES</b>
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.	Refer to Landscaping referral	<b>NO</b>
<b>7B – Access and parking</b>		
<b>7B.1 – Car parking provision</b>		
All residential flat developments are to provide on-site car parking within basements.	A basement car park is provided.	<b>YES</b>
Basement car park areas are to be consolidated under building footprints.	Basement is not consolidated beneath the building footprint (Refer to <b>Reason for Refusal No. 6</b> ).	<b>NO</b>
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.	A single lane driveway is not proposed.	<b>YES</b>
The basement car park is not to project more than 1.0m above existing ground level.	A 7.7 metres section of the proposed basement along the northern side is projected up to 1.4 metres above existing ground level. This will have minimal visual impact and is acceptable on merit.	<b>YES – merit assessment</b>
Single lane aisles, straight ramps and tunnels max 12.0m in length.	Satisfactory as per engineering referral	<b>YES</b>
Direct and continuous internal pedestrian access from basement car park is provided to each level of the building	Lifts and fire stairs are proposed from the basement to each level of the building.	<b>YES</b>
Car park entry is to be integrated within the building and located behind the building line.	Car park entry is located behind the building line.	<b>YES</b>

<b>KDCP COMPLIANCE TABLE – PART 7</b>																	
<b>Development Control</b>	<b>Proposed</b>	<b>Complies</b>															
Car parking design is to be in accordance with requirements for Silver and Platinum Level dwellings as required in this DCP and by the Livable Housing Guidelines. Circulation areas, roadways and ramps are to comply with AS2890.1. Where a conflict occurs, the Livable Housing Guidelines 2012 is to take precedence.	One accessible space is proposed.	<b>YES</b>															
Car parking rates for residential flat developments on sites within 800m walking distance of a railway station entry:  <table border="1"> <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>1 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>	Type	Minimum	Maximum	Studio	0 spaces	0.5 spaces	One bedroom	0.6 spaces	1 space	Two bedrooms	1 space	1.25 spaces	Three or more bedrooms	1.4 space	2 spaces	The KDCP requires a minimum of 66 residential car parking spaces and a maximum of 94 spaces. In addition, 9 visitor spaces are required.  The proposal includes 76 resident parking spaces and 10 visitor spaces.	<b>YES</b>
Type	Minimum	Maximum															
Studio	0 spaces	0.5 spaces															
One bedroom	0.6 spaces	1 space															
Two bedrooms	1 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.	One visitor parking space is provided as an accessible parking space.	<b>YES</b>															
One visitor parking bay is to be provided with a tap, to make provision for on-site car washing.	2 car washing bays are proposed	<b>YES</b>															
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.	A loading bay with suitable dimensions and manoeuvring space is proposed.	<b>YES</b>															
One visitor parking bay is to be provided with a tap, to make provision for on-site car washing.	One visitor parking space includes car-washing facilities.	<b>YES</b>															
Parking areas are to be designed and constructed so that electric vehicle charging points can be installed.	This requirement can be included as a condition of consent.	<b>YES</b>															
<b>7B.2 – Bicycle parking and support facilities provision</b>																	
Provide on-site, secure bicycle parking spaces and storage at the following rates: 1 bicycle parking space per dwelling within the residential car park area - in the form of an individual locker or secure room	Refer to Engineering comments ( <b>Reason for Refusal No. 13</b> ).	<b>NO</b>															

<b>KDCP COMPLIANCE TABLE – PART 7</b>		
<b>Development Control</b>	<b>Proposed</b>	<b>Complies</b>
1 bicycle parking space (in the form of a bicycle rail) per 10 units for visitors in the visitor car park area.		
All on-site bicycle parking spaces and storage are to be designed to AS2890.3.	Sufficient bicycle racks and storage cages are proposed.	<b>YES</b>
<b>7C – Building design and sustainability</b>		
<b>Part 7C.1 – SEPP Housing and Apartment Design Guide Requirements</b>		
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.	<b>NO</b>
<b>7C.2 – Communal open space</b>		
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.	Communal open space is provided across the ground floor and Level 8, with a combined area of 793 m <sup>2</sup> , representing 29% of the total site area.	<b>YES</b>
At least one single parcel of Primary communal open space with a minimum area of 80m <sup>2</sup> and a minimum dimension of 8m is to be provided.	The Primary communal open space on level 8 has an area of 309m <sup>2</sup> with a minimum dimension of 9.2 metres	<b>YES</b>
The Primary communal open space is to be directly accessible from the internal common circulation areas.	Lift access is proposed to the Level 8 communal open space.	<b>YES</b>
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.	Rooftop communal open space is proposed.	<b>YES</b>
Secondary communal open spaces are to have a minimum dimension of 5.0m and may be provided on roof tops.	Ground floor communal open space has a minimum dimension of 6 metres.	<b>YES</b>
Access to and within the Primary communal open space is to be provided for people with a disability Part 2 Section 7 of AS1428.	Lift access is proposed to the Level 8 communal open space.	<b>YES</b>

<b>KDCP COMPLIANCE TABLE – PART 7</b>		
<b>Development Control</b>	<b>Proposed</b>	<b>Complies</b>
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 communal open space includes areas for passive social and recreational activities, such as seating areas, an outdoor chess board, and BBQ facilities.	<b>YES</b>
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.	Some 50% of communal open space receives at least 2 hours of direct sunlight.	<b>YES</b>
Communal open space is to be integrated with any significant natural feature(s) of the site and soft landscaping areas.	There are no significant natural features on the site.	<b>YES</b>
The communal open space is to have surveillance from at least two onsite apartments for safety reasons.	Ground floor communal open space is acceptable subject to CPTED. The Level 8 communal open space does not benefit from passive surveillance; however, as it is accessible only to residents, the associated safety risk is not significant.	<b>YES</b>
Communal open space design is to avoid creation of concealment or entrapment areas.	No entrapment areas are proposed	<b>YES</b>
Shared facilities such as barbecue facilities, shade structures, play equipment and seating, are to be provided within the Primary communal open space.	Shared facilities such as seating areas, an outdoor chess board, and BBQ facilities are proposed.	<b>YES</b>
Garden maintenance storage areas, drainage and connections to water taps are to be provided with the Primary communal open space. Secondary communal open spaces are to have adequate connections to water for maintenance purposes.	Garden maintenance storage is proposed on Level 8.	<b>YES</b>
<b>7C.3 – Ground floor apartments</b>		
Ground floor apartments are to be separated from noise sources such as common areas, communal open space and the public domain.	Ground floor apartments are separated from the public domain by landscaping.	<b>YES</b>

**KDCP COMPLIANCE TABLE – PART 7**

<b>Development Control</b>	<b>Proposed</b>	<b>Complies</b>
Ground and podium level apartments are to have private outdoor areas differentiated from communal areas by at least one of the following: <ol style="list-style-type: none"> <li>i. a change in level;</li> <li>ii. walls to deflect noise;</li> <li>iii. planting, such as hedges and low shrubs;</li> <li>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.</li> </ol>	round-floor units are differentiated from communal areas by low shrub planting, a 1.2 m-high metal fence, and gated access. However, detailed drawings of these fences have not been provided ( <b>Reason for Refusal No. 18</b> ).	<b>NO</b>
A gate is to be provided from each ground floor apartment private open space into common areas where practical.	The private open spaces of UG03 and UG04 each include a gate providing direct access to the communal open space.	<b>YES</b>
No subterranean rooms to any part of any apartment	No part of the apartment includes a subterranean room.	<b>YES</b>
No ground floor apartments created as a result of excessive excavation.	Compliance demonstrated	<b>YES</b>
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.	Storage areas in the basement adjoin the basement walls (Refer to <b>Reason for Refusal No. 10</b> ).	<b>NO</b>
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.	The proposed basement is tanked. No accessible maintenance passage has been provided (Refer to <b>Reason for Refusal No. 10</b> ).	<b>NO</b>
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.	The internal finished floor level of UG05 and UG06 are located up to 1 metre below the existing ground levels at the building line.  See next control.	<b>NO</b>
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.	The internal finished floor levels of UG05 and UG06 are positioned up to 1 metre below the existing ground level, and the adjacent ground levels have been graded to match the finished floor level for a distance of 3 metres m from the building line.	<b>YES</b>

<b>KDCP COMPLIANCE TABLE – PART 7</b>		
<b>Development Control</b>	<b>Proposed</b>	<b>Complies</b>
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.	Compliance is demonstrated	<b>YES</b>
<b>7C.4 – Apartment mix and accessibility</b>		
Range of apartment sizes (one, two, three bedroom) included within the development	A range of units sizes is proposed.	<b>YES</b>
Mix of 1, 2 & 3 bedroom apartments located on the ground level.	No one bedroom apartment proposed at the ground level ( <b>Reason for Refusal No. 11</b> ).	<b>NO</b>
All apartments are to be designed to Silver Level under the Livable Housing Design Guidelines	All units are designed to Silver Level.	<b>YES</b>
At least 15% of the dwellings (or part thereof) are to be designed to Platinum Level under the Livable Housing Design Guidelines.	16.36% of the units are designed to Platinum Level.	<b>YES</b>
All developments are required to meet the KDCP Livable Housing Design Guideline provisions and National Construction Code accessibility requirements regardless of steepness of site.	Compliance is demonstrated	<b>YES</b>
All development is to provide an accessible path of travel: <ul style="list-style-type: none"> <li>i. from the street entry to the front door of each dwelling; and</li> <li>ii. from the basement carparking to the dwelling entry; and</li> <li>iii. from the dwelling to the primary communal open space and each type of room or space for use in common by the residents</li> </ul>	Accessible path of travel is proposed from the main entry via No. 4 Cheery Street.	<b>YES</b>
Where the internal finished floor level of a ground floor dwelling 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.	The internal finished floor levels of UG05 and UG06 are positioned up to 1 metre below the existing ground level, and the adjacent ground levels have been graded to match the finished floor level for a distance of 3 metres from the building line.	<b>YES</b>
Chair lifts, platform lifts and the like are not permitted on internal and external communal/shared paths and circulation areas. Where lifts are required they are to be constructed within lift shafts with full weather protection for users.	No chair lifts, platform lifts and the like are proposed	<b>YES</b>

<b>KDCP COMPLIANCE TABLE – PART 7</b>		
<b>Development Control</b>	<b>Proposed</b>	<b>Complies</b>
<b>7C.5 – Building entries</b>		
The residential flat building entry is to be clearly expressed using appropriate architectural elements.	Main entry is expressed using architectural elements including awning.	<b>YES</b>
Buildings are to address the street by providing visible entry points with the following: <ul style="list-style-type: none"> <li>i. main building entrances that are level and directly accessible from the street; or,</li> <li>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.</li> </ul>	Both entry points are visible and accessible from the street.	<b>YES</b>
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.	Entry foyer is located at RL183.00 which is less than 1 metre above the existing ground level.	<b>YES</b>
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.	Entry is clearly visible.	<b>YES</b>
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.	Main entry to the site is integrated with horizontal and vertical building facade architectural elements.	<b>YES</b>
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.	Main entry to the site includes spaces for entrapment and is capable of being well lit.	<b>YES</b>
Lifts are to be directly visible from the building entry doorway.	Lifts are not directly visible from the building entry doorway ( <b>Reason for Refusal No. 8</b> ).	<b>NO</b>
Lockable mail boxes are to be: <ul style="list-style-type: none"> <li>i. provided close to the street; and</li> <li>ii. be at 90 degrees to the street and to Australia Post standards; and</li> <li>iii. integrated with front fences or building entries.</li> </ul>	Satisfactory	<b>YES</b>
All entries are to be integrated into the external circulation pattern of the development.	Entries are accessible from Council's public footpath.	<b>YES</b>
Buildings on corner sites are to address both street frontages and provide entry points and direct level access from both street frontages.	Pedestrian accesses are provided from No. 4 and No. 8 Cherry Street.	<b>YES</b>

<b>KDCP COMPLIANCE TABLE – PART 7</b>		
<b>Development Control</b>	<b>Proposed</b>	<b>Complies</b>
Building entry paths are to be minimum 1.2m wide and located within the common area with a minimum dimension of 1.2m on either side for landscape planting. Paths are to provide extra width at building entries to allow easy passing between pedestrians and to allow effective turning.	The building entry paths have a minimum width of 1.2 metres, are located within the common area, and are complemented by side landscaping.	<b>YES</b>
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.	Some common circulation corridors have widths of less than 1.5 metres. The corridor providing access to the northern units (UG01 and above, and UG03 and above) has a width of 1.4 metres. <b>(Reason for Refusal No. 8)</b>	<b>NO</b>
<b>7C.6 – Building Form and Facades</b>		
All building facades at ground level are to be designed to avoid the creation of entrapment areas.	Entrapment areas are not proposed.	<b>YES</b>
No single wall plane is to exceed 81m <sup>2</sup> in area.	No single wall plane exceeds 81 m <sup>2</sup>	<b>YES</b>
The following are to be avoided on all building elevations: <ul style="list-style-type: none"> <li>i. large flat walls;</li> <li>ii. undifferentiated window openings;</li> <li>iii. applied treatments;</li> <li>iv. one single predominant finish or material.</li> </ul>	Building façade design is satisfactory.	<b>YES</b>
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.	Balconies are located to maximise passive surveillance of the street.	<b>YES</b>
All building elements including shading devices, signage, drainage pipes awnings/colonnades and communication devices are to be coordinated and integrated into the overall facade design.	Compliance is demonstrated	<b>YES</b>
Telecommunication structures are to be located within roof structures or basements and not be visible from any road or public domain area.	A condition to ensure compliance could have been recommended.	<b>YES</b>
Screening between adjacent apartments is to be integrated into the overall building design.	Screening is proposed between adjacent balconies.	<b>YES</b>
Notches, slots or indentations in the perimeter of the building are to be at least as wide as they are deep.	Satisfactory	<b>YES</b>
Facade elements that result in poor architectural design outcomes for internal spaces, such as snorkel windows, are not permitted.	Deep recesses proposed (Refer to Heritage Referral) <b>(Reason for Refusal No. 16)</b>	<b>NO</b>

**KDCP COMPLIANCE TABLE – PART 7**

<b>Development Control</b>	<b>Proposed</b>	<b>Complies</b>
<p>All facades are to be designed to minimise on-going maintenance and weathering through measures such as:</p> <ul style="list-style-type: none"> <li>i. selecting appropriate robust materials/finishes; and</li> <li>ii. including appropriate building edge, balcony edge, sill, head and parapet detailing that demonstrates protection from prevailing weather and harsh solar aspects.</li> </ul>	<p>Materials and finishes are not satisfactory (Refer to Heritage Referral) (<b>Reason for Refusal No. 16</b>)</p>	<p><b>NO</b></p>
<p><b>Facade Articulation</b></p>		
<p>All building facades are to be articulated with wall planes varying in depth by not less than 0.6m, and supplemented with architectural elements.</p>	<p>Wall planes of varying depth are proposed.</p>	<p><b>YES</b></p>
<p>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:</p> <ul style="list-style-type: none"> <li>i. defining a base, middle and top relating to the overall proportion of the building;</li> <li>ii. expressing the internal building layout or structure, such as vertical bays or party walls;</li> <li>iii. using a variety of window types to create rhythm or express the building uses;</li> <li>iv. using recessed balconies and deep windows to add visual depth;</li> <li>v. use of eaves, louvres and sun shading devices to openings.</li> <li>vi. using elements that cast shadow and accentuate the appearance of depth;</li> <li>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.</li> </ul>	<p>Façade articulation includes columns, privacy screens, vertical bays, eaves, balconies, and a variety of colours and materials, resulting in well-composed and visually attractive building elements.</p>	<p><b>YES</b></p>
<p>Blade walls are not to be the sole element used to provide articulation.</p>	<p>A variety of elements have been incorporated to achieve effective façade articulation.</p>	<p><b>YES</b></p>
<p>All developments are to utilise shading/glare control devices to articulate the facade and contribute to the streetscape. Design solutions can include:</p> <ul style="list-style-type: none"> <li>i. providing external horizontal shading to north-facing windows, such as eaves, overhangs, pergolas, awnings, colonnades, upper floor balconies, and/or deciduous vegetation;</li> </ul>	<p>Balconies, louvres, and horizontal shading are proposed, all of which are integrated into the overall façade design and complement the streetscape.</p>	<p><b>YES</b></p>

<b>KDCP COMPLIANCE TABLE – PART 7</b>						
<b>Development Control</b>	<b>Proposed</b>	<b>Complies</b>				
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.						
<b>Building Length</b>						
The continuous length of a single building on any elevation is not to exceed 36m.	The south elevation has a length of is 56 metres.  See next control.	<b>NO</b>				
The length of a single building elevation facing the side or rear boundary may exceed 36m provided that: <ol style="list-style-type: none"> <li>the façade is recessed in depth and width to appear as distinctive and separate building bays or wings; and</li> <li>the recess is retained as common area with landscaping which includes at least one medium tree (at least 8m canopy diameter at maturity).</li> </ol>	This elevation has a reduced side setback, and the façade is not recessed appropriately (Refer to <b>Reason for Refusal No 5</b> ).	<b>NO</b>				
<b>Balconies</b>						
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.	Balcony design feature a steel or glass balustrade along with shading screens and planter boxes.	<b>YES</b>				
Balconies that run the full length of the building facade are not permitted.	Continuous balconies along the building façade are not proposed.	<b>YES</b>				
Continuous transparent or translucent balustrades are not permitted to balconies or terraces.	Continuous transparent or translucent balustrades along the building façade are not proposed.	<b>YES</b>				
Balconies are not to project more than 1.5m from the outermost wall of the building facade.	Balconies do not project beyond the external walls.	<b>YES</b>				
<b>7C.7 – Building storeys</b>						
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 border="1" data-bbox="204 1883 761 2038"> <thead> <tr> <th>Maximum building height</th> <th>Maximum number of storeys</th> </tr> </thead> <tbody> <tr> <td>11.5m</td> <td>3</td> </tr> </tbody> </table>	Maximum building height	Maximum number of storeys	11.5m	3	A building height of 30.215 metres and a nine-storey form is proposed.	<b>NO</b>
Maximum building height	Maximum number of storeys					
11.5m	3					

<b>KDCP COMPLIANCE TABLE – PART 7</b>				
<b>Development Control</b>		<b>Proposed</b>		<b>Complies</b>
14.5m	4			
17.5m	5			
20.5	6			
23.5m	7			
<b>7C.8 – Top storey design and roof forms</b>				
<p>The top storey of a building is to be designed so that:</p> <ul style="list-style-type: none"> <li>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</li> <li>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.</li> </ul>		<p>The GFA of Level 8 is 31% of the GFA of Level 7.</p>		<b>YES</b>
<p>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).</p>		<p>The bathroom and plant room proposed on Level 8 do not achieve the minimum 2.4 metres setback from the outer face of Level 7 on the southern side (<b>Reason for Refusal No. 5</b>)</p>		<b>NO</b>
<p>The upper storeys of residential buildings are to be articulated with differentiated roof forms, maisonettes or mezzanine penthouses and the like.</p>		<p>The upper storey is articulated and includes open terrace areas.</p>		<b>YES</b>
<p>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.</p>		<p>Lift overruns and plants are not visible from the street.</p>		<b>YES</b>
<p>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</p>		<p>Roof includes eaves.</p>		<b>YES</b>
<p>Where solar panels are provided they are to be integrated into the roof line or elevation.</p>		<p>Solar panels are integrated into the roof line.</p>		
<p>Lightweight pergolas, sun screens, privacy screens and planters are permitted on the roof or podium, provided they are integrated with the building and facade design and do not increase the bulk of the building, create visual clutter or impact on significant views from adjoining properties.</p>		<p>Lightweight pergola and planters are proposed for the communal open spaces located at Level 8. These structures do not increase the bulk of building</p>		<b>YES</b>
<p>Roof top gardens for private or communal use are encouraged.</p>		<p>Rooftop communal open space is proposed.</p>		<b>YES</b>

<b>KDCP COMPLIANCE TABLE – PART 7</b>		
<b>Development Control</b>	<b>Proposed</b>	<b>Complies</b>
The upper storeys of residential buildings are to be articulated with differentiated roof forms, maisonettes or mezzanine penthouses and the like.	The upper storey is articulated and includes open terrace areas.	<b>YES</b>
<b>7C.9 – Laundry and air clothes drying facilities</b>		
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.	External clothes drying facilities are shown on the balconies.	<b>YES</b>
All external air clothes drying areas are to be screened and not be visible from any public domain area.	External clothes-drying areas are generally located toward the centre of the balconies and screened by planter boxes, making them less visible from the public domain.	<b>YES</b>
Storage volume calculation within laundries is to exclude the space required to accommodate a washing tub, washing machine and dryer.	Compliance is demonstrated	<b>YES</b>
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 is demonstrated	<b>YES</b>
<b>7C.10 – Fencing</b>		
All fencing is to be designed to highlight entrances and be compatible with buildings and letterbox areas.	1.8 metres metal fence to the side boundaries is proposed	<b>YES</b>
External finishes for fencing are to be robust and graffiti resistant.	Could be addressed via condition	<b>YES</b>
Ground floor private open space, courtyard and terrace wall and fence heights are not to exceed <ul style="list-style-type: none"> <li>i. 1.2m to any street frontage</li> <li>ii. 1.8m to any side or rear boundary with a maximum 1.2m high solid component and a minimum 30% transparent component above.</li> </ul>	1.2 metres to the private open spaces are proposed.	<b>YES</b>
<b>7C.11 – Acoustic Privacy</b>		
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.	Refer to Health referral	<b>YES</b>
<b>7C.12 – Services</b>		
All developments are to make provision for waste and recycling storage and collection within the building basemen.	Waste and recycling storage areas are provided in the basement level.	<b>YES</b>
Building services, including within basements and on rooftops, are not to be visible from the public	Roof top plant is not visible from the street	<b>YES</b>

## **Section B**

### **Part 18 – Biodiversity**

A narrow section of the site adjacent to the railway is mapped as land comprising biodiversity significance. The proposed development is not considered to 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.

### **Part 19 – Heritage items and Heritage Conservation Areas**

An assessment under Part 19 has been undertaken by Council's Heritage Advisor. The development is considered unsatisfactory (refer to heritage referral for further details).

### **Part 20 – Development near Road or Rail noise**

The proposal has been assessed against the relevant provisions contained under this Part. The proposed development is consistent with these provisions as there will not be a significant detrimental impact on the road/railway from construction including excavation, noise, air quality, vibration or to the safety to users of the site or the road/ rail corridor.

## **Section C**

### **Part 24 – Water management**

The proposed development has not been designed to manage urban stormwater as per the requirements of the KDCP. This issue forms **Reason for Refusal No. 12**.

### **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 included some inconsistencies. Accordingly, 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 82 of the EP&A Regulation 2021 outlines the conditions that must be applied to a development permitted under the SEPP Housing, Chapter 2, Part 2, Division 1. If the application were recommended for approval, conditions specified in Sections 82(2) and 82(3) of the EP&A Regulation 2021 would be recommended.

## **LIKELY IMPACTS**

The likely impacts of the development have been considered and are deemed to be unacceptable for the reasons advanced in this report.

## **SUITABILITY OF THE SITE**

The site is 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 as detailed throughout the report and recommended reasons for refusal.

## **CONCLUSION**

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

## **RECOMMENDATION**

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

THAT the Sydney North Planning Panel, as the consent authority, pursuant to Section 4.16 of the Environment Planning and Assessment Act 1979, refuse development consent to eDA0470/25 for Tree removal, construction of a 9 storey residential flat building over 3 levels of basement parking plus associated landscaping and civil works on land at No. 4 Cherry Street Warrawee, for the following reasons:

#### **Excessive bulk, scale and density**

1. The proposed development is of an unreasonable bulk and scale, notably at the most visually prominent higher-levels of the building (above Level 4), which is inconsistent with both the existing and desired future character of the Area within the vicinity of the Site, and contrary to Sections 20(3)(a), 147(1)(a) and Schedule 9 of the Housing SEPP and Objectives 3A, 3E and 3F of the ADG as well as Part 7 of KDCP.

#### Particulars:

- a) Section 147(1)(a) of Housing SEPP requires consideration of the quality of the design of the development, which is evaluated in accordance with the design principles for residential apartment development set out in Schedule 9, thereto.
- b) The proposed development fails to achieve Design Principle 1 'Context and Neighbourhood Character' in Schedule 9 of Housing SEPP.
- c) Schedule 9 (1) Context and neighbourhood character (1), (2), (3) & (4) require proponents for development to consider:

- (1) *Good design responds and contributes to its context, which is the key natural and built features of an area, their relationship and the character they create when combined and also includes social, economic, health and environmental conditions.*
- (2) *Responding to context involves identifying the desirable elements of an area's existing or future character.*
- (3) *Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.*
- (4) *Consideration of local context is important for all sites, including sites in the following areas—*
  - (a) *established areas,*
  - (b) *areas undergoing change,*
  - (c) *areas identified for change.*

- d) Furthermore, Objective 3A of ADG encourages the “*synthesise and interpretation of context...into opportunities and constraints that generate design parameters*. The ADG lists 12 items for consideration, the following 7 of which have particular relevance and significance for the subject site because of inadequacies in the proposed design:
- i. *Overshadowing of the site and adjoining properties;*
  - ii. *Relationship to and interface with adjacent properties including side and rear setbacks;*
  - iii. *Building footprint location*
  - iv. *Retained trees and tree protection zones*
  - v. *Proposed tree and deep soil*
  - vi. *Building entries*
  - vii. *Carpark footprint and depth*

- e) The solution advanced to comply with ADG 3F (see Contention 7) does not address the negative urban design implications of the reduced setbacks on the bulk, mass and presentation of the building in its context. Both the ADG and the KDCP at Part 7A.3 (5) require a stepped building profile with greater separation distances at higher levels. Over the top 5 storeys of the proposed development, where ordinarily a building might be expected to become visually lighter and more transparent (which is one of the benefits associated with having a wider setback on the top levels), the building presents solid blank walls to the neighbouring properties on the north, west and south frontages to No. 6 Cherry Street and No. 2 Cherry Street. This is made worse by the fact that the façade is composed of vertical surfaces which extend across the full 9 storeys. It is an inadequate response to urban context. Furthermore, it is not consistent with Section 20 of Housing SEPP.

## *20 Design requirements*

- (3) *Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with—*
- (a) *the desirable elements of the character of the local area, or*
  - (b) *for precincts undergoing transition—the desired future character of the precinct.*
- f) To satisfy the Housing SEPP, Section 20(3) (a), compliance with ADG (Parts 3A, 3E and 3F) needs to be adequately demonstrated. For precincts undergoing transition, an adequate assessment of Section 20(3)(b) cannot be undertaken unless due and proper consideration of Section 20(3)(a) can be demonstrated. For the reasons outlined above the proposed development fails to achieve consistency with the desired future character under the Housing SEPP as defined under Schedule 9 (1) thereof.

## Non-compliant height

2. The proposed development is not compliant with height controls in Chapter 6 of the Housing SEPP. The proposed height exceedance is excessive and not consistent with either the existing or future neighbourhood character of the area.

### Particulars:

- a) The proposed development is located in an “inner area” as defined by the LMR provisions of Chapter 6 in the Housing SEPP. The permissible height thereunder is 22 metres. An additional 30% of the total FSR is permissible under the provisions of Section 16 of Chapter 2 of the Housing SEPP, which allows maximum permissible height of 28.6 metres (including the affordable housing bonus) for the Site. The proposed height of the development is 30.215 metres, which exceeds the maximum permitted height of 28.6 metres under Chapter 2 of Housing SEPP by 1.615 metres (5.65%).
- b) The non-compliant height exceedance contributes to adverse overshadowing impacts for the development immediately to the south at No. 2 Cherry Street.
- c) The non-compliant height exceedance is compounded by non-compliant side setbacks for the upper 5 storeys of the development.
- d) The roof plan identifies a plant area with a notation indicating that the ‘final plant size will be confirmed by the engineers at the CC stage’. The height plane diagram and the Clause 4.6 variation request indicate that the maximum height breach arises from the screening around the plant, particularly at the north-western corner of the enclosure.
- e) Given the uncertainty regarding the actual plant size, the enclosure may need to be reduced or increased, which could change the highest point of the proposed development and the extent of the height variation being sought.
- f) In the Clause 4.6 variation request it is argued that compliance with the height development standard is unreasonable and unnecessary on the basis that the objectives of Chapter 2 of Housing SEPP have been achieved, and that the elements breaching the height plane are essential to delivering the affordable housing component, such as the roof structure, building services, solar panels, and the lift overrun. The following are noted:
  - i. The applicant’s Clause 4.6 variation request primarily addresses the objectives and principles of the SEPP Housing, rather than the specific objectives of the height of buildings development standard under the KLEP. In the context of a Clause 4.6 variation, it is essential that the applicant demonstrate that compliance with the height development standard is unreasonable or unnecessary, having regard to the objectives of that specific standard. Addressing broader policy objectives, such as those under the SEPP Housing, does not satisfy this requirement.
  - ii. The applicant’s response does not adequately address the objectives of the height of buildings control. In particular:
    - The proposed building exhibits excessive bulk and scale, resulting in a built form that is not compatible with the size of the site. These issues from Reasons for Refusal Nos 1 and 2. The built form is considered bulky, leading to a development outcome that is not compatible with the surrounding context.

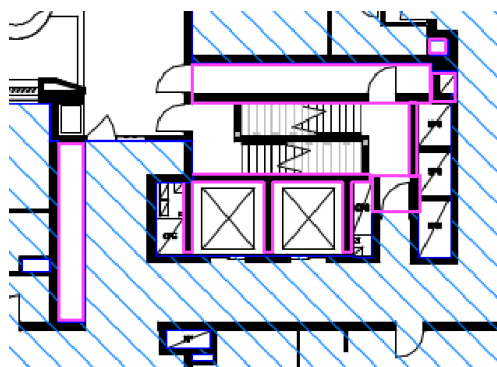
- iii. The elements of the development identified by the applicant as contributing to the height exceedance, including the roof structure, building services, solar panels, and lift overrun, form part of the overall building design and are not specifically required as a result of the provision of affordable housing. They comprise standard structural and building services elements that would ordinarily be required for a development of this scale and nature and are not specifically attributable to, nor generated by, the provision of affordable housing. Therefore, the exceedance of the height development standard does not directly inform or support the achievement of the objectives of Chapter 2 of Housing SEPP.
- iv. As demonstrated in the building envelope submitted with the Clause 4.6 variation request and accompanying architectural plans, the height exceedance is not limited to non-habitable rooftop elements. The breach associated with Unit 801 ranges from approximately 50mm to 890mm above the maximum building height plane. The breach extends into the walls and roof of Unit 801, which is not identified as an affordable housing unit.
- g) The proposal exceeds the 22 metres (Chapter 6) plus 30% (Chapter 2) height development standard. A 30% increase in building height is the maximum allowable under Chapter 2. The basis for the assumption that the emerging character of the area will be buildings over 28.6 metres in height is unclear, as there are no proposed planning controls that envisage this change to development standards. It is noted that the subject height has recently been cleared of structures and is relatively flat, therefore the height breach is not a consequence of topographical constraints.
- h) The proposed height is not considered to be compatible with the surrounding context and would result in bulk and scale that are inconsistent with the locality.
- i) There are insufficient planning grounds to support the variation.

**Gross Floor Area calculation inaccuracies**

- 3. The Gross Floor Area (GFA) has not been accurately calculated, with several areas incorrectly excluded.

Particulars:

- a) The areas of GFA that have been incorrectly excluded are identified in the screenshot below (highlighted in pink):



*Image 01: Screenshot of the ground floor Level*

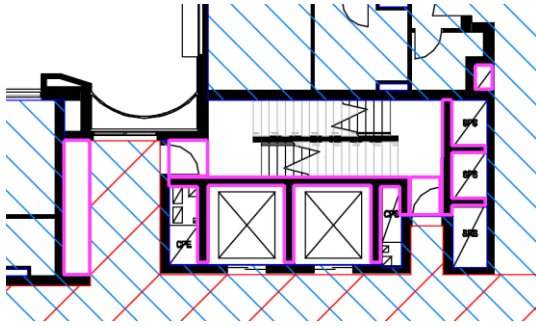


Image 02: Screenshot of Level 1-8

- b) The thickness of internal walls enclosing common vertical circulation (e.g. lifts and stairs), as well as the thickness of walls to risers, must be included in the GFA calculation.
- c) The maintenance storage area proposed adjacent to UG02 must also be included in the GFA.
- d) Clarification is also required regarding the area labelled as “service” on the left-hand side of the lifts, including how this area meets the exclusion criteria for GFA.
- e) The overall GFA affects the calculation of affordable housing GFA, which may impact compliance with the permitted building height and maximum GFA provisions under Chapter 2 of the Housing SEPP.
- f) The submitted FSR diagrams (DA400F) show two coloured hatched areas (red and blue). It appears that the red hatching is intended to represent the GFA allocated to the affordable housing units. The common areas serving all units on a level cannot be solely attributed to the affordable housing GFA.
- g) The pink-outlined area on Level 4 serves all units on that floor and therefore should not be allocated exclusively to the affordable unit GFA. The following is noted on Level 4:
  - i. The yellow-hatched area serves 6 units, including the affordable units
  - ii. The green-hatched area serves 4 units, including the affordable units
  - iii. The red-hatched area serves 3 units, including the affordable units

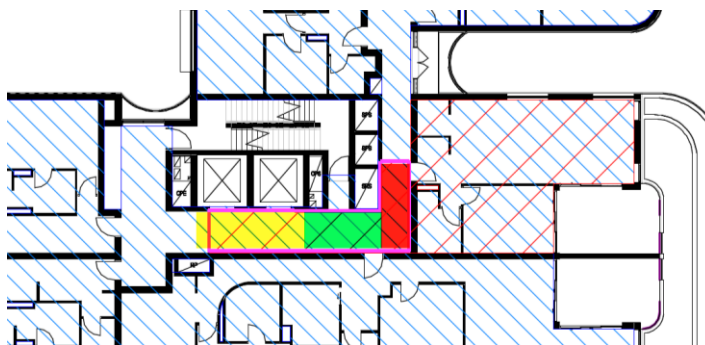


Image 03: Screenshot of Level 4

- h) This issue occurs on multiple levels where affordable units are proposed.

- i) A more accurate and proportionate allocation method must be applied to confirm that the proposed development provides the required affordable units in accordance with Chapter 2 of the Housing SEPP.
- j) This information may affect the extent of the allowable increase in the maximum building height in accordance with Chapter 2 of the Housing SEPP.

### **Inadequate site analysis**

- 4. The submitted site analysis (architectural drawings DA100A and DA101B) is inadequate and fails to adequately respond to the scale of housing on neighbouring sites and the surrounding landscape character, contrary to Objectives 3A-1, 3B-2 of the ADG and the aims at i, ii, iii, iv, v of Part 7 of the KDCP.

### Particulars:

- a) Whilst the area in the vicinity of the subject site has the potential to undergo change under the Housing SEPP, compatibility with existing physical and landscape features should be demonstrated in any site analysis. Photos of neighbouring sites (DA102A) are included without any text that analyse their architectural or landscape characteristics and how these characteristic features might inform the design of the proposed development or depart from it. This includes (but is not limited to) matters relating to; building setbacks from the street, side and rear boundaries; height (especially as it relates to privacy considerations along common property boundaries); views to mature landscape; sun access; private open space, and; the neighbourly relationship of one building to the next. The matter of building-to-building relationship should also analyse the degree to which any neighbouring buildings do (or don't as the case may be) present solid multi-storey walls (with no windows) to each other along common boundaries.
- b) Objective 3A-1 of the ADG requires that "*Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.*" Furthermore, 3B-2 states that; "*if a proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond minimums in section 3F.*"
- c) The site analysis does not adequately identify the following:
  - i. The existing characteristics and landscape features of the properties to the south, east, north and west of the site including; No. 1359 Pacific Highway (Heritage item), No. 1351 Pacific Highway, No. 10-12 Ray Street, No. 14 Ray Street, No. 16 Ray Street, No. 18 Ray Street, No. 51-53 Rohini Street, No. 10 King Street, No. 9 Cherry Street, No. 7 Lowther Park Avenue, No. 5 Lowther Park Avenue, No. 1379 Pacific Highway, No. 1-3 Cherry Street, No. 5 Cherry Street and No. 7 Cherry Street.
  - ii. The existing characteristics of the two lower scale adjoining properties, to the north and south including; No. 6 Cherry Street and No. 2 Cherry Street.
- d) As the photomontages on DA001A, DA005A and D102A (Site Photos) show, there is no building in the immediate vicinity of the subject site that shares the same height, bulk or solid-wall façade treatment of the proposed development. All surrounding, existing development sits below the top of the canopy tree line. Windows are evenly spread across all facades. The only neighbouring building that exceeds 4-storeys, located at No. 1-3 Cherry Street, provides an increased setback above the 4<sup>th</sup> level.

- e) The site analysis fails to encourage good site planning, informed by an understanding of the subject site's context. It also fails to adequately consider the amenity of future occupants of the Site and adjoining properties, including any potential zone interface impacts. The Site analysis fails to adequately ensure that the design response is well founded and responsive to the context of the site.
- f) There is insufficient site analysis to demonstrate compliance with Part 3A of ADG.
- g) For the reasons set out above, the proposed development fails to identify and respond to the attributes and constraints of the subject site and the surrounding area, and particularly for the adjoining land of a lower density. This results in a proposed development which has a poor relationship with neighbouring properties, and, because of the proposed bulk of the development, which is excessive, it will result in adverse visual impacts, contrary to aims i, ii, iii, iv, v of Part 7 of the KDCP.

### **Insufficient side setbacks**

- 5. Insufficient setbacks are proposed to the boundaries of the subject site, contrary to Objectives 3F-1, 3J-6 of the ADG and Objectives 8, 9, 10, 11, 14, 15 and 16 and Controls 5 and 10 of Part 7A.3 of the KDCP. This results in unacceptable impacts on areas deep soil, the proposed built form and residential amenity impacts, both within the site and to adjoining properties.

### Particulars:

- a) The proposed development does not comply with Control 5 of Part 7A.3 of the KDCP in relation to the required 9 metre side and rear setbacks for Levels 4, 5, 6 and 7. Setbacks of only 6 metres are proposed, representing a 3 metre shortfall. This non-compliance results in a built form that does not contribute positively to the urban character of the area. The impacts of these reduced setbacks, and the associated visual bulk, are clearly evident in the exterior renders and in Sections A and B.
- b) Across the upper five storeys of the building, where a visually lighter and more transparent built form is typically expected, the proposed development presents solid blank walls to the neighbouring properties on the north, west and south elevations adjoining No. 6 Cherry Street and No. 2 Cherry Street. This issue is exacerbated by an unbroken nine-storey façade, which represents a poor response to the surrounding urban context. It is recommended that the façade massing be broken up to achieve a lighter, more transparent upper-storey form and that solid blank walls on Levels 4–9 be avoided, particularly on the north, west and south elevations.
- c) The Objective 3F-1 of ADG is to ensure that; *“building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy”*. (Note: emphasis added)
- d) A separation distance that is “shared equitably” between neighbouring sites assumes that the same setbacks will be applied to both a development (the subject proposal) and any existing or future development on a neighbouring site.
- e) Objective 3F-1 of the ADG requires that habitable windows and balconies be set back 6 metres from the side and rear boundary (up to 4 storeys) and 9 metres from the side and rear boundary at the 5<sup>th</sup> – 8<sup>th</sup> storey's (up to 25 metres) to *“habitable rooms and balconies”*.

- f) No distinction is made between “*habitable rooms and balconies*” with openings facing the boundary or “*habitable rooms and balconies*” with no openings or solid walls facing the boundary (which is what the development proposes).
- g) The following 20 units U401, U402, U406, U405, U404, U501, U502, U506, U505, U504, U601, U602, U606, U605, U604, U701, U702, U706, U705, U704 (representing 36% of the total number) on Levels 4-7 all have apartments with “*habitable rooms and balconies*” that are 6 metres from a boundary (3 metres less than required by ADG).
- h) The proposed development relies on the acceptance of a sub-optimal mis-application of ADG 3F. Compliance with ADG (3F-2) appears to be justified by locating apartments behind blank walls facing the boundary and having no windows or openings in these walls unless they are either at 90° to the boundary or 9 metres from the boundary. Windows are located in 3 metres deep x 3 metres wide niches in the wall at 90° to the façade. The only windows facing out to the boundary (to No. 6 Cherry Street on north and western facades and No. 2 Cherry Street along the south) are compliant with the 9 metres setback. Any windows located within the 9 metres ADG side setback are directed internally into these niches. Windows located within niches are not considered an acceptable substitute for achieving full compliance with the required development controls.
- i) The reduced setbacks at Levels 4, 5, 6 and 7 would significantly constrain the future redevelopment potential of Nos 2 and 6 Cherry Street. To meet the ADG required 18 metres separation, Levels 5 and above of the adjacent future development would need to provide a minimum 12 metres setback, rather than the 9 metres required under the KDCP. The reduced separation also increases the potential for acoustic impacts between properties.
- j) This is based on a mis-application of the blank wall conditions as described in the ADG (3F). The blank wall conditions as described ADG (3F) relate to how certain changes in geometry between solid and open wall configurations, on the same site, might require a reduced distance.
- k) Figure 3F.3 of the ADG illustrates that new development above the 4<sup>th</sup> storey should be stepped back to 9 metres (not parts of it at 6 metres and others at 9 metres as proposed). There is no reference in the ADG to a condition such as the one proposed by the subject development (either implied or explicit).
- l) If the reduced 6 metres setback above Level 4 were permitted, it would force one of two in-equitable- solutions on future development to neighbouring sites in the area. If the subject development was permitted to reduce the setback, as proposed, then any future development on neighbouring sites will either have to adopt the same sub-optimal configuration (of habitable rooms opening into niches) or have apartments facing blank walls at a less optimal distance of 15 metres than the recommended 18 metres (if full compliance with 3F was afforded across both sites).
- m) The required 9 metres setback above the fourth storey should be applied along both the northern and western sides of the inverted L-shaped building to provide a more appropriate urban design response to No. 6 Cherry Street.
- n) The upper levels need to be reconfigured to reduce building bulk and improve compliance by:

- i. Considering adjustments to unit types 05–06, bringing their living areas closer to the 10-metres street setback and allowing bedrooms to be positioned behind the required 9-metres side setback; and
  - ii. Reconfiguring Unit Type 01 as part of the broader design amendments.
- o) The applicant’s street elevation (DA304B) shows both the existing apartment buildings at No. 2 Cherry Street as well as the outline of a “compliant future envelope”. The “compliant future envelope” of the site at No. 2 Cherry Street is shown with complying side setbacks to the upper 5 levels of the building unlike what is proposed by the subject development. This reinforces the inequitable application of the separation distances (under Objective 3F-1 of ADG) between the two adjacent sites.
  - p) The overshadowing impacts on No. 2 Cherry Street require careful scrutiny in relation to any potential relaxation of the setback controls. Any reduction of the 9 metres setback must be supported by a detailed overshadowing analysis comparing the proposed scheme with a fully compliant scheme and demonstrating no additional overshadowing impacts on No. 2 Cherry Street.
  - q) The basement encroaches into the side setback along the boundary with No. 6 Cherry Street, which is contrary to the controls in Parts 7A.3 and 7B.1 of the KDCP.
  - r) The site coverage of 1,054sqm (39.4%) does not comply with Control 1 of Part 7A.5 of the KDCP, which permits a maximum site coverage of 30%.
  - s) Compliant setback should be proposed to reduce the site coverage and provide more opportunity for deep soil zone (DSZ). The south elevation has a fence of 56 metres, which does not comply with Control 16 of Part 7C.6 of the KDCP. This excessive elevation length contributes to the perceived bulk and scale of the development.
  - t) The bathroom and plant room proposed on Level 8 do not achieve the minimum 2.4 metres setback from the outer face of Level 7 on the southern side, as required by Control 2 of Part 7C.8 of the KDCP. This non-compliance is not supported given the issues identified above relating to the scale transition and the inappropriate form treatment in this section of the building.

### **Inadequate deep soil zone**

- 6. The proposed development fails to satisfy both the DSZ requirements under Part 3E-1 of the ADG and the DSZ design guidelines outlined in Part 3E-1 of the ADG, and the relevant objectives and controls under Part 7A.6 of the KDCP.

#### Particulars:

- a) Deep Soil Plan DA402E identifies a DSZ of 348.2sqm (13%), which numerically satisfies the minimum 7% requirement under Part 3E-1 of the ADG. However, three of the four designated DSZs incorporate impervious pedestrian pathways in excess of the allowance permitted under Figure 3E.4 of Part 3E-1, which limits pedestrian pathways and paving, where specifically designed to facilitate tree root growth to a maximum of 10% of the DSZ.
- b) The affected DSZ areas are located on the western and eastern sides of Unit UG01 and the eastern side of Unit UG03. These areas comprise a combined DSZ of approximately 240sqm, within which pedestrian pathways occupy approximately 49sqm, equating to 20% of the DSZ.

- c) As the proposed development fails to satisfy the DSZ design guidelines outlined in Part 3E-1 of the ADG and relevant objectives and controls under Part 7A.6 of the KDCP, there will be adverse amenity impacts on the existing landscape character of the streetscape and adjoining properties.
- d) Design guidelines under Part 3E-1 of the ADG require DSZs to be positioned to retain existing significant trees and to support the development of healthy root systems that provide anchorage and stability for mature trees. Design solutions may include:
- *basement and sub-basement car park design that is consolidated beneath building footprints*
  - *use of increased front and side setbacks*
  - *adequate clearance around trees to ensure long term health*
  - *co-location with other deep soil areas on adjacent sites to create larger contiguous areas of deep soil.*
- e) The proposed development does not adequately respond to the DSZ design guidelines within the southern side setback, which is the location of the greatest bulk of the built form, extending approximately 55 metres in length and 29 metres in height. The proposed basement car park extends beyond the footprint of the building to within approximately 3 metres of the southern boundary, substantially constraining available soil volume. This configuration will limit establishment of supporting roots and preclude the establishment of canopy trees of sufficient scale to effectively soften the bulk and visual prominence of the development.
- f) The Landscape Plan proposes four *Liriodendron tulipifera* (Tulip Tree) within the southern side setback. Given the species' mature height of 15–18 metres (indicated in the plant schedule), the long-term stability, health and viability of the proposed planting cannot be assured due to the inadequate width and depth of deep soil available in this location.
- g) Furthermore, the proposed development cannot rely on contiguous deep soil areas within the adjoining property at No. 2 Cherry Street to offset the constrained soil conditions on-site, as root extension is physically limited by existing retaining structures and a driveway, further compromising the capacity to support large canopy trees within the southern site setback.
- h) In addition, the proposed development provides no provision for compliant deep soil within the northern side setback, with a proposed setback width of less than 2 metres between the driveway and the northern boundary, which is insufficient to function as a viable DSZ.
- i) The Landscape Plan proposes three *Ginkgo biloba* (Maidenhair Tree) near the eastern end of the northern side setback. Given the species' expected mature height of 10–25 metres (indicated in the plant schedule), the long-term stability and viability of the proposed trees cannot be assured due to the constrained deep soil conditions in this location. In addition, the supplementary planting proposed adjacent to the driveway, with a mature height of 2–5 metres (indicated in the plant schedule), will be insufficient to effectively soften the built form. Consequently, the lack of adequate deep soil within the northern side setback will result in adverse amenity impacts for the adjoining property at No. 6 Cherry Street, and the streetscape.

- j) Deep Soil Plan DA402E identifies a deep soil landscaping (DSL) area under Part 7A.6 of the KDCP, of 657.6sqm (25%) which does not satisfy Control 1 thereunder, requiring a minimum DSL area of 1336sqm (50%). Consequently, the proposed development also fails to adequately consider the following objectives and controls under Part 7A.6 of KDCP:
- i. Objective 1 - *To ensure landscape areas contribute to the garden character and canopy of the Ku-ring-gai locality.*
  - ii. Objective 2 - *To provide consolidated deep soil zones of adequate area in all residential development sites through quality planning and building design.*
  - iii. Objective 3 - *To provide landscaped areas that are appropriate to the scale and context of the development.*
  - iv. Objective 7 - *To ensure spaces between buildings provide deep soil landscaping that can sustain large trees that contribute to Ku-ring-gai's garden character.*
  - v. Control 3 - *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.*
  - vi. Control 4 - *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.*
  - vii. Control 5 - *Driveways are not to dominate the street setback area. Deep soil landscaping areas in the street setback are to be maximised.*
- k) While strict compliance with the DSL requirements under this part may not be fully achievable due to the increased site coverage permissible under the Housing SEPP, the proposed development fails to adequately mitigate the resultant impacts through the provision of sufficiently dimensioned and functional deep soil areas. In particular, and as outlined above, the southern and northern side site setbacks do not provide DSZs capable of supporting meaningful canopy vegetation or softening the visual bulk of the development.

### **Inadequate landscape setting**

7. The landscape proposal fails to satisfy the relevant objectives and controls under Parts 7A.6, 7C.5 and 21.2 of the KDCP.

#### Particulars:

- a) The *Franklinia axillaris* (Gordonia) located in the north-west corner of the site (not identified on the survey) provides a positive contribution to the existing landscape setting and is recommended to be indicated for retention.
- b) The landscape proposal does not satisfy Control 8 of Part 7A.6 of KDCP which requires that vegetation softens the building form and creates a garden setting. The following planting does not align with this control.
  - i. The hedge of *Viburnum sp.* and ground covers within the northern setback adjacent to the driveway will not grow to a sufficient height.
  - ii. The *Liriodendron sp.*, *Lagerstroemia sp.* and *Cercis sp.* within the southern setback are all deciduous species which will not provide sufficient softening of the building. A variety of evergreen and deciduous species are required.
  - iii. The hedge of *Photinia fraseri* 'Red Fence' along the southern boundary with a height of 1.5 metres will not provide adequate screening.
  - iv. Insufficient variety of mid-layer shrub planting (5-8 metres) within the eastern setback. Excessive monoculture planting of *Syzygium australe* 'Resilience'.

- c) To satisfy Control 9 of Part 7A.6 of KDCP, which requires at least 30% of the required number of trees to be planted in the front setback, at least 2 canopy trees are to be planted in the front setback.
- d) The proposed development does not satisfy Control 9 of Part 21.2 of KDCP in that there is an excessive amount of monoculture planting (consisting of one species) along boundaries. Planting is to include a diversity of species and heights including trees shrubs and ground covers.

### **Inadequate internal amenity**

- 8. The internal amenity of the proposed development is inadequate and contrary to Schedule 9 of the Housing SEPP and Objectives 3F, 4D, 4H of the ADG as well as Parts 7A.3, 7A.4 and 7C.6 of KDCP

#### Particulars:

- a) The proposed development places habitable rooms on external walls with windows located within niches, thereby negatively affecting outlook, sun access and ventilation.
- b) See Contention 8(h) (above) for a detailed description of how this aspect of the proposed development impacts the shape and form of the building.
- c) See Contention 8(g) (above) for detailed list of the apartments affected.
- d) To locate a habitable room on an external wall that faces a boundary (one which might otherwise benefit from generous levels of light, air and outlook) but not allow that unit to fully derive any benefit from this (by measure of the fact that the building has been built too close to the boundary) is not consistent with the ADG nor is it consistent with good design practice.
- e) The depth of the combined living, dining, kitchen in UG06 exceeds the maximum 8 metres depth under Objective 4D-2 of ADG. It is noted that a side-facing window has been provided to the kitchen but it will not suffice as an alternative light source. The window overlooks the carpark entry ramp. The entry ramp is covered by a roof which means that the window is located 6 metres distant from the outer building line. The window will not be able to be opened and will receive minimal light.
- f) The combined living/dining/kitchen areas of U108 and U107 is undersized and does not comply with Objective 4D-3 of ADG.
- g) The current entry configurations of U107, U104, U108, U103 (and typical above) are inefficient and reduce usable internal area.
- h) Units U106 and U105 (and typical above) are indirectly impacted by the inefficient entry layouts of adjacent apartments.
- i) Lifts are not directly visible from the building entry doorway.
- j) A minimum width of 1.5 metres is required for common circulation areas; however, the corridor providing access to the northern units (UG01 and above, and UG03 and above) has a width of only 1.4 metres.

- k) There are visual privacy concerns in relation to the balcony of Unit UG04, which is proposed without privacy screening and is located at the same level as the common pathway.

### **Inadequate visual privacy**

9. The visual privacy within the proposed development is unacceptable and contrary to Schedule 9 of the Housing SEPP and Objectives 3F of the ADG as well as Parts 7A.3, 7A.4 and 7C.6 of KDCP.

#### Particulars:

- a) The proposed development places habitable rooms on external walls with windows located within niches, thereby negatively affecting visual privacy.
- b) See Contention 8(h) (above) for a detailed description of how this aspect of the proposed development impacts the shape and form of the building.
- c) See Contention 8(g) (above) for detailed list of the apartments affected.
- d) As a result of the 3 metres deep x 3 metres wide window-lined niches in the walls (above Level 4) occupants of one bedroom will be able to see directly into other bedrooms across a 3 metre wide space. This will occur for occupants of the same apartment (but different bedrooms) as well as neighbouring apartments above and below. For example, an occupant of the Master Bedroom in U605 will be able to look down (and to a lesser extent up to 0705) into the 2<sup>nd</sup> and 3<sup>rd</sup> bedrooms of U505.

### **Subterranean areas**

10. The design of the subterranean areas does not comply with Control 4 of Part 7C.3 of the KDCP and fails to demonstrate appropriate construction and maintenance outcomes.

#### Particulars:

- a) The proposed development includes subterranean residential storage areas with external walls located below ground level and in direct contact with soil.
- b) The proposed tanked basement does not provide an accessible maintenance passage separating the external walls from the surrounding soil, contrary to Control 4 of Part 7C.3 of the KDCP.
- c) The absence of an accessible maintenance passage is inconsistent with the requirements of the KDCP.

### **Inadequate apartment mix**

11. The proposed development is unacceptable as it fails to provide an appropriate mix of apartment sizes, contrary to Control 2 of Part 7C.4 of the KDCP and Design Principle 9 of Schedule 8 of the Housing SEPP.

#### Particulars:

- a) The proposed development does not comply with Control 2 of Part 7C.4 of the KDCP, as no one-bedroom apartments are provided at ground level, limiting housing choice within the development.

- b) The proposed development includes an overrepresentation of three-bedroom apartments (37 out of 55 units). A broader mix of apartment sizes is required to better cater for a range of household types.
- c) No three-bedroom apartments have been allocated for affordable housing, which fails to cater for larger family households within the affordable housing component.

### **Water management**

- 12. The proposal would not avoid, minimise or mitigate adverse impacts to adjoining properties, contrary to Clause 6.5 'Stormwater and water sensitive urban design' of the KLEP. In the alternative, the Development Application is not accompanied by sufficient particulars to enable an assessment against Clause 6.5 of the KLEP.

#### Particulars:

- a) Clause 6.5 of the KLEP provides that, before granting development consent to development on any land to which the KLEP applies, the consent authority must be satisfied that, relevantly:
  - i. the stormwater management system includes all reasonable management actions to avoid any adverse impacts on the land to which the development is to be carried out, adjoining properties, native bushland, waterways and groundwater systems; and*
  - ii. if a potential adverse environmental impact cannot be feasibly avoided, the development minimises and mitigates the adverse impacts of stormwater runoff on adjoining properties, native bushland, waterways and groundwater systems.*
- b) The proposed development is to discharge into Council's existing drainage pit via a 300mm diameter pipe. Council's pipe system has not been investigated.
- c) The existing surface and invert levels of the stormwater pit within the road reserve to which connection is proposed has not been confirmed by a registered surveyor/drainage contractor.
- d) Stormwater plans do not show Before you Dig Australia searches. The overlay is required to ensure there is no conflict of existing utility services.
- e) No supporting hydraulic calculations have been submitted to confirm that the hydraulic performance of the pipeline to which connection is proposed to Council's stormwater system has sufficient hydraulic capacity to accept the post developed flows. This shall be in the form of DRAINS modelling.

### **Parking provision and design**

- 13. There is insufficient information regarding the proposed parking provisions and design.

#### Particulars:

- a) Insufficient information has been provided regarding the driveway configuration between the site boundary and the road reserve / edge of bitumen.

- b) It has not been demonstrated that one visitor bicycle parking device located at street level near the pedestrian entry on the Cherry Street frontage is provided or that it complies with the requirement of AS2890.3.
- c) The development has not provided an on-site bulky goods collection point as part of the entry access driveway, as required by Part 25B.2 of the KDCP. 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.
- d) At least one on-site loading space which is at least 3.5 metres wide is to be provided to cater for a minimum 6.7 metres long service vehicle has not been provided. This would require the width of the driveway next to the median to be modified. The loading space/s should be line marked and/or signposted as a designated loading area. The main Cherry Street frontage of the site is currently signposted with weekday and Saturday 2P restrictions and is subject to high demand due to proximity to Turramurra station and shops. Requests for an on-street Loading Zone in Cherry Street will not be considered.
- e) Due to the narrow footpath on Cherry Street and absence of a central median in the driveway, no sight triangle has been provided on the northern side of the access driveway, for safety of pedestrians. The minimum sight lines 2 metres x 2.5 metres for pedestrian safety as per Figure 3.3 of AS2890.1:2004 is to be provided.

#### **Preliminary construction traffic management**

- 14. A preliminary Construction Traffic Management Plan (CTMP) has not been provided.

##### Particulars:

- a) No indicative CTMP has been submitted (required under Council's DA Guide). The plan is to show construction vehicles entering and exiting the site in a forward direction. Swept Path analysis is also to show the largest vehicle to be used entering and exiting the site for the demolition, excavation and construction stages, stockpiles and all necessary tree protection fencing. Consultation with the project arborist is recommended in preparation of any CTMP. No discussion on a potential location for a work zone is provided unless it can be demonstrated that all loading and unloading is carried out within the site.

#### **Impact on Council's infrastructure**

- 15. 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) The proposed works will require a new 300mm pipeline to Council's stormwater pit. Detailed design civil drawings of the new pipeline and a new kerb inlet pit will need to be reconstructed.

#### **Impact on heritage item and heritage conservation area**

- 16. The proposed development does not satisfy controls and objectives in Part 19 of KDCP.

##### Particulars:

- a) The proposed development does not satisfy Controls 19F.1.2(i), 19F.1.2(ii) and 19F.1.5 of the KDCP.
- b) The proposed development has an approximate height of 30 metres and its upper levels will be visually prominent from surrounding heritage items and Heritage Conservation Areas (HCA). The building mass includes deep recesses, such as those on the northern elevation, which will create a strong visual contrast between shaded balcony areas and brightly sun-lit façade elements. This elevation faces the HCA, further intensifying the visual impact.
- c) This design outcome is contrary to Objectives 1, 2 and 7 of Part 19F of the KDCP, as it will adversely affect the historic curtilage, setting, and associated heritage features, including key views and vistas.
- d) The scale of the development will dominate, detract from or compete with the Heritage Item or HCA. The current design does not protect significant views to or from the heritage context.
- e) The design should simplify the building massing and eliminating or moderating the deep recesses on the elevations
- f) The proposed development does not satisfy Control 19F.2(iv) of the KDCP. The building incorporates materials that are not compatible with the traditional imagery of the surrounding heritage context, including metal façade elements and profiled concrete components.
- g) The design should utilise materials that are less visually competing with views from surrounding heritage items and the HCA. More appropriate materials may include brickwork in place of textured concrete and metal cladding, as well as the use of internal blinds and horizontal shading elements.

#### **No Owners' consent for proposed fence**

17. The proposed development includes works within adjoining land without the consent of the affected landowners being provided.

#### Particulars:

- a) A 1.5 metres high metal side fence is proposed along the shared boundary between the subject site and adjoining properties.
- b) The proposed fence encroaches upon, or relies on works within, land that is not wholly within the ownership of the applicant.
- c) No owner's consent has been provided for the proposed works.
- d) In the absence of the required owner's consent, the works on these properties may not be lawfully approved.

#### **Insufficient fence details**

18. The proposed development is unacceptable as insufficient information has been provided in relation to the proposed fencing, preventing proper assessment of its impacts.

Particulars:

- a) The ground-floor units are proposed to be separated from communal areas by low shrub planting, a 1.2 metres high metal fence, and gated access.
- b) Detailed drawings and specifications for the proposed fencing, including design, materials, finishes and gate details, have not been provided.
- c) In the absence of this information, the visual, amenity and privacy impacts of the fencing cannot be adequately assessed.
- d) The lack of detail also prevents proper consideration of the proposal against the applicable planning and design controls.

**Insufficient information to assess tree impacts**

19. The proposal fails to provide sufficient information to demonstrate compliance with AS4970-2025 – *Protection of trees on development sites* and, as such, does not adequately ensure the preservation of existing trees.

Particulars

- a) Tree T19 – *Jacaranda mimosifolia* (Jacaranda) is located within the adjoining property, No. 6 Cherry Street and therefore is a material constraint of the site.
- b) The Arboricultural Impact Assessment (AIA) quantifies the impact of a proposed boundary wall on Tree T19, identifying an encroachment of 27% within the Notional Root Zone (NRZ). However, the submitted plans do not include details of the boundary wall, preventing verification of the assessed impacts. In addition, the AIA fails to assess the impact of the proposed stormwater works, which encroach within the Structural Root Zone (SRZ) and NRZ of Tree T19.
- c) Encroachment into the SRZ and/or encroachment exceeding 20% of the NRZ constitutes a major encroachment under AS4970-2025. Accordingly, and in accordance with Clause 3.3.6, a project arborist must be engaged to explore alternative design solutions and/or demonstrate, with supporting evidence, that the tree will remain viable. In undertaking this assessment, the relevant factors set out in Clause 3.3.2 of the Standard must also be addressed.
- d) Tree T94 – *Quercus robur* (English Oak) is located within the adjoining property, No. 6 Cherry Street and therefore is a material constraint of the site.
- e) Confirmation of the diameter of the trunk of Tree T94 is required to ensure the accuracy of the NRZ encroachment and to ascertain the SRZ.
- f) The arborist has calculated that a boundary wall will encroach within 13% of the NRZ however, the plans do not appear to indicate any details of the subject wall. In addition, the AIA fails to assess the impact of the proposed stormwater works, which encroach NRZ of Tree T19. This is a moderate encroachment under AS4970-2025 however, due to the visual significance of the tree, confirmation of the proposed boundary wall is required, together with an assessment of the stormwater impacts to enable further assessment.

## **Landscape BASIX commitments**

20. The following additional information and amended BASIX Certificate is required to be submitted:

### Particulars

- a) A Landscape BASIX Compliance Plan is to be included in the landscape set. The Landscape BASIX Compliance Plan should clearly define and provide a calculation of each of the common and private garden and lawn areas from the ground floor level to Level 8.
- b) The plans indicate private garden planter areas for U102 and U504. These must also be indicated on the certificate.
- c) The updated BASIX Certificate is to be consistent with the areas and calculations indicated on the BASIX Compliance Plan to be provided by the Landscape Architect.