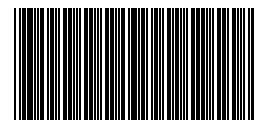




Filed: 10 February 2026 11:14 AM



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## Statement of Facts and Contentions

### COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2025/00483319

### TITLE OF PROCEEDINGS

First Applicant	Celesteem Turramurra Development Pty Ltd
First Respondent	Ku-ring-gai Council ABN 86408856411

### FILING DETAILS

Filed for	Ku-ring-gai Council, Respondent 1
Legal representative	CATHERINE LOUISE MORTON
Legal representative reference	
Telephone	02 9373 3555

### ATTACHMENT DETAILS

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

Statement of Facts and Contentions (Signed SOFAC.pdf)

[attach.]

## STATEMENT OF FACTS AND CONTENTIONS

### COURT DETAILS

Court	Land and Environment Court of New South Wales
Class	1
Case number	2025/483319

### TITLE OF PROCEEDINGS

Applicant	<b>Celesteem Turramurra Development Pty Ltd</b>
Respondent	<b>Ku-ring-gai Council</b>

### FILING DETAILS

Filed for	<b>Ku-ring-gai Council, Respondent</b>
Legal representative	Catherine Morton, Sparke Helmore
Legal representative reference	KUR955-00236
Contact name and telephone	<a href="mailto:Catherine.morton@sparke.com.au">Catherine.morton@sparke.com.au</a>

### PART A – FACTS

The Respondent says that the facts relevant to the determination of the Development Application (Council Application number: eDA0470/25) (Portal Application number: PAN-565172) (Sydney North Planning Panel: PPSSNH-727) ("**the Development Application**") are as follows:

#### THE APPLICATION

1. This appeal has been lodged pursuant of Section 8.7 of the *Environmental Planning and Assessment Act 1979* (NSW) against the deemed refusal of the Development Application. The appeal was filed with the Court on 12 December 2025.

#### THE PROPOSAL

2. The applicant seeks development consent for the construction of a residential flat building with an affordable housing component on land at No. 4 and No. 8 Cherry Street, Warrawee (**Site**). The proposed residential flat building includes:
  - a) Three levels of basement, comprising:

- i. 87 car parking spaces, including
    - a) 70 x resident parking spaces
    - b) 6 x spaces allocated to affordable housing units
    - c) 10 x visitor parking spaces (including 1 x accessible space)
    - d) 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
  - vi. rooftop and ground floor communal open space
  - vii. rooftop plant room
  - viii. basement service areas
  - ix. vehicular access from Cherry Street
  - x. separate pedestrian access from Cherry Street
  - xi. stormwater works including an on-site detention tank and rainwater tank in basement
  - xii. associated landscaping civil works
3. The proposed development includes 13 dedicated 'affordable' dwellings under the provisions of Chapter 2 of *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)*, to be retained for 15 years. The 13 'affordable' housing units are to include 3 x studio units, 4 x one-bedroom units, and 6 x two-bedroom units.
4. External finishes for the proposed development include a mix of light coloured renders, glazing, timber and darker metal. Proposed materials include facebrick façade, textured cladding, concrete columns, stone cladding and glass. Planter boxes have also been included in the façades.

5. The application involves removal of 28 trees located on the Site. 47 new trees are proposed to replace the lost canopy.
6. The Capital Investment Value of the Development Application is \$37,431,722.

## THE SITE

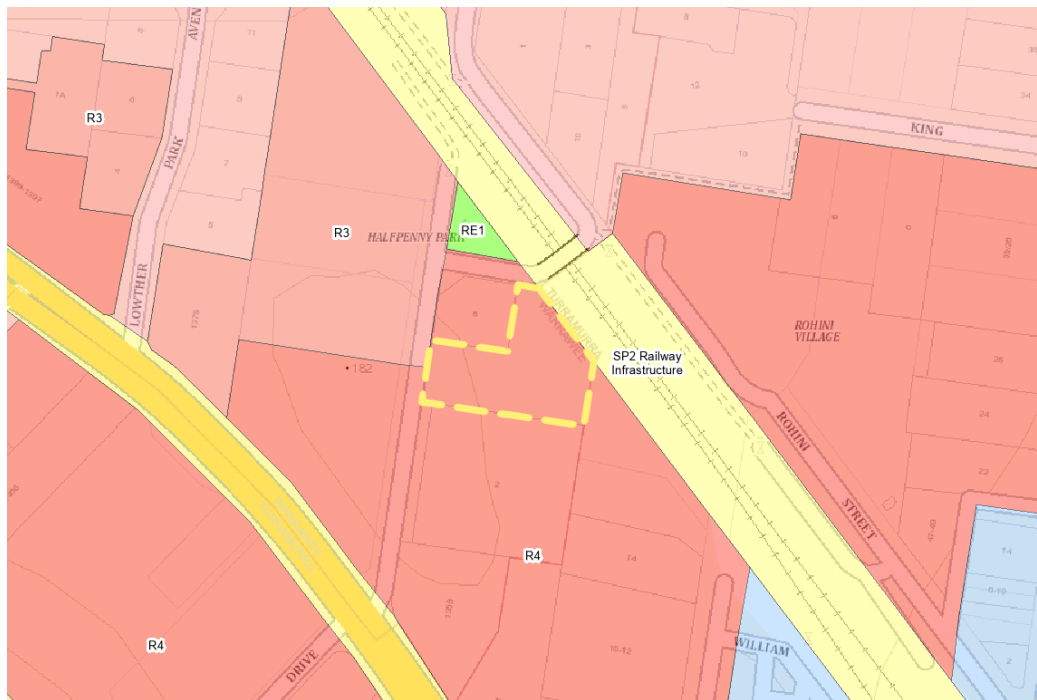
7. The Site is owned by Cherry Street Turramurra Development Pty Ltd, and owner's consent has been provided.
8. The Site is legally described as Lot 1 in DP 1306205 and is known as No. 4 and No. 8 Cherry Street, Warrawee NSW 2074 (**Figure 1**). The Site is an L-shaped allotment which borders the corner 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.



*Figure 1: Aerial view of the Site (Sixmaps)*

9. The Site's southern boundary with No. 2 Cherry Street is 71.835 metres. The Site's eastern boundary with the North Shore Railway Line is 40.18 metres. The Site's northern boundary with Cherry Street is 9.08 metres, and its western boundary is 27.585 metres. The total area of the Site is approximately 2,672 sqm.
10. The Site has been previously cleared and does not slope.

11. The Site was previously occupied by two residential low-rise dwellings, which have since been demolished and cleared under the approved Complying Development Certificate CCPCA0072/25.
12. Vehicular accesses to the Site are via two driveways to Cherry Street on the northern and western sides of the Site.
13. The Site is zoned R4 High Density Residential under the *Ku-ring-gai Local Environmental Plan 2015 (KLEP)* (**Figure 2**).



*Figure 2: Land zoning map (Spatial Viewer)*

14. The Site has maximum Floor Space Ratio (**FSR**) of 1.3:1 and maximum height of 17.5 metres under the KLEP. However, the Development Application takes advantage of the Low and Mid Rise Housing (**LMRH**) provisions under Chapter 6 of the Housing SEPP.
15. The Site is within 400 metres of the Turramurra Town Centre under the LMRH (**Figure 3**) and accordingly the Site is within a “low and mid rise housing inner area”.

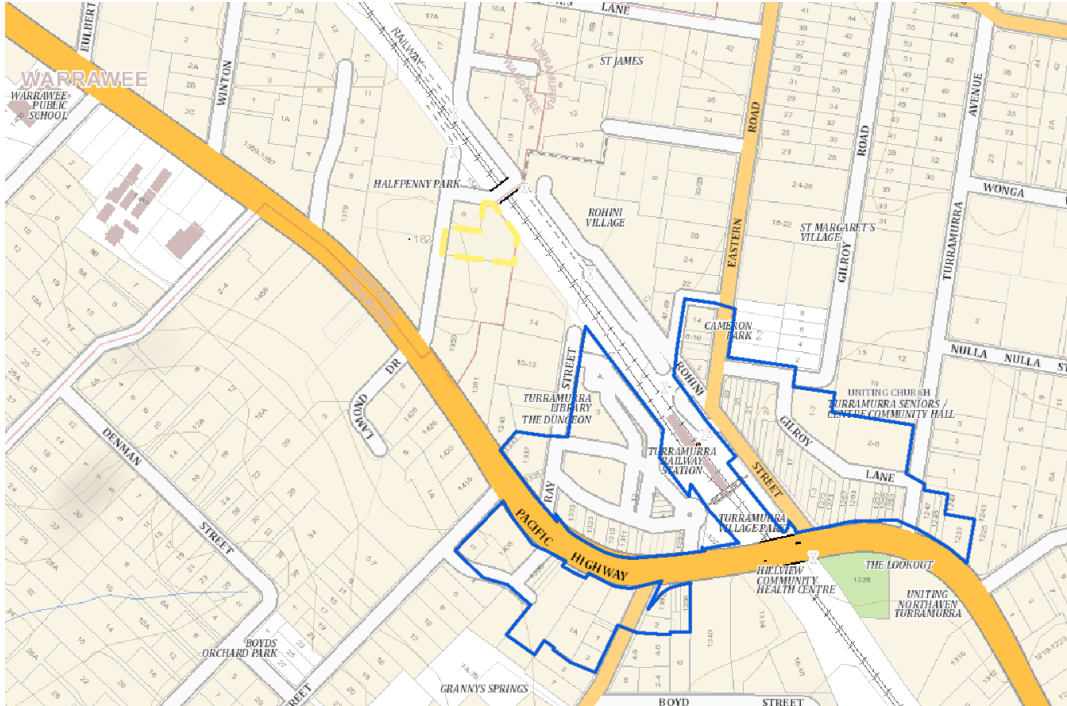


Figure 3: The Site and the Turrumurra Town Centre (Spatial Viewer)

16. The Site accordingly has a maximum building height control of 22 metres and maximum FSR of 2.2:1 under the LMRH provisions under Chapter 6 of Housing SEPP.
17. The Development Application also takes advantage of the In-fill Affordable Housing provisions under Chapter 2 of the Housing SEPP. The Development Application proposes an affordable housing component to gain a 30% “bonus” to FSR and building height, resulting in maximum building height of 28.6 metres and maximum FSR of 2.86:1.
  - a. The proposal under the Development Application reaches maximum building height of 30.215 metres, representing an exceedance of the height control of 1.615 metres, or 5.6%. The Development Application contains a Clause 4.6 request in respect of the exceedance.

## THE LOCALITY

18. The Site is located a residential area of low, medium and high density development within a mature tree canopy. In the vicinity are retirement communities, childcare centres and a school. To the north of the Site across Cherry Street is a small area zoned RE1 Public Recreation, known as Halfpenny Park.
19. The Site adjoins No. 6 Cherry Street, a corner allotment comprising a 1 storey detached dwelling. The Site adjoins No. 2 Cherry Street to the south, comprising a 2 storey

residential flat building. The Site adjoins the North Shore Railway Corridor to the north-east, zoned SP2 Railway Infrastructure.

20. The Site is in the vicinity of Turramurra Town Centre and Turramurra Station.
21. The Site is in the vicinity of a number of heritage items listed under the KLEP, including heritage item "I168" to the south, heritage item "I167" to the west, heritage item "I1117" to the northeast, heritage item "I1111" to the east, and the heritage conservation area "C5" to the north. The heritage map is included below at **Figure 4**.

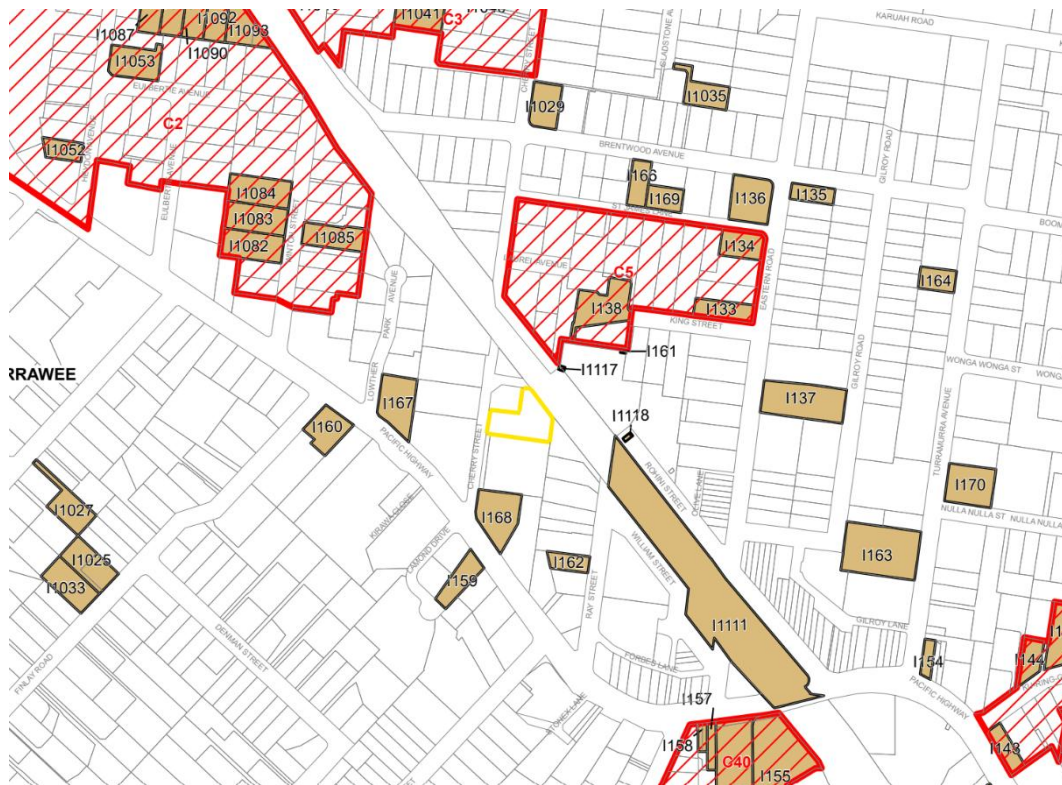


Figure 4: Heritage map under the KLEP (Site highlighted)

## THE STATUTORY CONTROLS

22. The statutory instruments applicable to the Development Application are as follows:
  - a) *Environmental Planning and Assessment Act 1979* (NSW) (**EPA Act**)
  - b) *Water Management Act 2000 No 92*
  - c) State Environmental Planning Policy (Housing) 2021 (**Housing SEPP**)
  - d) State Environmental Planning Policy (Resilience and Hazards) 2021
  - e) State Environmental Planning Policy (Sustainable Buildings) 2022
  - f) State Environmental Planning Policy (Transport and Infrastructure) 2021 (**TI SEPP**)
  - g) Ku-ring-gai Local Environmental Plan 2015 (**KLEP**)

- h) Ku-ring-gai Development Control Plan (**KDCP**)
- i) Ku-ring-gai Contributions Plan 2010
- j) Apartment Design Guide (**ADG**)
- k) Tree Canopy Guide for Low and Mid Rise Housing (**the Guide**)

## **ACTIONS OF THE RESPONDENT CONSENT AUTHORITY**

- 23. The Development Application was lodged via the Planning Portal on 4 September 2025 (PAN-565172), and accepted by the Council on 4 September 2025.
- 24. On 18 September 2025, the Development Application was referred to the Sydney North Planning Panel to make a determination given that the Development has a Capital Investment Value greater than \$30 Million: section 2.19 (*Declaration of regionally significant development: section 4.5(b)*) of the *State Environmental Planning Policy (Planning Systems) 2021*, and Section 2 of Schedule 6 of that SEPP.
- 25. By 18 September 2025, the Development Application had been notified to owners and occupiers of surrounding properties. During the submissions period 25 September 2025 to 27 October 2025, sixty seven (67) submissions were received by the Council in response. A summary of the issues raised in those submissions is as follows:
  - a) Excessive bulk and scale
    - a. Excessive bulk and scale compared to No. 2 Cherry Street
    - b. Excessive building height
    - c. Insufficient 4.6 height variation request
  - b) Cherry Street is a narrow, uneven winding road, requiring caution for vehicles and pedestrians
  - c) Traffic impacts to Cherry Street and the vicinity:
    - a. Risk of accidents and risk to pedestrians
    - b. Risk of accidents on the bridge could affect the operation of the below rail
    - c. Impacts to parking and increased congestion
    - d. Potentially dangerous positions of vehicle access points
    - e. Insufficient on-site parking
    - f. Cumulative impacts with other developments
  - d) Impact to local character and desired future character

- e) Not in public interest
  - f) Privacy and overlooking
  - g) Landscaping and tree removal:
    - a. Loss of mature canopy
    - b. Lack of landscaped gardens including tall trees
  - h) Impacts specific to No. 2 Cherry Street, including:
    - a. Overlooking caused by windows, balconies and rooftop
    - b. Acoustic impacts including due to rooftop communal space
    - c. Solar impacts
    - d. Lack of building separation
  - i) Heritage impacts, including to Nos 1, 2, 3, 5 Laurel Avenue and No. 8 King Street subject to heritage overlay
  - j) Stormwater and groundwater impacts
  - k) Excavation and geotechnical impacts:
    - a. Risk of ground movement and vibration
    - b. The risk of structural damage to Nos. 16 & 18 Ray Street, Turramurra
    - c. Risk to the railway embankment, being potentially unstable
  - l) Disruption caused by construction
  - m) Impacts to vegetation and local biodiversity, including brushtail and ringtail possums, native birds and brush turkeys
  - n) Lack of open space at ground level
  - o) Asbestos risk
26. Between 18 September 2025 and 28 November 2025, internal referrals for landscape, engineering, ecology, heritage, environmental health and building referrals were made, and those responses were received.
27. On 18 September 2025, Council made a referral to an external urban design expert. The response was received on 19 September 2025.
28. On 18 September 2025, Council made a referral for concurrence to Sydney Trains, under Section 2.99 of the TI SEPP, which was received by Transport for NSW (**TfNSW**). On 3 October 2025, TfNSW responded: TfNSW “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 [to its letter] that will need to be complied with.”

29. On 18 September 2025, Council made a standard referral to TfNSW under Section 2.122 of the TI SEPP. On 9 October 2025, TfNSW responded: “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”.
30. On 29/01/2026, the Council gave notice to TfNSW that the Class 1 Application was received by Council on 17 December 2025.
31. On 28 November 2025, the Applicant was issued with a preliminary assessment letter, identifying issues that are required to be addressed and inviting the Applicant to provide amended plans. No amended plans were received.
32. The Class 1 Application was filed on 12 December 2025 and received by Council on 17 December 2025.
33. On 14 January 2026, the Applicant provided additional information regarding groundwater impacts of the Development Application, which resulted in a Development Application being classified as an integrated development and approval under Section 91 of *Water Management Act 2000* is required.
34. On 29 January 2026, Council made a referral to Department of Climate Change, Energy, the Environment and Water-Water Group.
35. The Sydney North Planning Panel has not made a determination on the Development Application.

## PART B - CONTENTIONS

The Respondent says that the contentions relevant to the determination of the Development Application are as follows:

### **B1 – CONTENTIONS THAT THE APPLICATION BE REFUSED**

#### **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 interpret(-ation 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 the Chapter 6 of the Housing SEPP. The proposed height exceedance is excessive and not consistent with the 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%).
- c) The non-compliant height exceedance contributes to negative overshadowing impacts for the development immediately to the south at No. 2 Cherry Street.
- d) The non-compliant height exceedance is compounded by non-compliant side setbacks for the upper 5 storeys of the development.
- e) 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 written justification indicate that the maximum height breach arises from the screening around the plant, particularly at the north-western corner of the enclosure.
- f) 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.
- g) The Clause 4.6 submission argues 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. However, these elements relate to the overall building form and are not specifically required as a result of including the affordable housing component. 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.

- h) The proposed height is not considered compatible with the surrounding context and results in bulk and scale that are inconsistent with the locality.
- i) There are insufficient planning grounds to support the variation.

### **Non-compliant minimum lot area dimensions**

- 3. The proposed development is unacceptable as the site does not comply with the minimum lot dimension requirements under Clause 6.6(2)(b) of KLEP, and no Clause 4.6 variation has been submitted to address the non-compliance.

#### Particulars:

- a) The Site has frontages of 27.585 metres and 9.08 metres, both of which are less than the minimum site dimension of 30 metres required under Clause 6.6(2)(b) of the KLEP.
- b) The development application the subject of this appeals is not accompanied by a request for variation under Clause 4.6 of the KLEP to address the non-compliance with Clause 6.6(2) of the KLEP.
- c) In the absence of a valid variation request, the development application is not capable of being approved.

### **Non-compliant number of storeys**

- 4. The proposed development is unacceptable as it does not comply with the maximum number of storeys for low and mid-rise housing under Section 175(2) of the Housing SEPP, and no variation has been sought to address the non-compliance.

#### Particulars:

- a) The proposal relies on the bonus provisions under Section 16 of the Housing SEPP to increase building height through the provision of additional affordable housing.
- b) It is unclear whether the number-of-storeys development standard under Section 175 of the Housing SEPP continues to apply where the height bonus provisions are utilised.
- c) Notwithstanding this uncertainty, the proposed nine-storey residential flat building represents approximately a 50% variation to the maximum number of storeys prescribed under Section 175(2) of the Housing SEPP.

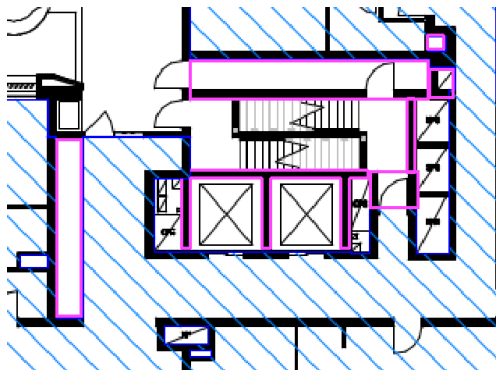
- d) In the event that Section 175(2) of the Housing SEPP applies, the development application the subject of this appeal is not accompanied by a variation request under Clause 4.6 of the KLEP to justify the non-compliance.
- e) In the event that the provisions of Section 175(2) of Housing SEPP are applicable, the development application the subject of this appeals cannot be approved as is not accompanied by a Clause 4.6 variation requests to address the non-compliance with Section 175(2) of the Housing SEPP.
- f) In the absence of a valid variation request, the development application is not capable of being approved.

### Gross Floor Area calculation inaccuracies

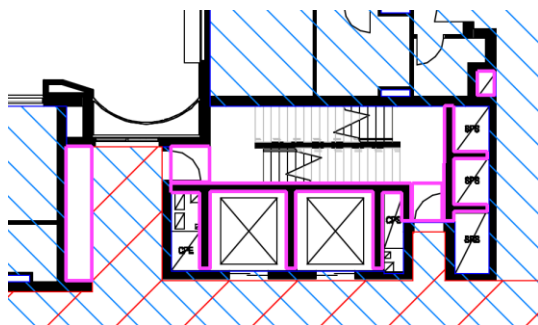
- 5. The Gross Floor Area (**GFA**) has not been accurately calculated, with several areas incorrectly excluded.

#### Particulars:

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

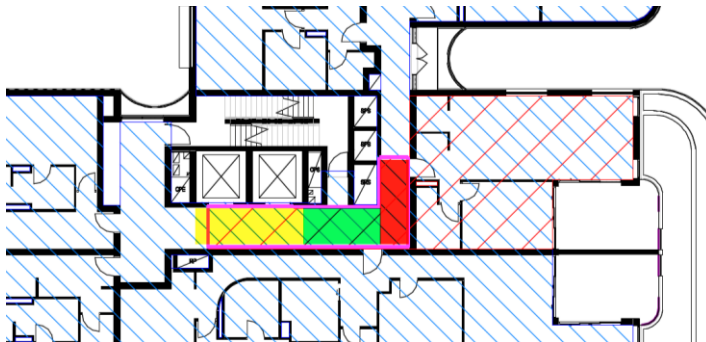


*Image 01: Screenshot of the ground floor Level*



*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 and urban response

6. 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 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 and features 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 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 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 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**

- 7. Insufficient setbacks are proposed to the Site boundaries, 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 metre separation, Levels 5 and above of the adjacent future development would need to provide a minimum 12 metre 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 1 of 2 inequitable 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 are 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-metre street setback and allowing bedrooms to be positioned behind the required 9-metre side setback; and
  - ii. Reconfiguring Unit Type 01 as part of the broader design amendments.
- o) The proponent'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 metre 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 considered to reduce the site coverage and provide more opportunity for deep soil zone (**DSZ**). The south elevation has a length 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 metre 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**

- 8. The proposed development fails to satisfy both the DSZ requirements under the Housing SEPP, contrary to Section 19(2)(c)(i) and 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) Section 19(2)(c)(i) of the Housing SEPP is a non-discretionary development standard requiring a DSZ on at least 15% of the site area with a minimum dimension of 3 metres. Deep Soil Plan DA402E identifies a DSZ of 429.6sqm or 16% which numerically complies with the standard. However, the majority of the designated DSZ's include structures (paved paths) which does not comply with the definition of a DSZ which means a landscaped area with no buildings or structures above or below the ground.
- b) 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.
- c) 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.
- d) 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.

- e) 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.*
- f) 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.
- g) The Landscape Plan proposes four (4) *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.
- h) 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.
- i) 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.
- j) The Landscape Plan proposes three (3) *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.

- k) 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.*
- l) 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**

9. 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 northwest 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**

10. 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**

11. 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**

12. The proposed development is unacceptable as 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 development 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) It is unclear from the submitted documentation whether the proposed basement is tanked.
- d) Regardless of whether the basement is tanked, the absence of an accessible maintenance passage is inconsistent with the requirements of the KDCP.

## **Inadequate apartment mix**

13. 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) 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**

14. 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. 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 Councils 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**

- 15. 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**

16. 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**

17. 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**

18. 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.

### **B2 – CONTENTIONS WHICH MAY BE RESOLVED BY CONDITIONS OF CONSENT**

Nil

### **B3 – CONTENTIONS WHICH MAY BE RESOLVED WITH ADDITIONAL INFORMATION**

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

19. The proposed development is unacceptable as it includes works within adjoining land without the consent of the affected landowners.

##### Particulars:

- a) A 1.5 metre 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 application is not capable of being lawfully approved.

#### **Insufficient fence details**

20. 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 metre 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 addressing site isolation**

21. The development is proposed to cross the boundaries of No. 6 Cherry Street and consolidation with that site is not proposed, contrary to Control 2 of Part 3B of the KDCP.

Particulars:

- a) The proposed development crosses the boundaries of No. 6 Cherry Street without consolidation of that site, resulting in the isolation of No. 6 Cherry Street.
- b) The development application fails to provide the information required under Control 6(ii) of Part 3B of the KDCP (including the associated note).

**Insufficient information to assess tree impacts**

22. 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**

23. 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.

### **SIGNATURE**

Signature of authorised officer of  
respondent consent authority



Name of authorised officer

Asmaa Rabiee

Capacity

Executive Assessment Officer

Date of signature

06/02/2026