

26 June 2026
Our Ref: 598

The Department of Planning, Housing and Infrastructure

Dear Sirs,

Re: SSD-95747716
Address: 8A, 14 and 16 Buckingham Road, Killara

This submission is made on behalf of my client Mrs Belinda Braham – the owner and occupier of 22 Buckingham Road Killara who purchased the property in 1995 and has lived in the property for over 30 years. 22 Buckingham Road Killara is a locally listed heritage item under the Ku-ring-gai LEP 2015.

Mrs Braham's home will be unreasonably impacted if SSD-95747716 is approved in its current form. Additionally, there are matters which prevent the approval of the current proposal. The basis of this objection to the proposal is summarised as:

- No clause 4.6 addressing section 176(2) of the Housing SEPP is provided.
- The clause 4.6 exception request in relation to breach of the height control under section 16(3) of the Housing SEPP fails to meet the requirements of the clause.
- The heritage impact statement fails to adequately consider the impact of the proposal on the amenity of 22 Buckingham Road and incorrectly identifies the site
- There is no transition to the lower density zone in which Mrs Braham lives.

1. No clause 4.6 re section 176(2) of the Housing SEPP is provided

Clause 176(2) in Chapter 6 of the Housing SEPP states as follows:

176 Development standards—low and mid rise housing outer area

- (1) *This section applies to land in a low and mid rise housing outer area in Zone R3 Medium Density Residential or R4 High Density Residential.*
- (2) *Development consent must not be granted for development for the following purposes if a resulting building will have a building height of up to 17.5m unless the consent authority is satisfied that the building will have 4 storeys or fewer—*
 - (a) *residential flat buildings,*
 - (b) *buildings containing shop top housing.*

- (3) *In this section, a storey does not include a basement within the meaning of the standard instrument.*

It is a development standard and the proposal is taking advantage of the building height uplift for development under Chapter 6 in relation to the outer LMR area. Section 176(2) clearly identifies that the building should have four storeys or fewer. The building is proposed to have 7 storeys. No clause 4.6 exception request is provided in relation to non-compliance with this development standard, and approval therefore cannot be granted. There is no provision within the in-fill affordable housing provisions in Chapter 2 which ousts the operation of the development standard in section 176.

2. The cl 4.6 relating to section 16(3) of the Housing SEPP does not meet the requirements of the clause

A clause 4.6 exception request is included in the application in relation to the height exceedance under the in-fill affordable housing provisions in Chapter 2 of the Housing SEPP.

- (a) The clause 4.6 fails to demonstrate that compliance is unreasonable or unnecessary because it achieves the objectives

The clause 4.6 considers a number of different objectives, given that there are no direct objectives to the height control in section 16 of the SEPP.

The discussion on page 14-15 regarding section 15A of the Housing SEPP, centres upon the advantages of the development as a whole, not those achieved from the height exceedance. The explanation and justification is that a 3.2m high floor to ceiling is required to meet the BCA. That is not convincing, given that it is a mandatory condition of consent to meet the BCA requirements, and a 3.2m floor to ceiling is required to comply with:

- i. the ADG (section 4C-1), and
- ii. a 2.7m floor to ceiling height is a non-discretionary development standard in section 148(2)(c) of the Housing SEPP, and
- iii. They have not demonstrated that Level 7 could be removed and the building comply with the development standard without affecting the affordable units - given that Level 7 does not include any affordable housing.

Consideration of objective (c) on page 15 indicates that the proposal does not generate any unacceptable environmental impacts. Overshadowing is not demonstrated in the clause 4.6 (and as a standalone document, any such claim must be set out in the clause 4.6 to render it as a suitable justification). There is no consideration of the visual impact of a 7 storey building on the amenity of 22 Buckingham Road, or its tennis court. No justification to support this statement is suitably made in the clause 4.6.

The discussion of the principles and objectives of the Housing SEPP on page 16 re objective (f) states that the site is proximate to two heritage items - at 10 Buckingham Road and at the Killara Golf Course Clubhouse. The site is adjacent to the heritage item at 22 Buckingham Road which is in a lower density residential area and yet this has not even been considered against the objectives in the LEP.

In discussing achievement of the building height objective (b) of Kuring-Gai LEP on page 17, there is no discussion of the transition to the low density R2 zone to the west - ie to 22 Buckingham Road which

is a heritage item. There is simply no justifications set out to demonstrate an acceptable transition in scale to the adjoining lower density residential zone to protect local amenity.

(b) The thwarting of the object of the control is not sustained

Section 7.1.2 of the clause 4.6 argues that the compliance is unreasonable and unnecessary because compliance would thwart or defeat the underlying object.

The discussion states that compliance "could" result in the loss of an entire level in Buildings A and C - up to 7 apartments in total, and that loss of those apartments would mean that the FSR bonuses provided under the Housing SEPP could not be fully utilised. Firstly there is no suggesting by this argument that it would result in the loss of those apartments, simply that it could. No evidence is provided to support any notion that that would be the inevitable result.

The objective is to facilitate new in-fill affordable housing. It is not to maximise to the fullest extent possible, the amount of in-fill affordable housing, which is the argument being put in section 7.1.2 of the request. The argument is not convincing.

As shown in section 7.1.3 of the Clause 4.6, much of the justification relies on the perceived benefits of the development as a whole, not how the elements which lead to the height exceedance benefit the achievement of the objectives.

(c) The environmental grounds identified are insufficient to justify the contravention of the control

- (i) Ground 1: Consistency with the objects of the EP & A Act is very broadly discussed. The consideration of (f) being to promote the sustainable management of building and cultural heritage references section 7.1.1 of the Clause 4.6, which specifically does not consider the adjacent heritage item at 22 Buckingham Road.
- (ii) Ground 2 discusses the response to topography. Figure 5 indicates that the greatest height non-compliance is at the highest part of the site - close to the dwelling at 22 Buckingham Road. It is counter to the argument made that topography is driving the height exceedance. Figure 5 is not providing any assistance to the ground being argued and cannot be relied upon.
- (iii) Ground 3 relies on the provision of improved amenity compared to a compliant scheme. This ground relies upon an assumption that the site has the right to complete maximisation of the FSR bonus provisions by stating that the GFA would need to be relocated and increase the envelope elsewhere. That is not a ground which relates to why the exceedance of the height control is a sufficient environmental planning ground.

3. Heritage Report

The heritage impact statement (HIS) in Appendix CC includes a number of errors in relation to 22 Buckingham Road, which call into question the level of consideration that was actually applied to the impact on the heritage item.

Figures 41 and 42 erroneously include 22 Buckingham Road as being within the site. The tennis court belonging to 22 Buckingham Road is clearly visible as within the red outline. The site boundaries are in line with the western edge of the western bowling green as demonstrated in Figure 43. Given the failure to properly understand the location of the 22 Buckingham Road it is unclear how this has impacted the remainder of the report.

In section 6.3 on pages 27 and 28 of the HIS, the description of the site is quoted from a HIS by GBA Heritage dated February 2021. As detailed in previous submissions in relation to prior development proposals on this site, the statement about the tennis court on page 28 is incorrect. The court was resurfaced and not “created” or constructed, in 1995 when Mrs Braham and her late husband purchased the property. It is believed that the court was built many years before 1995. Figure 34 clearly shows the tennis court existing at the rear of 22 Buckingham Road in 1951.

It is also questioned how a tennis court with open style fencing could have led to restrictions of views to the heritage item (as is stated in the prior Heritage Impact Statement quotation on page 28). It appears that the HIS relies upon this inaccurate description of the heritage item.

The reference to 22 Buckingham Road being setback from Building C (not Building A) in section 10.3 of the HIS at the bottom of page 45 indicates a confusion in the development, particularly when combined with earlier misunderstandings as to the extent of the property and location of 22 Buckingham Road.

4. No transition to the adjoining lower density zone

There is no transition from a seven storey building to the heritage item in the adjacent lower density zone and this will impact severely on the amenity of the house and private open space of 22 Buckingham Road.

Regards



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