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Contact: Bonnie Yue

Ref: SSD-82548708

23 April 2026

Department of Planning Housing and Infrastructure
Locked Bag 5022
PARRAMATTA NSW 2124
Via: NSW Major Projects portal

Attention: Prity Cleary

Dear Prity,

**SECOND RESPONSE TO SUBMISSIONS SSD-82548708, RESIDENTIAL FLAT
BUILDING WITH INFILL AFFORDABLE HOUSING - 24, 26 & 28 MIDDLE HARBOUR
ROAD, LINDFIELD**

Thank you for the opportunity to further comment on State Significant Development (SSD) application (SSD-82548708) for the proposed residential flat building with in-fill affordable housing development at 24, 26 and 28 Middle Harbour Road, Lindfield.

Following review of the Applicants second Response to Submissions (RtS) documentation, Council will be maintaining its **Comment** on the application. Please find at **Attachment 1** Councils comments to assist the Department of Planning Housing and Infrastructure (DPHI) assessment of this application.

The key issues that remain unresolved with the proposal include tree and the arboricultural impacts, and that the tree impact concerns have not been satisfactorily addressed. Furthermore, it is highly recommended that trunk drainage design and flood management issues be resolved during DA approval stage. Council would like to reinforce the key issues by highlighting them in yellow and using red font in the comments below.

Council reiterates that if consent is granted DPHI must impose a condition that requires 7.11 Contributions be paid, with the applicable plan being Council's section 7.11 contributions plan, *Ku-ring-gai Contributions Plan 2010*.

Finally, Ku-Ring-Gai Council staff will be happy to meet with the Department of Planning Housing and Infrastructure (DPHI) or the Applicant to clarify any issues. Should you have any further enquiries, please contact Bonnie Yue on 9424 0941 or via, byue@krg.nsw.gov.au

Yours sincerely,

Selwyn Segall

**Team Leader
Development Assessment Services**

Attachment 1 - Ku-ring-gai Council's Second Response to Applicant's RTS	
1. Urban Design and Planning Issues	
Gross Floor Area	Matter for DPHI to be satisfied off.
2. Landscaping Issues	
Secretary's Environmental Assessment Requirements (SEARs)	Secretary's Environmental Assessment Requirements (SEARS) inconsistency 14. Trees and Landscaping requires: • <i>Provide a landscape plan, that:</i> - <i>details the proposed site planting, including location, number and species of plantings, heights of trees at maturity and proposed canopy coverage (as a percentage of the site area).</i> - <i>provides evidence that opportunities to retain significant trees have been explored and/or inform the plan.</i> • <i>If the proposal involves impacts to trees, provide an Arboricultural Impact assessment that assesses the number, location, condition and significance of trees to be removed and retained including:</i> - <i>any existing canopy coverage to be retained on-site.</i> - <i>tree root mapping. if the proposal involves significant impacts to tree-protection zones of retained trees identified as being significant.</i> UNRESOLVED - A revised Landscape plan has not been provided. The Landscape plan made no attempt to retain the significant trees have been explored and/or inform the plan.
Unsatisfactory Landscape plan	SEPP Housing Design principles inconsistency Schedule 9: Design principles for residential apartment development 5 Landscape <i>(1) Good design recognises that landscape and buildings operate together as an integrated and sustainable system, resulting in development with good amenity.</i> <i>(2) A positive image and contextual fit of well-designed development is achieved by contributing to the landscape character of the streetscape and neighbourhood.</i> <i>(3) Good landscape design enhances the development's environmental performance by retaining positive natural features that contribute to the following—</i> <i>(a) the local context,</i> <i>(e) tree canopy,</i> <i>(f) habitat values,</i> <i>(g) preserving green networks.</i> <i>(4) Good landscape design optimises the following—</i> <i>(d) respect for neighbours' amenity.</i> The proposal is inconsistent with the landscape design principles: • It fails to adequately consider and protect high significance and high retention value trees 9, 15, 16 and 18 that are positive, natural features and that contribute to the local context and character, tree canopy, habitat, and green network (3a, e, f & g). UNRESOLVED - No updated Landscape Plan has been provided. • The proposed impacts to trees 11, 15, 16, 18 and 37 fails to respect neighbour's amenity (4d). UNRESOLVED - No updated Landscape Plan has been provided

	- The lack of soft landscape works across the site frontage due to rock lined drainage swales fails to respond to the local character and context (2 and 3a & e) and fails to respect neighbour amenity (4d) due to lack of screening and softening of the built form within the streetscape. UNRESOLVED - No updated Landscape Plan has been provided - The lack of tall tree planting across the site and within the western side setback fails to respond to the existing and desired landscape character and context (2 and 3a) and fails to adequately enhance the tree canopy (3e). UNRESOLVED - No updated Landscape Plan has been provided - The proposed landscape aesthetic that excludes the use of tall exotic deciduous and evergreen tree species fails to adequately respond to the landscape character of the streetscape and neighbourhood (2). UNRESOLVED - No updated Landscape Plan has been provided - Impacts to significant Tree 18 tree is discussed further under Part 13 below.
Insufficient Deep Soil zones	ADG inconsistency - Part 3E Deep soil zones Deep soil zone is defined as ‘<i>areas of soil not covered by buildings or structures within a development.</i>’ For sites greater than 1500sqm a minimum dimension of 6.0m is required by the ADG Objective 3E-1 Design criteria 1. It is assessed that as the site area of 4757m² is significantly larger than 1500m² the ADG design guidance of 15% deep soil should apply as a minimum. 15% site area equates to 713.5m². It is assessed that the development will result in a deep soil zone of only 407m² or 8% of the site area and is inconsistent with the ADG requirements failing to meet the 15% deep soil zone design criteria objective. The applicants deep soil compliance plan and calculable areas incorrectly includes areas that are inconsistent with the definition including: <i>The perimeter areas that do not meet the minimum 6.0m dimension.</i> <i>Impervious surfaces</i> <i>Services eg 525mm drainage line within the western setback and street frontage.</i> The lack of deep soil zones within site setbacks is inconsistent with ‘Greener Places’ design opportunities for viable supplementary tall tree plantings consistent with the established landscape character and streetscape and does not meet the ADG Objective 3E-1. UNRESOLVED - The architectural building footprint has not been adequately amended to address these issues. No revised Landscape Plans have been provided.
Unacceptable Streetscape and Amenity Impact	Objective 4O-2 Landscape design contributes to the streetscape and amenity inconsistencies The removal of tree 1 and impacts to trees 9, 15, 16, 18 and 37 fails to adequately consider the established streetscape and desired future landscape character and is inconsistent with ADG Objective Part 4O-2 and design guidance. There is design opportunity with increased development setback to enable the viable retention of trees: 9, 15, 16 and 18 (high significance) and other trees (37) that contribute to the established landscape and streetscape character. Council strongly recommends the design is amended to increase the development setbacks to enable their viable retention.

	UNRESOLVED - The architectural building footprint has not been amended to address these issues. Stormwater / landscape conflicts The location of the proposed OSD tank outside of the basement footprint within landscape setbacks fails to adequately consider the impacts for the ability of the proposal to provide deep soil landscape zone for the planting of trees to contribute positively to the landscape character. The OSD tank location should be reconsidered and relocated within the building footprint and outside of boundary setbacks. The location of drainage infrastructure and pits fails to adequately consider retained trees of high significance and retention value that form part of a critically endangered plant community. The provision of a rock lined drainage swale across the site frontage fails to provide sufficient plantings including tall trees to contribute positively to the streetscape and resident and neighbour amenity and therefore fails Part 4O-2 Objective. UNRESOLVED - No updated Landscape Plan has been provided. The Civil plans provided show the flood modelling, and not a revised location of the OSD outside the landscaped area to the rear.
Unacceptable Tree Removal and Impacts	KDCP Part 13 Tree and Vegetation Preservation The removal and impact to trees: 1, 9, 11, 15, 16, 18 and 37 fails to protect and maintain the established treed landscape character and is inconsistent with the aims, objectives and controls of the DCP. UNRESOLVED - The architectural building footprint has not been amended to address these tree conflicts and issues. No updated Landscape Plan has been provided. The level of encroachment on trees: 18 is not an accepted outcome. • Tree T18 <i>Syncarpia glomulifera</i> (Turpentine) is an endemic tree mapped as part of a critically endangered plant community (Sydney Turpentine Ironbark Forest / STIF). The tree at 24m high is visually significant and contributes positively to the established landscape and treed character. • The arboricultural impact assessment report has again contradicted itself by amending the significance value of tree 18 from high to low and now back to high again, when the trees' health and condition has not changed. (Page 27 Second Amended SSDA Arboricultural Impact Assessment) • It is disappointing to note no Architectural changes have been made to the eastern façade to increase the setback around the existing trees, specifically the significant T18 <i>Syncarpia glomulifera</i> (Turpentine). • Despite the lack of changes to the building footprint, Lee Hancock the Arborist now believes Tree 18 can withstand the 22.2% encroachment (considered major as per AS4970:2025 <i>protection of trees on development sites</i>) and he now considers T18 acceptable for retention. No revised levels, architectural plans or details have been provided to demonstrate how this will be achieved. • It appears this change of opinion is done to facilitate the SSD development requirements rather than based on factual evidence. • A good AIA provides guidance to the design team in the concept stages and is based on factual data analysis in the first instance. The AQF level 5 Consulting Arborist is critical to inform the design process around existing trees on the site and adjacent to the site and to inform the location of the built

	upon area and infrastructure outside the NRZ of the high retention value trees. • It is Councils opinion that it is a pointless exercise when the AIA comes last after the design process is completed and the building footprint is fixed. This is purely a tick box exercise. • It is also pointless when the Arborist can completely change their opinion for the retention value of a tree such as T18 going from high to low, then back to high again and to argue a tree is to be removed and then state the tree is to be retained when the design has not changed. For example, the original AIA report dated 05.12.2025 stated on page 16: - <i>Tree 18 indicates that construction or excavation in these areas may adversely impact the health, stability, or longevity of the subject tree. Where roots were located beneath existing structures, there is potential for future structural conflict. Tree will endure an unsustainable impact from the proposed building'...</i> • The revised Addendum AIA dated 13.04.2026 page 20 now contradicts the first report and states the retention of tree T18 is justified due to: - <i>"...certain tree species possess the capacity for root grafting, enabling the transfer of water, nutrients and photosynthates between interconnected root systems."</i> • It is noted 'Wikipedia' has provided this source of information regarding "Root Grafting" for "some" species and is not specifically for this Turpentine species. This is not a viable source and should be rejected. • Since the building location has not been amended, it is believed this report was rewritten solely to suit the narrative for this SSD to be compliant and at the insistence of CPHR. • Council strongly recommends plans are amended to increase the setback to the eastern façade to reduce the level of encroachment to a minor level as per AS4970 to adequately retain tree T18 and in turn adjacent T16 and T18A <i>Syncarpia glomulifera</i> (Turpentine).
Unacceptable Landscape Design and Character	Landscape design and character The lack of planting across the site frontage fails to adequately consider the residential character of the streetscape and the broader context of Ku ring gai which is dominated by tall trees and established gardens with a predominance of exotic plantings. The proposed planting palette of predominantly native plant species fails to complement the established and desired landscape character that is made up of predominantly exotic species associated with Ku ring gai. It is recommended a greater percentage of exotic species be utilised. The lack of deep soil landscape areas impacts upon the ability of the site to provide tall canopy trees within development setbacks to screen and soften the built form and to contribute to the treed landscape character and urban forest of Ku ring gai. It is noted that only one tall endemic tree is proposed at the rear of the site as part of the planting scheme, and therefore the landscape proposal fails to reflect the local character. UNRESOLVED - No updated Landscape Plan has been provided. The architectural building footprint has not been adequately amended to address these issues.
3. Ecology review	
	This assessment has been prepared to review the ecological aspects of SSD-82548708, with a focus on compliance with the Biodiversity Conservation Act 2016 and

	the Biodiversity Assessment Method (BAM). This is the third ecological review of the proposal. The purpose of this review is to evaluate whether the proposal adequately considers and manages impacts to biodiversity values present on the site, including remnant vegetation associated with the Sydney Turpentine-Ironbark Forest ecological community. This review considers the Second Amended Arboricultural Impact Assessment dated 13 April 2026 submitted in response to requests for further information. Importantly, no amended Biodiversity Development Assessment Report has been submitted to reflect the revised arboricultural position or to reassess biodiversity impacts. Documents Reviewed The review has considered the original Biodiversity Development Assessment Report, the Second Amended Arboricultural Impact Assessment prepared by Lee Hancock dated 13 April 2026, the response to submissions and RFI material, and the associated architectural, civil and landscape documentation. The assessment has focused on whether the amended arboricultural information resolves previously identified ecological issues and whether the proposal demonstrates compliance with the Biodiversity Assessment Method. Relevant Legislation The proposal is classified as State Significant Development and is subject to the requirements of the Biodiversity Conservation Act 2016. The Biodiversity Assessment Method establishes a mitigation hierarchy requiring impacts to be avoided where possible, minimised where avoidance is not feasible, and offset only as a last resort. Section 3 of the BAM Stage 2 Operational Manual requires that impacts be avoided through proposal location and design at an early stage. This includes the identification of constraints, the exploration of alternative layouts and the documentation of design refinements that demonstrate how impacts have been avoided. The Secretary's Environmental Assessment Requirements also require that landscape planning demonstrate that opportunities to retain significant trees have been explored and have informed the design. Findings of the Review No amended Biodiversity Development Assessment Report has been provided. This is a critical deficiency in the assessment. The BDAR remains the primary document for assessing biodiversity impacts under the BAM, yet it has not been updated to reflect the revised arboricultural position or to reassess impacts to Tree 18. As a result, there is now a clear inconsistency between the BDAR and the amended Arboricultural Impact Assessment. The biodiversity assessment is therefore not current, not internally consistent, and cannot be relied upon for decision-making. The Second Amended Arboricultural Impact Assessment now proposes retention of Tree 18, a <i>Syncarpia glomulifera</i> forming part of the Sydney Turpentine-Ironbark Forest community. However, the report confirms that the development results in a 22.2 percent encroachment into the tree's Notional Root Zone, which constitutes a major encroachment under AS4970:2025. Despite this, the conclusion of the report has shifted from an earlier position that the tree would not remain viable to a revised position that it can be retained. This change in position is not supported by the available evidence. The building footprint has not materially changed and no additional architectural or engineering detail has been provided to demonstrate how the tree will be retained in a viable
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	condition. The justification relies on limited root mapping and generalised assumptions regarding species tolerance and root grafting rather than site-specific evidence. The reliance on such generalised concepts does not provide a robust or defensible basis for concluding that long-term viability will be maintained under conditions of major root zone encroachment. The concern that this revised position is unsupported is reinforced by the observation that no corresponding design change has occurred. The conflict between the building and the tree remains, and the revised conclusion appears to have been reached without resolving that conflict. In this context, the conclusion that Tree 18 can be retained is not credible. Accordingly, the impacts to Tree 18 are not supported. The current documentation does not demonstrate that the tree can be retained in a viable condition and the revised arboricultural conclusion cannot be relied upon. Given this, the BDAR should be amended to assess Tree 18 as lost. In the absence of a redesign that demonstrably reduces the level of encroachment and resolves the conflict, the tree cannot reasonably be treated as retained for the purposes of biodiversity assessment. Importantly, the likely loss of Tree 18 cannot be characterised as an unavoidable impact. The evidence indicates that the conflict arises from the adopted building footprint rather than from any inherent site constraint. There is no documentation demonstrating that alternative layouts were explored or that the design was modified to avoid the impact. Instead, the development footprint appears to have been fixed and the arboricultural position adjusted to accommodate it. This approach is inconsistent with Section 3 of the BAM Stage 2 Operational Manual. The Manual requires that impacts be avoided through proposal design, including the early identification of constraints and the refinement of layouts to minimise impacts. It also requires clear documentation demonstrating how avoidance has been achieved. That has not occurred in this case. There is no evidence that meaningful design alternatives were considered or that the development was redesigned to avoid impacts on Tree 18. The most reasonable conclusion is that the impact to Tree 18 has arisen from a design outcome driven by development yield, including gross floor area, rather than by an attempt to avoid biodiversity impacts. This represents a failure to properly apply the mitigation hierarchy. The approach taken effectively substitutes post hoc justification and mitigation for genuine avoidance through design, which is contrary to the intent and requirements of the BAM. While the Arboricultural Impact Assessment proposes a range of mitigation measures, including tree protection zones, hand excavation and arborist supervision, these measures do not resolve the fundamental design conflict. They are dependent on intensive management and do not provide certainty that the tree will remain viable in the long term. Under the BAM, such measures do not replace the requirement to avoid impacts where this is reasonably achievable.
Recommendations	The amended Arboricultural Impact Assessment does not provide sufficient justification to support the retention of Tree 18. The Biodiversity Development Assessment Report must be amended to assess Tree 18 as removed unless a redesigned scheme is provided that demonstrates its viable retention. The current BDAR is inconsistent with the amended arboricultural evidence and cannot be relied upon in its present form. The impact to Tree 18 should not be accepted as unavoidable, as it arises from a design approach that has not adequately considered biodiversity constraints.

	The proposal does not demonstrate compliance with Section 3 of the BAM Stage 2 Operational Manual, as it fails to show that impacts have been avoided through proposal design. A revised design is required that reduces encroachment into the root zones of significant trees and demonstrates that avoidance has been properly applied. A revised BDAR must be submitted that accurately reflects the impacts of the proposal and demonstrates compliance with the Biodiversity Assessment Method.
Conclusion	This third review finds that the amended documentation does not resolve the key ecological issues associated with the proposal. No amended Biodiversity Development Assessment Report has been provided, and the current BDAR is inconsistent with the revised arboricultural position. The proposed retention of Tree 18 is not supported by the available evidence and cannot be relied upon. The BDAR must be amended to assess the loss of this tree unless a genuine redesign is undertaken. The impact to Tree 18 is not unavoidable but is the result of a design that has not adequately responded to ecological constraints. This approach is inconsistent with the requirements of the Biodiversity Assessment Method, particularly Section 3 of the Stage 2 Operational Manual. Until the proposal demonstrates that impacts to significant STIF trees have been genuinely avoided through design, it cannot be considered compliant with the BAM or the SEARs.
4. Engineering Issues	
Civil Plans	1. Approval from Council's Engineers within the Operations Department is required for the realign/divert Council's existing pit and pipe system. At this stage there is no approval for the works to discharge stormwater and/or realign Council's trunk drainage system. - The submitted plans do not identify the location or extent of the proposed drainage easement, only the proposed pipeline alignment. (Not Resolved) 2. Council's Operations Team have advised that the proposed trunk drainage diversion/re-alignment cannot be supported given that this design has several deviancies which is considered unacceptable and non-compliant. Council's Operations Team has previously advised that the proposed trunk drainage diversion/realignment is not supported due to multiple design deviations. (Not resolved) <u>Key outstanding issues include:</u> - In the proposal, 90-degree system direction change was proposed. Council does not endorse this type of design. Modification is required to the 90-degree pits. - No details of easement over the proposed drainage system. The width of the easement shall be depicted in accordance with Part 24R.2 of the KDCP. - It is unclear the distance between the proposed building and drainage system. Council requires the proposed building will not be located within "zone of influence" of Council drainage system. - The data provide in "Integrated Water Management Plan" (page 39) "pit 1.4 floods", which indicate that the system could not convey 5% storm event. The detailed calculation is required. -

	5%	1.1	0.283	Paved	45	8	8	0.137	U2.1	0.001	0.35	0
				Supp.	0	0						
				Grassed	55	8	8					
	1%	1.1	0.283	Paved	<----- as above ----->			0.156	U2.1	0.243	1.26	0.31
				Grassed			8					
	5%	1.2	0.0088	Paved	0	0	0	0.003	1.1	0	0	0
				Supp.	50	5						
				Grassed	50	5	5					
	1%	1.2	0.0088	Paved	<----- as above ----->			0.004	1.1	0.001	0.3	0
				Grassed			5					
	5%	1.3	0.0088	Paved	0	0	0	0.004	1.2	0	0	0
				Supp.	50	5						
				Grassed	50	5	5					
	1%	1.3	0.0088	Paved	<----- as above ----->			0.005	1.2	0	0	0
				Grassed			5					
	5%	1.4	0.0092	Paved	0	0	0	0.005	1.3	0	0	0
				Supp.	50	5			FLOOD.S			
				Grassed	50	5	5					
	1%	1.4	0.0092	Paved	<----- as above ----->			0.005	1.3	0	0	0
				Grassed			5		FLOOD.S			
	5%	1.5	0.0098	Paved	0	0	0	0.005	1.4	0	0	0
				Supp.	50	5						
				Grassed	50	5	5					
	1%	1.5	0.0098	Paved	<----- as above ----->			0.005	1.4	0	0	0
				Grassed			5					
	5%	1.6		Paved					OSD-TANK			
				Supp.								
	1%	1.6		Grassed					OSD-TANK			
				Paved								
- The connections between OSD and Trunk drainage system in the proposal was not clear. Does the OSD have a 1200 mm pipe connection with 1200 mm trunk drainage? Clarification is sought. 3. The proposal seeks to discharge the stormwater runoff created by the new development into Council's existing trunk drainage system which is located within the site. This trunk drainage system traverses diagonally through the property. The applicant has indicated that they wish to realign/divert Council's existing pit and pipe system to cater for the proposal. This cannot be supported in its current format as it is a major burden to Council's infrastructure and long-term maintenance, ongoing system failure, deficient pipe sizing etc of the trunk drainage system. - The applicant proposes increasing the pipe size from 900 mm to 1200 mm. However, the upstream inflows comprise 525 mm and 450 mm pipes, with the downstream connection reverting to a 900 mm pipe. According to the response the downstream and upstream pipe is in good condition, but no supporting reports or any CCTV videos has been provided. - No longsections for the drainage drawings have been submitted. 4. A footpath design is to be provided along the site's frontage and is to be designed in accordance with Council drawing 2003-004 Rev. 'B'. A footpath longitudinal section will also need to show the extent of cut/fill, existing services and existing street tree locations. The project arborist will need to endorse the civil plans. All redundant driveway crossings are to be shown to be removed - The proposal indicates retaining existing levels on the nature strip for the existing footpath as per the response; however, as an SSD reconstruction of the existing footpath in front of the property in consultation with the project arborist will be required. - There is no long section provided for the driveway within the submitted drawing set, and the proposed driveway levels may impact the existing footpath and surrounding street trees. - Insufficient detail has been provided to demonstrate compliance with Council's footpath and driveway design requirements. (Not resolved)												
Water Management				No water balance model has been submitted to reduce the site runoff days by 50% which would satisfy Council's streamflow objectives under Part 24C.3 of the Ku-ring-gai DCP. (Not resolved)								

Waste Management	Provide a longitudinal section through the driveway and into the basement carpark to clearly demonstrate that there will be 2.6 metres clear headroom along the whole of the travel path required for the small waste collection vehicle as required under Part 25A.3 of the KDCP. The section must include realistic slab/beam depths, stormwater pipelines and other overhead services. (Not resolved)
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END OF SUBMISSION