

Appendix B - Statutory Compliance Table – 21, 23 & 25 McIntosh Street and 55 Werona Avenue, Gordon

Instrument	Response
<i>Biodiversity Conservation Act 2016</i>	Pursuant to Section 7.9 of this instrument, SSDAs must be accompanied by a Biodiversity Development Application Assessment Report (BDAR) unless the Planning Agency Head, and the Environment Agency Head determine that the proposed development is not likely to have any significant impact on biodiversity values. This determination is referred to as a BDAR Waiver. The site is located in an urban area and will not have significant impact on any biodiversity values. Notwithstanding, a BDAR has been prepared and is submitted with this application in accordance with the relevant requirements.
<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	Section 2.122 of the Transport and Infrastructure SEPP (T&I SEPP) requires the consent authority to provide Transport for NSW (TfNSW) with written notice of the development application for 'traffic-generating development' and take into considered any response. The Proponent understands the subject SSD will be referred to TfNSW. Traffix has prepared a TIA to inform the referral, which accompanies this SSDA.
<i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>	Section 4.6 of the Resilience and Hazards SEPP sets out that a consent authority must not consent to the carrying out of any development on land unless: It has considered whether the land is contaminated; If the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be after remediation); and If the land requires remediation to make it suitable for the use, it is satisfied that the land will be remediated before the land is used for that purpose. The Preliminary and Detailed Site Investigation (PSI and DSI) were prepared to consider the future use of the site for residential development. The Report notes that there is no visual evidence of industrial, commercial or waste related land uses within the site boundaries. It is considered unlikely that surrounding land use activities have contributed to contamination on the subject site. The age and construction of some of the site's buildings has potential for asbestos containing materials and lead-based paints to comprise part of the external fabrics. Section 4.13 of this EIS describes how hazardous materials will be managed through the demolition and excavation process. Further, 7.2.5 provides an assessment of the proposed waste management regime. The Report concludes that based on observations made during the field investigations, the sampling and analysis program conducted at the site (including the drilling and sampling of 19 boreholes), the proposed land-

Instrument	Response	
	use and with respect to relevant statutory guidelines, it is concluded that the site is suitable for the proposed land-use and further assessment and/or remediation and validation is not warranted.	
<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>	Chapter 2 of the BC SEPP applies to the site as it is considered a 'non-rural' area in the Ku-ring-gai LGA and an R2 zone. Section 6 of the BC SEPP sets out that a person must not clear vegetation in a non-rural area of the State without authority conferred by a permit granted by council under that part. In the case of the subject proposal, the permit (subject to the issue of a development consent) would be granted under this SSD. The proposed tree removal forms part of the proposed development for which consent is sought.	
<i>State Environmental Planning Policy (Sustainable Buildings) 2022</i>	Chapter 2 of the SB SEPP sets out standards for residential development – BASIX. Schedule 1 of the SB SEPP sets out the standards that apply to the proposal being BASIX development meeting the definition in paragraph (a) of the definition of 'BASIX development' in the Regulation. A BASIX Certificate accompanies this EIS. The Certificate complies with Clause 27 of the EP&A Regulation 2021.	
Legislation	Matters for Consideration	Comment

The Act

Section 1.3 Objects of Act	<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</i> <i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i> <i>(c) to promote the orderly and economic use and development of land,</i> <i>(d) to promote the delivery and maintenance of affordable housing,</i> <i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i> <i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	The proposal is consistent with the objects of the Act, as set out below. The social and economic welfare of the community is promoted through the provision of 162 new dwellings including 33 affordable units. The State's resources are unimpacted. The proposal incorporates ESD measures including passive design measures, optimised shading design, target 90% diversion of construction and demolition waste, high efficiency fixtures, provision of EV ready infrastructure, extensive landscaping and WSUD principles, exceeding natural ventilation requirements, achieving BASIX and 7-star average and minimum 6-star minimum NatHERS rating. The development outcome promotes the orderly and economic use of the land in achieving a density which delivers much needed housing in a highly accessible and well serviced area.
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	<i>(g) to promote good design and amenity of the built environment,</i> <i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i> <i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i> <i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	As explained in this EIS, the environment is protected through responsive design and various mitigation measures. The built and cultural heritage of the site and surrounds has been adequately assessed by Urbis and Biosis. Proper construction will be undertaken by the Proponent who will build and deliver the project. The buildings will be maintained to ensure the protection of the health and safety of their occupants. The engagement strategy has increased the opportunity for community participation and will be continued during the exhibition and assessment process.
Section 4.15 Evaluation	<i>the provisions of:</i> <i>relevant environmental planning instruments</i> <i>any proposed instrument that is or has been subject of public consultation under the Act</i> <i>any development control plan</i> <i>any planning agreement</i> <i>the regulations</i> <i>likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality</i> <i>suitability of the site for the development</i> <i>any submissions made in accordance with the Act or Regulations</i> <i>the public interest.</i>	The relevant EPIs are addressed in section 5 of this EIS. There is no draft EPI applying to the site/proposal. DCPs are not a relevant consideration for an SSDA proposal. The proposal is not subject to a planning agreement. The likely impacts of the development are assessed in section 7 of this EIS. The site is suitable for the development as set out in section 8.7 of this EIS. Submissions made will be considered post exhibition of the SSDA. Engagement has been undertaken pre submission as detailed in section 6 of this EIS and in the report that accompanies this application. The development is in the public interest as it will provide additional market and affordable housing in a well-serviced and highly accessible location.
Housing SEPP		
Chapter 2 Affordable Housing, Part 2,	15(c) Development to which division applies	

Division 1 In-fill
affordable housing

(1) This division applies to development that includes residential development if— The site is zoned R2 Low Density Residential. While the KLEP prohibits RFBs in the R2 zone, Chapter 5 of the Housing SEPP permits RFBs in this relevant residential zone.

(a) the development is permitted with consent under Chapter 3, Part 4, Chapter 5 or another environmental planning instrument, and

(b) the affordable housing component is at least 10%, and The proposal seeks to provide 17% of the total GFA (inclusive of the bonus GFA) for affordable housing purposes. 15% will be provided as affordable housing for a period of 15 years and 2% provided in perpetuity.

(c) all or part of the development is carried out— The site is in an 'accessible area' being within 400m of Gordon Railway Station.

(i) for development on land in the Six Cities Region, other than in the City of Shoalhaven local government area—in an accessible area, or

(ii) for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone.

(2) Affordable housing provided as part of development because of a requirement under another chapter of this policy, another environmental planning instrument or a planning agreement is not counted towards the affordable housing component under this division. Not relevant.

16 Affordable housing requirements for additional floor space ratio

(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2). The applicable maximum FSR under Chapter 5 (TOD) of the Housing SEPP is 2.5:1. A 30% increase equates to a maximum permitted FSR of 3.25:1.

The proposed total FSR is 2.39:1, which is well below the maximum 3.25:1 permissible FSR applicable to the site.

<i>(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows—</i>	The minimum affordable housing component is at least 17%. The proposal includes 3,285 sqm of affordable housing GFA.
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<i>(3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).</i>	The applicable building height under Chapter 5 (TOD) of the Housing SEPP is 22m. In accordance with section 16(3) the maximum permissible height is to be equivalent to that of the proposed FSR being a 30% above the TOD provision. Therefore, the maximum permissible height is 28.6m.
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Example—

Development that is eligible for 20% additional floor space ratio because the development includes a 10% affordable housing component, as calculated under subsection (2), is also eligible for 20% additional building height if the development involves residential flat buildings or shop top housing.

The maximum height of the building is 30.5m in height (Building B). This exceedance occurs only at the lift overruns which provide access to the rooftop communal spaces. The exceedance is as a result of these communal roof tops, and the generous 3.2m floor to floor heights.

Refer to the attached Clause 4.6 variation request prepared by Gyde in Appendix D for justification for this minor variation.

<i>(4) This section does not apply to development on land for which there is no maximum permissible floor space ratio.</i>	Not applicable as, under the KLEP, the site has a FSR of 0.3:1.
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19 Non-discretionary development standards – the Act, section 4.15

(1) The object of this section is to identify development standards for particular matters relating to residential development under this division that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

Note—

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

(2) The following are non-discretionary development standards in relation to the residential development to which this division applies—

Complies

The site area is 7,776sqm.

(a) a minimum site area of 450m²,

(b) a minimum landscaped area that is the lesser of—

Complies

Provides 2,991.5sqm or 38.4% of the site area as landscape area.

(i) 35m² per dwelling, or

(ii) 30% of the site area,

(c) a deep soil zone on at least 15% of the site area, where—

Not applicable – refer to s19(3) below.

(i) each deep soil zone has minimum dimensions of 3m, and

(ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,

(d) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter,

Not applicable – refer to s19(3) below.

(e) the following number of parking spaces for dwellings used for affordable housing—

Complies

The number of car parking spaces required for the affordable housing component has been assessed in the TIA prepared by Traffix.

(i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces,

(ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces,

18 car parking spaces are required for the affordable housing component of the proposed development. 18 car parking spaces will be provided, thereby complying with the affordable housing parking requirement.

(iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space,

(f) the following number of parking spaces for dwellings not used for affordable housing—

Complies

The number of car parking spaces required for the non-affordable housing component has been assessed in the TIA prepared by Traffix.

(i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces,

(ii) for each dwelling containing 2 bedrooms—at least 1 parking space, (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,	170 car parking spaces are required for the non-affordable housing component. 173 car parking spaces are proposed, which exceeds the requirement.
(g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development,	Complies The minimum internal apartment areas are achieved. Refer to SSDA Design Report prepared by PMDL Architects.
(3) Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies.	Noted – Chapter 4 applies to this development. Accordingly, subsection (2)(c) and (d) do not apply.
20 Design Requirements	
(1) Development consent must not be granted to development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces) under this division unless the consent authority has considered the Low Rise Housing Diversity Design Guide, to the extent to which the guide is not inconsistent with this policy.	Not applicable – refer to section 20(2) which identifies that subsection (1) does not apply to development to which Chapter 4 applies.
(2) Subsection (1) does not apply to development to which Chapter 4 applies.	Noted.
(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.	<i>Project Venture Development Pty Ltd v Pittwater Council</i> provides guidance when considering the compatibility of a proposal within its local area. Of relevance from the case: <u>Compatibility is different from sameness</u> – buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve. <u>Compatibility is not always desirable</u> – there are situations where the planning controls envisage a change of character, in which case compatibility with the future character is more appropriate than with the existing.

Where compatibility is desirable, physical and visual impacts need to be considered – for new development to be visually compatible with its context, it should contain or at least respond to, the essential elements that make up the character of the surrounding urban environment... The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks and landscaping. In special areas, such as conservation areas, architectural style and materials are also contributors to character.

There are other contributing factors, including height, setbacks and landscaping – buildings do not have to be the same height to be compatible. Where there are significant different in height, it is easier to achieve compatibility when the change is gradual rather than abrupt. The extent to which height differences are acceptable depends also on the consistency of height in the existing streetscape... Landscaping is also an important contributor to urban character.

To assess the matters above, two questions should be considered:

Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

The proposals physical impacts on the surrounding developments are considered further in Section 7 below and are deemed to be acceptable subject to adopting the recommended mitigation measures.

Is the proposal's appearance in harmony with the buildings around it and the character of the street?

The site is located within a precinct that is undergoing transformation as a result of the TOD and LMR planning controls and NSW Government's priority to increase housing stock in well located areas.

The desired future character is informed by these provisions which aim to increase housing diversity, affordable housing, 400m of Gordon Railway Station (in the case of the site).

The desirable elements of the character of the local area are set out below.

Leafy street character on either side of McIntosh Street containing substantial street tree planting.

Accessibility of the site to Gordon Railway Station.

The identification of four lower north shore railway stations (including Gordon) as being capable of accommodating additional density and increasing housing supply including affordable housing.

The TOD and LMR planning controls anticipate an inevitable change in the character of the area.

The desired future character of the precinct is considered to be a higher density environment which provides additional housing opportunities, namely, diversity of housing choice, affordability and accessibility to the nearby local centre and public transport.

The proposal is considered compatible with its local area in that the TOD and LMR regimes envisages a change in character and is this indicative of the future character of the area comprising greater intensity of development. The physical impacts of the proposal are acceptable as set out in this EIS. The proposed building height on the site responds to the site's level change, compliant building separation is provided, and the proposed architectural character seeks to deliver a contemporary RFB while respecting the site's heritage context. Importantly the landscape street character is maintained and enhanced.

21 Must be used for affordable housing for at least 15 years

(1) Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development—

(a) the development will include the affordable housing component required

Noted, capable of compliance

The Proponent commits to this outcome, and it is their expectation this will be conditioned by the Department at the consent stage.

	<i>for the development under section 16, 17 or 18, and</i>	
	<i>(b) the affordable housing component will be managed by a registered community housing provider.</i>	Capable of compliance The affordable housing component will be managed by a social housing provider. Negotiations are currently underway with EchoRealty to manage the affordable housing units.
	<i>(2) This section does not apply to development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation.</i>	Not applicable.
	22 Subdivision permitted with consent	
	<i>Land on which development has been carried out under this division may be subdivided with development consent.</i>	Not applicable.
Chapter 4 Design of Residential Apartment Development	<i>142 Aims of chapter – 149 Apartment Design Guide prevails over development control plans</i>	Noted. Refer to the ADG Compliance Table prepared by PMDL Architects in the SSDA Design Report.
Chapter 5 Transport oriented development	<i>151 Definitions</i> <i>Relevant residential zone</i> <i>Transport oriented development area</i>	The R2 zoning of the land is defined as a relevant residential zone. The site is located within a 'Tier 2' TOD area.
	<i>152 Land to which this chapter applies</i> <i>Ku-ring-gai</i>	Consistent – chapter applies. The site is in the Ku-ring-gai LGA and is within 400m of Gordon Railway Station.
	<i>153 Relationship to other environmental planning instruments</i> If there is an inconsistency between this chapter and another provision of this or another EPI, whether made before or after the commencement of this chapter, this chapter prevails to the extent of an inconsistency.	Noted.

154 Development permitted with development consent in a TOD area	Consistent RFBs are permitted with development consent in the R2 zone.
155 Maximum building height and maximum floor space ratio This section identifies development standards for development under this chapter that, if complied with, prevent the consent authority from requiring more onerous standards for matters. Maximum HOB for RFBs: 22 metres Maximum FSR for RFBs: 2.5:1	Noted. As per earlier in this table, a 30% height and FSR bonus has been applied to these base TOD development standards.
156 Affordable housing 2% of the GFA to be used for affordable housing and managed by a registered community housing provider in perpetuity.	Complies 2% of the GFA will be utilised for affordable housing in perpetuity to satisfy the TOD provisions.
157 Affordable housing parking spaces (a) for each dwelling containing 1 bedroom—0.4 parking space, (b) for each dwelling containing 2 bedrooms—0.5 parking space, (c) for each dwelling containing 3 or more bedrooms—1 parking space.	Complies Achieves the minimum parking requirements, as discussed earlier.
159 Minimum lot width 21 metre wide at the front building line.	Complies The site has a width of approximately 53m therefore complying with s159.
160 Active street frontages	Not applicable.
161 Consideration of the Apartment Design Guide	Complies Refer to the ADG Compliance Table prepared by PMDL Architects in the accompanying SSDA Design Report.

Ku-ring-gai Local Environmental Plan 2015

2.2 Zoning of the land to which this Plan applies	The zoned R2 Low Density Residential. RFBs are prohibited in the R2 zone in the KLEP. Notwithstanding, the site benefits from the provisions under Chapter 5 of the Housing SEPP, which make RFBs permissible with consent.	Noted. Permissibility of land uses is governed by the planning provisions in the Housing SEPP by enabling RFBs in a prescribed residential zone, that is the R2 Low Density Residential zone. The SEPP prevails over the KLEP.
2.3. Zone objectives and Land Use Table	<i>To provide for the housing needs of the community within a low density residential environment.</i> <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> <i>To provide for housing that is compatible with the existing environmental and built character of Ku-ring-gai.</i>	The proposed development will deliver additional housing, including 17% affordable housing. This will contribute to meeting the housing needs of the community. The residential proposal does not impact the provision of facilities or services on other suitably zoned sites. The proposal is compatible with the future environmental and built character of Ku-ring-gai and particularly Gordon, being close to the Gordon Railway Station.
4.3 Height of Building	The applicable building height is 9.5m.	Not applicable – refer to discussion earlier in this EIS.
(2) <i>The height of a building on any land is not to exceed the maximum height shown for the land on the <u>Height of Buildings Map</u>.</i>		
4.4 Floor Space Ratio	The applicable FSR is 0.3:1.	Not applicable – refer to discussion earlier in this EIS.
(2) <i>The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the <u>Floor Space Ratio Map</u>.</i>		
5.10 Heritage Conservation	The site is close to a number of State and locally listed heritage items, including Eryldene House at 17 McIntosh Street (item no. 18 in Schedule 5 of KLEP). To the south-west of 55 Werona Avenue is the locally listed heritage items of	This SSDA is supported by an Aboriginal Due Diligence Assessment and Heritage Impact Statement.
(a) <i>to conserve the environmental</i>		

<i>heritage of Ku-ring-gai,</i> <i>(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</i> <i>(c) to conserve archaeological sites,</i> <i>(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.</i>	'Rochester' (51 Werona Avenue) and a dwelling house at 49 Werona Avenue, and to the south is a locally listed heritage dwelling house at 14 Forsyth Street. No. 25 McIntosh Street forms part of the Gordon Park Estate, McIntosh and Ansell HCA. While to the west of 21 McIntosh Street is the Gordon Park HCA. The image below identifies the site (in green) and the nearby heritage items.	Section 7.1.9 of this EIS provides a detailed assessment on the heritage item of the proposal. The site is not affected by Aboriginal heritage, see section 7.2.13 of this EIS.
6.1 Acid sulfate soils <i>(2) Development consent is required for the carrying out of works described in the table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.</i>	The site is classified as Class 5 on the Acid Sulfate Soils Map. Works are not within 500 metres of adjacent Class 1, 2, 3 or 4 land.	Yes.
6.2 Earthworks <i>(1) The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.</i>		The Geotechnical Investigation prepared by Morrow Geotechnics considers the excavation and filling required on site to facilitate the proposed development.
6.5 Stormwater and water sensitive urban design		A detailed stormwater management plan supports the proposal. The stormwater report confirms the development does not result in adverse stormwater impacts on the

<i>(1) The objective of this clause is to avoid or minimise the adverse impacts of urban stormwater on the land on which development is to be carried out, adjoining properties, native bushland, waterways and groundwater systems.</i>	subject land or the adjoining land and groundwater systems.
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6.6 Requirements for multi dwelling housing and residential flat buildings	The site has a total area of 7,776sqm. The site has a width and depth of more than 30m.	Complies with requirements for RFBs.
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2) Despite any other provision of this Plan, development consent must not be granted for the erection of multi dwelling housing or a residential flat building on a lot in a residential zone unless the lot has an area of at least 1,200 square metres and minimum dimensions (width and depth) of at least—

(a) if the area of the land is less than 1,800 square metres—24 metres, or

(b) if the area of the land is 1,800 square metres or more—30 metres.