

1 January 2026

To:

The Secretary

Department of Planning, Housing and Infrastructure

Attention: SSD Assessment Team / Independent Planning Commission

Re: SSD-81890707 — 10, 14 & 14A Stanhope Road, Killara

Amended State Significant Development Application — Formal Objection

1. Introduction and Standing

I make this submission in formal objection to the amended State Significant Development Application (SSDA) SSD-81890707 for land at 10, 14 and 14A Stanhope Road, Killara.

This submission updates and expands upon my previous objections, having regard to:

- the **gazettal and commencement** of the Ku-ring-gai Council Preferred Scenario amendments to the *Ku-ring-gai Local Environmental Plan 2015* (KLEP) and the relevant provisions of the *State Environmental Planning Policy No 65 / Housing SEPP 2021*
- the amended *Response to Submissions and Amendment Report* prepared by Gyde Consulting
- material changes to the **statutory planning framework** since lodgement
- continuing deficiencies in the EIS, compliance with the Secretary's Environmental Assessment Requirements (SEARs), and the heritage impact assessment.

For the reasons set out below, the amended SSDA **cannot lawfully be approved and must be refused**.

2. Summary — Grounds of Refusal

Consent must be refused because:

1. The proposal is fundamentally and materially inconsistent with **DPHI-endorsed and now legislated Ku-ring-gai planning controls**, including maximum height and FSR standards.
2. The so-called “saved” TOD provisions are inconsistent with, and must yield to, the DPHI **endorsed and gazetted Ku-ring-gai Preferred Scenario**, which now represents the lawful strategic and statutory planning framework.
3. The SEARs relied upon are arguably **invalid or not lawfully satisfied**, such that any “savings” provisions cannot apply.

4. The EIS and amended Response to Submissions fail to address mandatory considerations under **s 4.15 of the EP&A Act**, rendering the application legally incompetent.
5. The heritage impact assessment is legally deficient, including a failure to properly assess impacts on the **locally listed heritage item at 12 Stanhope Road**.
6. No. 14 Stanhope Road satisfies **criterion (b) of the Heritage Act** through its association with **Dr Margot Hentze**, a person of State-level historical significance, which has been entirely ignored.
7. Approval would expose the Secretary and/or the IPC to a **high risk of judicial review**, including on grounds analogous to those currently being litigated in the Mosman LMR proceedings.

3. Statutory Authority to Refuse

The Secretary has clear legal authority to refuse an SSDA that fails to meet statutory criteria.

In **Besmaw Pty Ltd v Secretary, Department of Planning and Environment [2017] NSWLEC 74**, the Court confirmed that where a State Significant Development proposal fails jurisdictional preconditions or substantive statutory requirements, refusal is not only permissible but required.

Approval of SSD-81890707 in the face of clear statutory and strategic planning inconsistencies would be contrary to planning law and would expose the decision-maker to judicial review.

4. Updated Statutory Planning Controls — Ku-ring-gai Preferred Scenario

4.1 Legal Status

The Gyde Consulting material incorrectly characterises the Ku-ring-gai Preferred Scenario as merely “illustrative”.

That characterisation is legally incorrect.

The Preferred Scenario:

- was **endorsed by Ku-ring-gai Council on 5 June 2025**
- was **approved by the NSW Government**
- was **gazetted on 14 November 2025**
- now forms part of the **statutory planning framework**, including amendments to the KLEP and the relevant provisions of the *State Environmental Planning Policy (Housing) 2021*.

As gazetted instruments, these controls are **statutory EPIs** which the consent authority **must consider and apply** when determining development applications, including SSDAs, pursuant to **s 4.15(1)(a)(i)** of the EP&A Act.

They constitute mandatory considerations as endorsed strategic planning instruments under **s 4.15(1)(e)**; (*Maygood Australia Pty Ltd v Willoughby City Council* [2013] NSWLEC 142).

4.2 Applicable Height and FSR Controls

Under the **DPHI-endorsed and legislated Ku-ring-gai Preferred Scenario**, the applicable controls for the Stanhope Road frontage are:

Control	Legislated Limit
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Maximum Height	9.5 metres
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Maximum FSR	0.3:1
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These controls deliberately reflect the **heritage conservation context** and established low-density character of Stanhope Road.

4.3 Extent of Non-Compliance

Control	Proposed Development	Legislated Limit	Non-Compliance
Height	up to 35 metres	9.5 metres	+25.5 metres
FSR	2.22:1 (up to 3.25:1 claimed)	0.3:1	>7 times permitted

This is not a minor or technical departure.

It represents a **fundamental repudiation of the legislated planning framework** for the site.

5. Errors in Gyde Consulting's Assessment

5.1 Reliance on Superseded "Future Context"

Gyde asserts that a hypothetical future built form under superseded TOD and LMR controls remains relevant.

This is a clear legal error.

Development applications must be assessed against the **controls applying at the time of determination**, not at lodgement (*Sofi v Wollondilly Shire Council* (1975) 31 LGRA 416).

Reliance on controls that have now been expressly replaced by legislated instruments is legally untenable.

5.2 Misuse of Savings Provisions

Savings provisions:

- do **not** displace the obligation to undertake a lawful **s 4.15 assessment**
- do **not** permit ignoring endorsed or legislated strategic planning controls
- do **not** cure a deficient EIS.

They are procedural, not substantive, and cannot validate an otherwise incompetent application.

6. SEARs Compliance and Consequences — Jurisdictional Defect

Gyde Consulting asserts that the subject site is “saved” from the application of updated planning controls on the basis that the Secretary’s Environmental Assessment Requirements (SEARs) were issued prior to 13 June 2025.

That assertion is legally contestable and unsustainable.

SEARs do not operate as a substantive exemption from statutory assessment obligations. They are procedural instruments that define the scope of an EIS. Where SEARs are not lawfully complied with, or where the EIS fails to address mandatory considerations, any purported reliance on savings provisions must fail.

6.1 Failure to Address Emerging and Draft Statutory Controls

The SEARs for SSD-81890707 expressly required the EIS to:

- identify and assess **all relevant Environmental Planning Instruments**, including *draft and emerging controls*
- justify any **departure from applicable development standards**, including height, FSR, and built-form outcomes
- demonstrate strategic and site-specific consistency with the prevailing planning framework.

Despite these requirements, the EIS and the subsequent “Response to Submissions and Amendment Report” fail to meaningfully engage with the Ku-ring-gai Preferred Scenario planning controls, notwithstanding that:

- the Preferred Ku-ring-gai Scenario had been publicly exhibited prior to finalisation of the EIS
- Council endorsement occurred during the assessment timeframe
- negotiations between Council and DPHI were publicly known and documented
- the Preferred Scenario directly addressed the Stanhope Road frontage and heritage interface relevant to the site.

The failure to undertake a substantive assessment of these controls is not a matter of weight or planning judgment. It is a failure to comply with the express scope of the SEARs.

The courts have consistently held that where an EIS does not address matters required by SEARs, the assessment process is legally defective and incapable of supporting consent (see,

by analogy: Hoxton Park Residents Action Group Inc v Liverpool City Council (2011) 184 LGERA 20).

Further established case law confirms that the EIS must address draft instruments. (see *Terrace Tower Group Pty Ltd v Sutherland Shire Council* [2003] NSWLEC 289 at [48]–[55]; *Save Our Suburbs Inc v Pittwater Council* [2007] NSWLEC 88 at [73]–[79]).

6.2 Mischaracterisation of the Preferred Scenario as “Illustrative”

Gyde’s characterisation of the Preferred Scenario as merely “illustrative” or a “future planning context” is legally incorrect.

At the time of assessment:

- the Preferred Scenario had been endorsed by Ku-ring-gai Council
- it had been accepted by DPHI as the basis for LEP amendments
- it was later gazetted, confirming its statutory status.

Even prior to gazettal, the Preferred Scenario constituted either:

- a **draft environmental planning instrument** within the meaning of s 4.15(1)(a)(ii), or
- at minimum, a **mandatory public interest consideration** under s 4.15(1)(e).

Failure to assess an endorsed and publicly exhibited planning framework amounts to a failure to consider a mandatory relevant consideration; (*Maygood Australia Pty Ltd v Willoughby City Council* [2013] NSWLEC 142).

SEARs compliance cannot be achieved by ignoring an emerging statutory framework that directly regulates the scale, form, and heritage interface directly relevant to the proposed development.

6.3 SEARs Do Not Displace s 4.15 Obligations

The existence of issued SEARs does not, of itself, validate an SSD application and cannot operate to:

- suspend the operation of s 4.15 of the EP&A Act
- authorise assessment against superseded or hypothetical planning controls
- validate an EIS that fails to address applicable strategic planning outcomes.

Savings provisions, where they exist, are procedural. They do not convert a non-compliant EIS into a lawful one, nor do they permit the consent authority to disregard endorsed and gazetted strategic controls applying at the time of determination.

Assessment must occur against the planning framework **in force at determination**, not at lodgement; (*Sofi v Wollondilly Shire Council* (1975) 31 LGRA 416).

Reliance on SEARs to avoid this obligation constitutes an error of law.

Where an EIS fails to engage with relevant draft or emerging instruments known at the time of preparation, the consent authority is deprived of the information required to lawfully exercise its statutory discretion.

An SSD cannot be lawfully approved where the EIS omits mandatory matters required by the SEARs, because the decision-maker is thereby prevented from considering all mandatory matters under s 4.15 of the EP&A Act. *Hunter Environment Lobby Inc v Minister for Planning* [2013] NSWLEC 48 at [34]–[38].

6.4 Savings Provisions Cannot Cure a Jurisdictional Defect

Even if it were accepted (which is denied) that the site is listed as a “saved” TOD site, savings provisions:

- do **not** validate an EIS that fails to comply with SEARs;
- do **not** displace the obligation to consider draft or emerging EPIs; and
- do **not** authorise approval of an SSD that is jurisdictionally defective.

As stated earlier, savings provisions are **procedural**, not substantive. They preserve the ability to continue assessment of a validly commenced application; they do not resurrect or legitimise an application that was **never lawfully supported by a compliant EIS**.⁴ *Mison v Randwick Municipal Council* (1991) 23 NSWLR 734 at 739–740.

Where an EIS does not substantially comply with SEARs, the application is legally incompetent and **must be refused**, irrespective of any claimed savings status.

6.5 Consequence — Jurisdictional Failure

Accordingly:

- The SEARs relied upon by the Applicant have **not been lawfully satisfied**;
- The EIS and amended Response to Submissions are **non-compliant** with mandatory SEARs requirements;
- The SSDA is therefore **jurisdictionally defective**;
- “Savings” provisions **cannot apply** to a defective application; and
- The Secretary **lacks power** to grant consent.

In these circumstances, refusal is not discretionary. It is required to avoid jurisdictional error.

The Secretary cannot lawfully approve SSD-81890707 on the basis of an EIS that fails to comply with SEARs and ignores the endorsed strategic planning framework governing the site. Approval in these circumstances would constitute an **error of law**, rendering any consent vulnerable to judicial review under s 9.45 of the EP&A Act. *Besmaw Pty Ltd v Secretary, Department of Planning and Environment* [2017] NSWLEC 74.

7. Heritage Grounds — Failure of Assessment

7.1 12 Stanhope Road (Locally Listed Heritage Item)

The *Heritage Impact Statement — 10, 14 & 14A Stanhope Road, Killara* (12 November 2025, Issued by Urbis as approved by Alexandria Cornish and S Maia Protivinsky) is legally deficient.

In particular, it:

- treats visual mitigation and landscaping as determinative
- fails to assess **setting, scale dominance, curtilage and spatial relationships**
- ignores established heritage principles that visual screening does not negate impact.

This approach is contrary to accepted heritage jurisprudence and policy.

7.2 14 Stanhope Road — Heritage Act Criterion (b)

No. 14 Stanhope Road satisfies **Heritage Act criterion (b)**:

association with a person of importance in NSW's cultural history.

Dr **Margot Hentze** was:

- a pioneering female academic
- directly involved in post-war international reconstruction
- associated with the **United Nations Relief and Rehabilitation Administration (UNRRA)**.

Therefore, 14 Stanhope Road clearly and compellingly satisfies Criterion (b) – Association with a Person of Importance, as it maintains a strong and well-documented association with Dr Margaret (Margot) Hentze. She was a woman of national academic renown and enduring historical importance in New South Wales who lived at 14 Stanhope Road during her formative years and accomplished significant achievements while living there.

The heritage report **entirely fails** to consider associative heritage significance. This omission is material and legally fatal.

8. Public Interest and Litigation Risk

The arguments currently being advanced in the ongoing Land and Environment Court proceedings brought by resident Judith Pearson challenging the NSW Government's Low and Mid-Rise Housing Policy (Mosman LMR proceedings) are directly analogous:

- state-driven uplift overriding local heritage context
- misuse of savings provisions

- procedural unfairness.

Approval of SSD-81890707 would expose DPHI and the IPC to the **same legal vulnerabilities**.

9. Grounds of Refusal

Consent must be refused because:

1. The proposal is inconsistent with **DPHI-endorsed and legislated Ku-ring-gai planning controls**
2. Height and FSR exceed statutory standards by an extreme and unjustified margin
3. The EIS fails to comply with SEARs
4. Savings provisions are improperly relied upon
5. Heritage impacts on 12 Stanhope Road are unacceptable
6. Associative heritage at No. 14 Stanhope Road has been ignored
7. Approval would be legally unreasonable and contrary to the public interest

10. Conclusion

For the reasons set out above, the Secretary **not only may refuse** SSD-81890707 — the Secretary **must refuse** it in order to act lawfully.

Approval would be contrary to:

- the *Environmental Planning and Assessment Act 1979*
- legislated strategic planning controls
- established case law
- heritage protection principles

Sincerely,