

SUBMISSION – OBJECTION TO DEVELOPMENT APPLICATION

Site: Balfour Street / Highfield Road Heritage Conservation Area

Consent Authority: Ku-ring-gai Council

1. Introduction

I object to the proposed development on the grounds that it:

- Will result in serious and irreversible biodiversity impacts;
- Is inconsistent with the Biodiversity Conservation Act 2016 (NSW);
- Breaches the Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015);
- Fails to satisfy Clause 4.6 variation tests;
- Adversely impacts a Heritage Conservation Area;
- Provides inadequate deep soil, setbacks, solar access and amenity;
- Underestimates traffic and parking impacts;
- Is not in the public interest under s 4.15 of the Environmental Planning and Assessment Act 1979 (NSW).

For the reasons below, consent must be refused.

2. Biodiversity – Serious and Irreversible Impacts

2.1 Statutory Framework

Under **Biodiversity Conservation Act 2016 (NSW) (BC Act)**:

- **s 7.3 & s 7.4** require the consent authority to consider whether development is likely to have a *Serious and Irreversible Impact (SAIL)* on biodiversity values.
- Where a SAIL entity is affected, avoidance is the primary requirement.

The Biodiversity Development Assessment Report (BDAR) confirms:

- Presence of Sydney Turpentine–Ironbark Forest (PCT3262);
- It is listed as a SAIL entity;
- It is a Critically Endangered Ecological Community (CEEC);
- The site is mapped as having significant biodiversity value.

Approval would therefore directly authorise destruction of a SAIL ecological community.

2.2 Precautionary Principle

The **EP&A Act s 1.3 (Objects of the Act)** incorporates ecologically sustainable development principles, including the precautionary principle.

In *Telstra Corporation Ltd v Hornsby Shire Council* [2006] NSWLEC 133, the Court confirmed that where there is scientific uncertainty and risk of serious environmental harm, decision-makers must err on the side of caution.

Given the mapped CEEC and corridor function of the site, the precautionary principle mandates refusal.

2.3 Ecological Corridor & Hollow-Bearing Trees

The proposal removes:

- A hollow-bearing native tree;
- 10 additional large canopy trees (including trees over 26m).

Hollow-bearing trees are recognised habitat features critical to fauna species protected under the BC Act.

The loss fragments an established ecological corridor within the Heritage Conservation Area.

The BDAR's own acknowledgment of significant biodiversity value renders the site unsuitable for this scale of development.

3. Non-Compliance with KLEP 2015

3.1 Clause 4.3 – Height of Buildings

- Maximum permitted height: 28.6m
- Proposed height: 33.2m

This is a 4.6m exceedance.

3.2 Clause 4.6 – Exceptions to Development Standards

To vary a development standard, the applicant must demonstrate:

1. Compliance is unreasonable or unnecessary;
2. There are sufficient environmental planning grounds;
3. The proposal is in the public interest.

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, the Court clarified that strict compliance may be unreasonable only in limited circumstances.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, the Court held that a Clause 4.6 request must demonstrate that the objectives of the standard are achieved notwithstanding non-compliance.

Here:

- The height exceedance increases bulk and overshadowing.
- It exacerbates biodiversity loss.
- It undermines heritage character.

The objectives of the height control (scale, compatibility, environmental protection) are not achieved.

The Clause 4.6 tests cannot be satisfied.

3.3 Clause 5.10 – Heritage Conservation

The site is within the Balfour Street/Highfield Road Heritage Conservation Area.

Under Clause 5.10(4), Council must consider whether the proposal:

- Conserves heritage significance;
- Retains landscape setting;
- Is compatible in scale and form.

In *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, the Court emphasised that new development within an HCA must respect established character and setting.

A 33.2m building with major canopy loss is incompatible with the low-scale, landscaped character of the HCA.

3.4 Clause 6.3 – Terrestrial Biodiversity

Consent must not be granted unless Council is satisfied biodiversity values will be conserved.

Given the confirmed CEEC and SAI impacts, this threshold cannot be met.

4. Deep Soil Non-Compliance

Ku-ring-gai DCP requires:

- 50% deep soil for sites over 1,800m².
- Proposal provides 23%.

Deep soil supports:

- Canopy tree retention;
- Habitat restoration;
- Stormwater infiltration;
- Urban cooling.

Such a substantial shortfall undermines ecological function and reinforces that the development intensity exceeds site capacity.

5. Solar Access & Amenity – Apartment Design Guide

The proposal fails key ADG objectives:

- 17 units receive no winter solar access;
- 34 receive less than 2 hours;
- 21 lack cross-ventilation.

Shadow modelling was undertaken at 28.6m rather than the proposed 33.2m height.

In *Parsonage v Ku-ring-gai Council* [2004] NSWLEC 347, the Court emphasised the importance of accurate shadow analysis in assessing amenity impacts.

Reliance on incorrect modelling renders the assessment materially deficient.

6. Traffic & Parking Impacts

Under **EP&A Act s 4.15(1)(b)**, Council must consider likely impacts.

The Traffic and Urban Design Reports fail to adequately address:

- School drop-off queuing along Balfour Street;
- Wallace Parade's narrow width;
- Future closure of Bent Street at Pacific Highway;
- Additional traffic generated by proximity to retail (Coles);
- Garbage and delivery vehicle movements.

ABS Census data demonstrates high vehicle ownership in the Ku-ring-gai LGA, yet parking provision is inadequate and does not accommodate common SUV/4WD vehicle dimensions.

This will result in on-street overflow parking and congestion.

7. Public Interest & Site Suitability

Under **EP&A Act s 4.15(1)(c) & (e)**, Council must consider:

- Suitability of the site;
- The public interest.

A site:

- Mapped as significant biodiversity value;
- Containing a SAI ecological community;
- Forming part of an ecological corridor;
- Located within a Heritage Conservation Area;

is not suitable for over-height, high-density development of this scale.

The public interest requires protection of critically endangered ecological communities and heritage landscapes.

Conclusion

This proposal:

- Authorises destruction of a SAI entity under the BC Act;
- Breaches height controls under KLEP 2015;
- Fails Clause 4.6 jurisprudential tests (*Wehbe*, *Four2Five*);
- Undermines heritage objectives;
- Provides inadequate deep soil;
- Relies on flawed solar modelling;
- Underestimates traffic and parking impacts;
- Is inconsistent with ecologically sustainable development principles.

Under:

- Biodiversity Conservation Act 2016 (NSW);
- Environmental Planning and Assessment Act 1979 (NSW) s 4.15;
- Ku-ring-gai Local Environmental Plan 2015 (Clauses 4.3, 4.6, 5.10, 6.3);

consent cannot lawfully or reasonably be granted.

The development application should be refused in its entirety.