

1 June 2025

Director – Planning Assessments Department of Planning, Housing and Infrastructure
GPO Box 39 Sydney NSW 2001

Email: SSDsubmissions@planning.nsw.gov.au

Subject: Formal Objection to State Significant Development (SSD) Proposal at 10, 14, and 14A Stanhope Road, Killara NSW 2071 (SSD-81890707)

Dear Planning Assessment Officer,

I write to formally object to the State Significant Development (SSD) proposal for 10, 14, and 14A Stanhope Road, Killara. This application, seeking to transform three large residential lots into a high-density complex of 135 apartments, is fundamentally flawed on planning, heritage, environmental, administrative law, and policy consistency grounds. It is inconsistent with statutory planning instruments, severely undermines key heritage protections, and directly misaligns with both public representations and the stated objectives of the NSW Government's housing policy.

As a regular visitor of family residing in Stanhope Road, Killara, I appreciate the beautiful Federation-era houses and the overall character of the conservation streetscape. I am dismayed by the sheer scale and height of this proposed development, which is completely out of character with the area I cherish. If approved, this development will irrevocably harm the very qualities that define Killara, from its established streetscapes, mature trees and heritage conservation areas.

Key Grounds for Objection:

1. Inconsistency with Ministerial Statements and Policy Frameworks

The proposal fundamentally undermines the integrity of public policy and misleads the community:

- The Minister for Planning's media release of 21 February 2025 states that the Low and Mid-Rise Housing Policy aims to "fill the missing middle" with buildings "generally 3–6 storeys in height."
- The Planning NSW website similarly states that "mid-rise housing is generally 3–6 storeys," clearly setting public expectations for moderate-scale developments.
- However, this SSD proposes a 10-storey development, with its highest point at 35m, which exceeds 6 storeys and aligns with a "high-rise" outcome.

- The misleading invocation of “mid-rise” to justify high-rise outcomes erodes public confidence, raises questions of administrative legality (as confirmed in *Minister for Immigration and Border Protection v SZSSJ* [2016] HCA 29 and *Plaintiff M61/2010E v Commonwealth* [2010] HCA 41), and could render subsequent approvals subject to judicial review. Government communication must be accurate to ensure procedural fairness.

2. Overdevelopment and Gross Breach of Planning Controls

The proposed development fundamentally violates applicable planning controls:

- Under the Ku-ring-gai Local Environmental Plan 2015 (LEP), the maximum height limit for this area is generally 9–10.5 metres (approximately 2–3 storeys).
- Even with bonus incentives available under the TOD program, the permitted uplift is capped at 30%. The proposed 10-storey buildings vastly exceed the maximum allowable height even after applying these TOD height limit and bonuses.
- The requested height increase of 6.4m, a significant 22.37% over the base height limit, is not a minor increase and has no justification. This, in addition to the 30% infill housing bonus, means the 35m height is effectively 59% over the existing local zoning (22m).
- The 10-storey proposed development is significantly larger in scale than the highest building in Killara (being 5 storeys). There is no height transition between the proposed development and the predominantly single and double-storey homes of Stanhope Road, creating an abrupt and unsympathetic visual impact on the Heritage Conservation Area.
- The proponent's assertion that "the entire street facing elevation of the development is approximately 18.8m below the maximum permissible building height" is an incorrect assertion and a misrepresentation of fact. The building façade as seen from the street will be 17.9m, which is clearly not 18.8m below 28.6m.
- This is a clear breach of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 (EP&A Act), which mandates compliance with applicable planning instruments, and is inconsistent with *Randwick City Council v Micaul Holdings Pty Ltd* [2007] NSWLEC 225, where non-compliance with height and density controls is only acceptable in exceptional circumstances. No such circumstances exist here.

3. Unacceptable Traffic, Road Safety, and Parking Impacts

The proposal poses substantial safety risks and creates significant local infrastructure issues:

- Stanhope Road is already a busy local thoroughfare that is narrow and insufficient in width to allow larger vehicles such as buses and trucks to pass safely; it barely allows two cars to pass each other.
- The proposed development introduces approximately 195 additional resident vehicle spaces which will egress via the new driveway at 14 Stanhope Road. Given the limited road width, this increase in volume would create a significant safety hazard for drivers, pedestrians, and cyclists, especially during peak hours, and increase the risk of collisions and obstruction of emergency vehicle access especially on a street already constrained by its physical geometry.
- Parking along Stanhope Road is already at capacity; construction worker vehicles will exacerbate this.
- The Werona Avenue and Stanhope Road intersection is single lane in each direction, severely limited by the width railway bridge, and cannot cater for this increased traffic. Vehicles intending to turn right from Stanhope Road into Werona Ave block all other vehicles travelling east on Stanhope Road. Culworth Avenue is also single-lane and unsuitable for managing additional vehicle movements.
- Stanhope Road is a crucial route used by Transport for NSW for train replacement buses during trackwork. The additional 195 vehicles has the real potential to adversely impact Transport for NSW operations, directly obstructing these vital public transport services.
- The developer's proposed "No Right Turn – between 6 AM – 10 AM & 4 PM – 7 PM" signage from Stanhope Road onto the Pacific Highway is inadequate and, critically, creates new problems for existing residents. This measure would merely shift congestion to other local streets and fundamentally fails to address the significant increase in vehicle movements. Specifically, residents exiting the proposed development intending to travel north along Pacific Highway would need to travel via Culworth Avenue and Lorne Street in order to travel north along Pacific Highway. This rerouting would put further immense strain and congestion on these already single-lane local roads, which are wholly unsuitable for this increased volume of traffic.
- A traffic signal at the Stanhope Road/Pacific Highway intersection is a logical solution to manage the immense increase in traffic generated by this development. However, the developer's submission conspicuously lacks any feasibility studies or traffic modelling for such a signal. This omission prevents

Transport for NSW (TfNSW) from undertaking a proper assessment of its viability or design, demonstrating a critical failure by the proponent to adequately plan for the traffic impacts of their proposal.

- The Stanhope Road/Pacific Highway intersection is a complex intersection, which incorporates cars from Fiddens Wharf Road and the Pacific Highway that manoeuvre left and right turns to travel east-west and therefore any traffic study and signal installation would need to coordinate and incorporate the Fiddens Wharf Road/Pacific Highway intersection.
- Under Section 4.15(1)(e) of the EP&A Act, the consent authority must consider the "public interest," which plainly includes traffic and pedestrian safety.
- This proposal fundamentally fails to meet that obligation, consistent with *Zhang v Canterbury City Council [2001] NSWLEC 4* in which the Land and Environment Court emphasised that proposals generating unreasonable traffic and access risks are incompatible with orderly planning and should justify refusal.

4. Heritage Impacts and Critical Value of 14 Stanhope Road

The SSD proposes demolishing 14 Stanhope Road, a significant Federation-era residence:

- The site is located within a Heritage Conservation Area under the Ku-ring-gai Local Environmental Plan (LEP) 2015. Demolition of a contributory heritage item undermines the objectives of both the LEP and the Heritage Act 1977 (NSW).
- The proponent incorrectly states that 14 Stanhope Road does not meet any of the criteria for heritage listing as per the Heritage Act 1977 (NSW). This assertion is false.
- Our research has yielded compelling documentary evidence and legal context demonstrating that 14 Stanhope Road meets multiple criteria under the Heritage Act 1977 (NSW), particularly Criterion (b)—through its profound and well-documented association with Dr Margaret Edith Hentze, an academic and cultural pioneer and intellectual of State significance who featured prominently in the press of her era and who was described as a home-grown celebrity. This criterion recognises places associated with individuals of importance in New South Wales' cultural or natural history. These findings demonstrate that the legal threshold under Criterion (b), as interpreted by the Land and Environment Court of NSW, is unequivocally met.

The proposal disregards statutory heritage conservation controls that apply because each of the component lots—10, 14, and 14a Stanhope Road—is either wholly or partially located within the Stanhope Road Heritage Conservation Area (HCA).

- 14 Stanhope Road is entirely within the mapped Stanhope Road HCA.
- 10 and 14a Stanhope Road are partially within the HCA, specifically their access handles or driveways, which are mapped within the HCA under Schedule 5 of the LEP.

These access handles are legally and physically part of their respective lots and provide the sole vehicular and visual connection to Stanhope Road. Given the above, each of the three lots is either wholly or partially within the HCA and must therefore be assessed in full under the Heritage Conservation controls outlined in clause 5.10 of the Ku-ring-gai LEP 2015. This applies to the entire consolidated development site, which spans across all three lots.

This principle has been affirmed in several key decisions of the NSW Land and Environment Court, including:

- *Terrazzano v Mosman Council* [2004] NSWLEC 671 – the Court found that where a portion of land lies within an HCA, the whole site must be assessed for heritage impact.
- *Carter v Ku-ring-gai Council* [2009] NSWLEC 1444 – the Court confirmed that heritage significance must be assessed across the entire lot, even where only part of it is within an HCA.

The rationale behind this “whole-of-lot” approach is clear: treating only the mapped portion of a lot as subject to heritage provisions would circumvent the intent of heritage protections, eroding the integrity and setting of HCAs.

The Ku-ring-gai DCP (Part 5C – Heritage Conservation Areas) expressly identifies visual continuity, fencing, tree canopy, and access rhythm as contributing elements to the heritage character of streets like Stanhope Road.

Moreover, in *26 Salisbury Pty Ltd v Woollahra Municipal Council* [2024] NSWLEC 1119, the Court refused a mid-rise development in an HCA, emphasising:

- The need to preserve the visual and spatial character of HCAs,
- The importance of visual impact even from marginal or partially included parts of a site,
- And that contribution to the setting is sufficient to trigger the need for heritage-sensitive design.

These principles equally apply to 10 and 14a Stanhope Road, whose access handles are the public interface with the HCA. The visual bulk and design of a 10-storey building terminating at such access points fundamentally alters the experience and integrity of the HCA.

Clause 5.10 of the Ku-ring-gai LEP 2015 requires that development on land within a Heritage Conservation Area:

- Conserve the heritage significance of the area,
- Consider the setting, streetscape, and context, and
- Avoid adverse impacts on the character and rhythm of the HCA.

Because the subject site includes land mapped within the HCA, these obligations apply to the entire consolidated site, including the design, scale, bulk, height, and setbacks of the proposed development.

The SSD proposal, which includes a building exceeding 35 metres in height and 10 storeys, is grossly incompatible with the character and context of the HCA and clearly breaches the objectives of clause 5.10.

The Ku-ring-gai DCP reinforces this obligation by requiring assessment of any development that is:

- “Within or adjacent to a Heritage Conservation Area,” and
- Impacting the visual or physical setting of heritage buildings and subdivision patterns.
- Since each of the consolidated lots are wholly or partially within the Stanhope Road Conservation area, the whole of the consolidated lot must comply with HCA controls.

Under section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, consent authorities must consider applicable environmental planning instruments (e.g., the Ku-ring-gai LEP) when assessing development.

Under section 4.15(1)(b), the likely impacts of the development must include environmental impacts on the natural and built environment, which encompasses heritage impacts.

To approve this development without fully assessing the proposal under clause 5.10 of the LEP would be to act contrary to statute and the public interest.

5. Non-Compliance with TOD Program Requirements

The development misapplies TOD uplift justifications:

- The site is 450m walking distance from Killara station, placing it within the 800m but greater than the 400m walking distance where maximum uplifts apply.

- The TOD guidelines permit only moderate increases for the 400–800m band, subject to local character and infrastructure constraints. The development’s bulk, scale, and massing disregard these parameters, undermining both the letter and spirit of the TOD Program.

6. Environmental Degradation and Urban Forest Loss

The SSD will result in unacceptable ecological damage:

- The SSD critically downplays the significance of the Critically Endangered Sydney Blue Gum Forest and the Turpentine Ironbark Forest located on the sites. There are 3 biodiversity mapped areas within the site, indicating its profound ecological significance.
- Contradictory statements within the reports regarding tree removal – some state “all trees” will be removed, while others suggest some might be retained but would likely not be viable after extensive excavation. The removal of these trees would be an immense environmental and biodiversity concern.
- This is directly contrary to the Ku-ring-gai Urban Forest Strategy and breaches the EP&A Act’s Section 1.3(d), which requires ecologically sustainable development.
- In *Boener v Sydney Water Corporation* [2005] NSWLEC 101, Preston CJ affirmed that tree removal should not proceed without compelling justification and detailed assessment — both of which are absent here.
- The removal of canopy will exacerbate urban heat island effects, reduce biodiversity, and severely degrade local residential character and amenity.
- Furthermore, the developer has not conducted comprehensive fauna surveys. This critical omission, given the known presence of threatened species (e.g., Grey-headed Flying Fox, Glossy Black Cockatoo, Eastern Pygmy Possum, Squirrel Glider), is unacceptable.
- There are significant sustainability concerns regarding the huge waste of building resources involved in demolishing three substantial, existing homes.

7. Deficient Design and Poor Amenity Outcomes

The proposed design is of poor quality that the residents of the units would likely lack real enjoyment:

- The proposed development is aesthetically not sympathetic to the heritage context of Stanhope Road.
- Many units in the development will have limited or zero solar access during winter, and 70% are without cross-ventilation, leading to poor internal amenity.

- There are numerous deviations from the Building Code of Australia, including issues with balcony size, public corridor lengths, and fire exits. Critically, many units (in Buildings B and C) are without external access to a fire truck on the north, east, and west sides of the building, raising serious safety concerns.
- The Clause 4.6 request is unsatisfactory, failing to provide sufficient environmental planning grounds for the extent of non-compliance. There are no unique site circumstances to justify the breach. The argument that compliance would impact the heritage context is unsubstantiated, and the claim that the majority of the development sits below the height limit is not a valid argument for non-compliance.
- Mere inconvenience or economic viability should not be sufficient. Any argument that compliance would be more difficult or expensive should not be accepted.
- The premise that Council has abandoned height standards is incorrect based on the *Guide to Varying Development Standards*. The precedent provided in the 4.6 report misleadingly refers to DA466/22 which is a small-scale development comprising 3 storeys on Pacific Highway at Roseville which is in no way comparable with the scale and height of development proposal under SSD-81890707.

8. Inadequate Community Consultation and Procedural Unfairness

The manner of community consultation for this State Significant Development was deficient, with most residents unaware of the proposal until its SSD submission. The Engagement Outcome Report is insufficient in its findings.

- Approving the SSD now would breach the fundamental principles of procedural fairness (*Kioa v West (1985) 159 CLR 550*) and *Minister for Immigration and Border Protection v SZSSJ [2016] HCA 29*.
- The NSW Government and Ku-ring-gai Council are currently negotiating the final form of a revised Transport Oriented Development (TOD) Scenario 3B for the Killara precinct; the height, density, open space, and heritage protection controls applicable to this site remain under review.
- Approval of the SSD before finalisation of the TOD Scenario 3B would pre-empt the outcome of these negotiations and deny residents their right to be consulted on the final planning framework. Such an approach would expose the approval to serious legal risk.

9. Significant Social Infrastructure Impacts

The SSD is alarmingly silent on the social implications and capacity of local infrastructure:

- The SSD fails to address the impact on, or ability of, local schools (Killara High School is already at capacity), medical facilities (significantly lacking in Killara), and other amenities to accommodate the increase in population from 135 apartments.
- There is no town centre in Killara and therefore residents would be reliant on travelling most likely by car to Lindfield or Gordon for supermarket and basic supplies.

10. Misleading Statements in the EIS

Several statements in the application are inaccurate or deceptive:

- The claim that the building remains below the height limit due to a misleading measurement of street-level elevation is flawed and inconsistent with *Stockland Development Pty Ltd v Manly Council [2004] NSWLEC 472*.
- The significance of the vegetation on site is downplayed, with the EIS initially describing the Critically Endangered Ecological Community (CEEC) as "common tree found in the Ku-ring-gai area," despite its highest level of conservation importance under NSW (BC Act) and Commonwealth (EPBC Act) legislation.

11. Administrative Law and Responsible Government

There is a serious issue of governance and public accountability:

- Government decisions must be transparent, consistent, and lawful. Misleading public communication regarding building height and density undermines public trust and exposes decisions to legal challenge.
- The principle in *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273 supports the idea that public expectations formed by official statements can carry legal significance in administrative processes. Continuing to approve 10+ storey developments under the guise of "mid-rise" may constitute a breach of the doctrine of responsible government.
- Ku-ring-gai Council has formally opposed the proposal, consistent with its obligations under the *Local Government Act 1993*.
- The Council's position reflects significant and widespread community concern, and must be afforded appropriate weight under principles of participatory planning and local democracy.

12. Legal and Procedural Concerns

- The applicant, *Stanhope Rd Residence Holdings Pty Ltd*, is **not a registered legal entity** under ASIC. This means it cannot legally enter into contracts, hold land, or be held accountable for any obligations under the SSD or DA.
- The contact developer listed in the documentation is **CPDM Pty Ltd** (ABN 60 166 522 201), which appears to be acting on behalf of the non-existent entity. This

raises serious concerns about the legal enforceability of any conditions of consent, should approval be granted.

- The Department must reject any application made by or on behalf of a purported entity that has no proper legal standing to carry out a development of this scale.

Conclusion

In light of the compelling reasons outlined above, I respectfully request that the Department:

- **Refuse the SSD application in its current form.**
- **Suspend all consideration pending:**
 - Finalisation and public exhibition of Ku-ring-gai TOD Scenario 3B for the Killara precinct.
 - Determination of the State Heritage Listing for 14 Stanhope Road; and
 - Submission of comprehensive and accurate traffic studies and modelling for a traffic signal at the Stanhope Road/Pacific Highway intersection, coordinating with Fiddens Wharf Road.
- Correct public communications to reflect that “mid-rise” housing is generally 3–6 storeys and ensure transparent alignment between policy messaging and planning outcomes.

Killara’s unique heritage, urban character, and environmental integrity must not be sacrificed to unjustified overdevelopment. I urge the Department to uphold legal standards, planning integrity, and community expectations.

Thank you for considering this submission.

Yours faithfully,