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3 June 2025

The Hon. Paul Scully MP
Minister for Planning and Public Spaces
NSW Department of Planning, Housing and Infrastructure

Submitted via the Planning Portal

Dear Minister Scully

Letter of objection to the EIS for State Significant Development Application SSD-81890707 Residential flat buildings at 10, 14 and 14a Stanhope Road, Killara

Introduction

1. Background and summary of objections

- 1.1 We act for Anne Bi and Jane Bi, the owners of the dwelling at 12 Stanhope Road, Killara (our clients' **Home**).
- 1.2 The land immediately surrounding our clients' Home is proposed to be developed to construct 2 residential flat buildings (**RFBs**), providing 135 apartments / units and extensive basement parking for 195 car parking spaces, being the development the subject of State Significant Development Application SSD-81890707 (**SSDA**).
- 1.3 Our clients very recently purchased their Home, having only settled on 14 May 2025. It was only after this time that they became aware of the SSDA. In fact, they were only made aware of the SSDA on 29 May 2025.
- 1.4 The SSDA concerns land at 10, 14 and 14a Stanhope Road, Killara (**Development Site**),¹ which is located within the local government area (**LGA**) of Ku-ring-gai Council (**Council**).
- 1.5 The purpose of this letter is to outline our clients' vehement objections to the SSDA, including on the basis that:
 - 1.5.1 **Objection Ground 1** – the SSDA fails to consider the Council's "*Preferred Scenario*" (**Preferred Scenario**) in terms of achieving the development yield envisaged in Chapter 5 of *State Environmental Planning Policy (Housing) 2021 (TOD SEPP)*, including the extent to which the proposal does not comply with the substantially reduced building height and floor space ratio (**FSR**) development standards identified in that draft instrument;
 - 1.5.2 **Objection Ground 2** – the excessive building height proposed exceeds even those controls prescribed in the TOD SEPP, let alone the Council's Preferred Scenario;

¹ Comprising the land in Lot B DP326483 (10 Stanhope Road) and Lots 1 and 2 DP224907 (14 and 14a Stanhope Road).

- 1.5.3 **Objection Ground 3** – the unacceptable impacts on heritage, including to our clients' Home which is a listed heritage item, along with other heritage items in the immediate vicinity of the Development Site and to the mapped heritage conservation area more broadly;
 - 1.5.4 **Objection Ground 4** – the adverse amenity impacts caused to our clients' enjoyment of their Home, particularly by reason of an unacceptable intrusion into their visual and acoustic privacy;
 - 1.5.5 **Objection Ground 5** – the unacceptable impacts to our clients caused by overshadowing by the Proposed Development; and
 - 1.5.6 **Objection Ground 6** – the resultant site isolation of our clients' Home, which will be rendered incapable of future development or otherwise adversely impacted as a result of the SSDA.
- 1.6 As we outline in these grounds of objection, there are numerous fundamental power issues which, in our view, have the result that the Minister **must** refuse to grant consent to the SSDA. This includes (inter alia) that:
- 1.6.1 the SSDA fails to include consideration of numerous mandatory matters of consideration required by s 4.15 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* which necessarily gives rise to errors of law;
 - 1.6.2 the EIS is not substantially in accordance with the Secretary's Environmental Assessment Requirements issued on 4 April 2025 (**SEARs**), which is a breach of s 191 of the *Environmental Planning and Assessment Regulation 2021 (EP&A Regulation)*, and has the consequence that the SSDA is not a competent application; and
 - 1.6.3 the SSDA does not comply with essential jurisdictional preconditions in the *Ku-ring-gai Local Environmental Plan 2015 (KLEP)*, including because:
 - (a) the SSDA relies upon a written request under cl 4.6 in respect of the proposed building height which exceeds the controls prescribed in the TOD SEPP, and that request does not satisfy the jurisdictional preconditions of that clause; and
 - (b) the SSDA does not undertake an assessment of heritage in a manner required by cl 5.10, which similarly imposes jurisdictional constraints on the grant of consent.
- 1.7 Any decision of the Minister to approve the SSDA, in these circumstances, would be *ultra vires* or beyond power.
- 1.8 In addition to this, there are a raft of merit issues which, in our view, cannot be overcome. This is because the Proposed Development is simply of a scale, form and character which is inappropriate and unsuitable given the sensitive heritage and low-density residential context.
- 1.9 The Proposed Development also results in significant adverse impacts to the adjoining sites and particularly to our clients' Home (which is a listed heritage item). The SSDA reflects a gross overdevelopment of the site, which is incapable of existing in harmony with surrounding land uses, and which results in poor planning outcomes in almost every respect.
- 1.10 To this extent, the SSDA reflects an abuse of the TOD SEPP, the stated intention of which is to "*deliver more affordable, **well-designed** and **well-located homes***".² As this submission

² DPHI website, 'Transport Oriented Development', accessed online: <https://www.planning.nsw.gov.au/policy-and-legislation/housing/transport-oriented-development-program/transport-oriented-development>

makes plain, the Proposed Development does not achieve these objectives – it only provides the minimum amount of affordable housing, the design is not appropriate or responsive to the context, and the Development Site is unsuitably located in an area of rich heritage value. The SSDA reflects a blatant attempt to ‘shoehorn’ what would otherwise be prohibited development into a small-scale suburban environment, with little to no regard to the impacts of that development on the community.

1.11 It follows that the Minister cannot be satisfied that:

1.11.1 the likely impacts of the Proposed Development are acceptable, as per s 4.15(1)(b);

1.11.2 the Development Site is suitable for the Proposed Development, as per s 4.15(1)(c); or

1.11.3 the grant of consent is in the public interest, as per s 4.15(1)(e).

1.12 So even if the power issues identified earlier can be overcome (which seems unlikely), the Minister should nevertheless refuse consent to the SSDA on the basis that it is unmeritorious and results in poor planning outcomes.

1.13 In support of these submissions, our clients have also engaged a town planner, Emma Rogerson of Corona Projects, to prepare a letter of opinion in response to the SSDA (**Planning Opinion**). A copy of that Planning Opinion is enclosed at **Annexure A** and is relied upon by our clients to supplement the matters raised in this letter of objection.

2. The Proposed Development

2.1 The Environmental Impact Statement prepared by Gyde dated 22 April 2025 (**EIS**) describes the proposal as follows:³

The proposed development is the demolition of existing structures and the construction of a part 3 to part 10 storey residential flat building with in-fill affordable housing and associated works. The proposal will include:

- Demolition of existing structures and site preparation / earthworks;
- Construction of a basement level and 2 lower ground levels including 195 car parking spaces with vehicular access via Stanhope Road;
- Construction of a 3-10 storey residential flat building across 3 apartment blocks, including 135 units comprising a mix of 1, 2, 3 and 4 bedroom apartments; and 26 affordable units;
- Multiple communal open spaces on the ground floor and roof terraces; and
- Landscape works.

(the **Proposed Development**).

2.2 At first instance, we note that the above description does not capture the significant scale of the Proposed Development, which is to be situated in a predominantly low density residential context, typified by detached dwellings on generous blocks in leafy landscaped settings, also being within a heritage conservation area.

2.3 This context is acknowledged in the EIS which says that “*Killara is largely characterised by large free-standing houses*” and that “[t]o the south and west of the site is largely low density, detached residential dwellings, and to the east, and immediately north of the site comprises mid-rise residential flat buildings”.⁴

³ EIS, Part 1.3, page 3.

⁴ See also the description of the setting in Part 2.2 of the Heritage Impact prepared by Urbis dated 24 April 2025 (**HIS**) which says that “*the urban context surrounding the site is predominantly low-density residential development immediately neighbouring the site to Stanhope Street with some mid-scale multi-residential development to the north..*”.

- 2.4 As against this backdrop, the SSDA proposes to construct what is essentially 3 large residential towers in a battle-axe style layout, with:
- 2.4.1 the primary 10 storey building (providing 115 units), comprised of 2 key towers, sitting in the middle of a cluster of residential dwellings and small scale RFBs – referred to in some of the material as “*Building B*” or “*Buildings B and C*”; and
 - 2.4.2 a secondary 6 storey building fronting Stanhope Road, which functions to provide the only driveway to the subterranean basement servicing all towers, and an additional 20 units – referred to in some of the material as “*Building A*”.
- 2.5 Figure 1 below shows this “*atypical arrangement*”,⁵ with the Development Site bounded in red:



Figure 1: Extract of Figure 10 from the EIS showing the Development Site and the battle-axe style frontage to Stanhope Road

- 2.6 Figure 2 is an extract from the architectural plans which shows the proposed built form in relation to our clients’ Home, which we have highlighted in yellow for convenience.



Figure 2: Extract of the Level 1 Plan – see Drawing DA104 Rev 01 at Appendix 5a to the EIS

3. Relationship between the Development Site and our clients’ Home

- 3.1 As outlined earlier, our clients’ Home is the property at 12 Stanhope Road, Killara.
- 3.2 It is a 2 storey free-standing dwelling house which has its only private open space to the rear, including a paved terrace, lawn area, above-ground swimming pool and tennis court.

⁵ Being the language adopted in the HIS, page 5.

- 3.3 It is presently nestled between other similar dwelling houses on all boundaries, except for the southern boundary which fronts Stanhope Road.
- 3.4 The outcome is that our clients' Home enjoys a high degree of residential amenity including privacy (noting that it is not overlooked by any of its neighbours) and solar access, and has the benefit of generous landscaping along all side setbacks.
- 3.5 Figure 3 below is an aerial image extract from Nearmaps which shows the layout of our clients' Home, and Figure 4 is an extract from Realestate.com which shows the amenity enjoyed by the property, consistent with the above description.

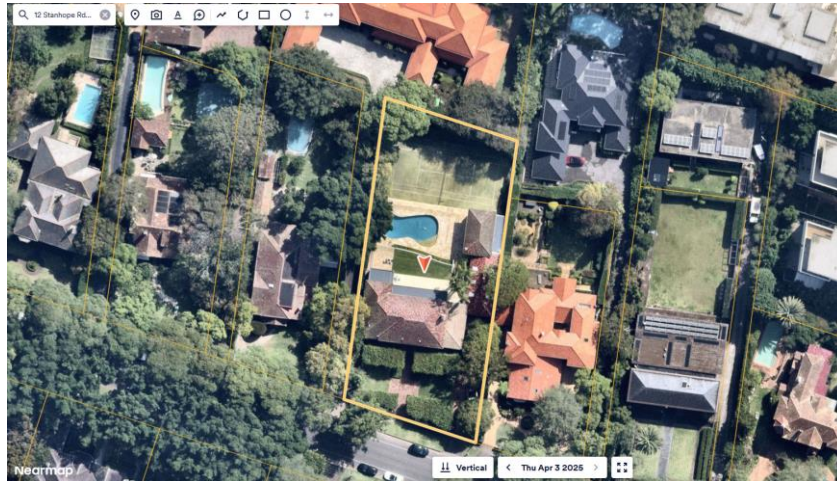


Figure 3: Extract from Nearmaps with 12 Stanhope Road marked in yellow



Figure 4: Extract from Realestate.com showing 12 Stanhope Road
(accessed: <https://www.realestate.com.au/property/12-stanhope-rd-killara-nsw-2071/>)

- 3.6 It is also noteworthy that our clients' Home is listed as a heritage item (#1388) for the purpose of cl 5.10 and Sch 5 of the KLEP.
- 3.7 As is discussed in more detail in Objection Ground 3 (see Part 7 below), the Statement of Significance for Item #1388 acknowledges the heritage value of our clients' Home, which is built in the Georgian Revival style, including the "mature gardens" and landscaped setting

3.8 An appreciation of this context is important when considering the form and scale of the Proposed Development and the likely impacts to our clients' Home.

4.1 The Development Site is located within the R2 Low Density Residential zone (**R2 Zone**) pursuant to the KLEP. Development for the purpose of RFBs are an innominate prohibited use in the R2 Zone.

4.3 In this case, the Development Site is mapped on the Transport Oriented Development Sites Map, which means the TOD SEPP prevails over the zoning provisions in the KLEP to the extent of an inconsistency.⁸

4.4 This overcomes the issue of permissibility and gives the Applicant the benefit of various development uplifts.⁹ However, it does not enable a consent authority to otherwise avoid undertaking a comprehensive assessment of the proposal as against each of the heads of consideration in s 4.15 of the EP&A Act.

4.5 This much is plain from the Department of Planning, Housing and Infrastructure (**DPHI**) *Guidance to Transport Oriented Development* (May 2024) (**TOD Guide**) which reinforces that the permissibility of a proposal under the TOD SEPP does not remove the requirement to undertake a fulsome assessment of the proposal as otherwise required by the EP&A Act¹⁰

4.6 That is, the TOD SEPP should not be used as a vehicle to parachute large-scale housing projects into areas which are inappropriately located to co-exist with higher-density developments. This is reflected in the aims of the TOD SEPP, as expressed in cl 150, which expressly identifies the desire to ensure that RFBs are “*well designed*” and “*are of appropriate bulk and scale*”.

4.7 Similarly, the Transport Oriented Development Program¹¹ states that:

The new planning controls will apply in heritage conservation areas. However, a merit-based assessment will continue to apply to developments in these locations and relevant heritage controls will apply to the extent they are not inconsistent with the new standards.

4.8 So reliance on the TOD SEPP alone as a justification for a proposal is insufficient, and an Applicant is required to demonstrate that a proposal is otherwise satisfactory and acceptable having regard to the statutory assessment framework for development applications and applying recognised planning principles.

4.9 This means that the Minister **must**, when determining the SSDA, consider matters including (inter alia):

⁶ The Statement of Significance is extracted at Part 4.3.1 of the HIS, at page 32.

⁷ TOD SEPP, cl 150(a).

⁸ TOD SEPP, cll 153 and 154.

⁹ For example, in relation to building height and FSR.

¹⁰ TOD Guide, page 4.

¹¹ DPHI, Transport Oriented Development Program (December 2023), page 11.

- ## Grounds of objection

5. Objection Ground 1: Failure to consider the Council's Preferred Scenario

- ¹² Item 1 of the Mediation Agreement dated 21 November 2024.

Consistent with the approach it has taken with other Councils, the NSW Government is supporting Ku-ring-gai Council as it develops specific planning controls that deliver at least equivalent dwelling capacity to the TOD program, intended to culminate in an amendment to the TOD SEPP. **As a consequence, the planning controls applicable to the Ku-ring-gai LGA in the TOD SEPP might change.** The process is expected to be completed by May 2025.

[Emphasis added]

- 5.7 Since then, the following developments have occurred:¹³
- 5.7.1 in November and December 2024, Council exhibited four alternative scenarios to the arrangements under the TOD SEPP;
 - 5.7.2 feedback was collated and at an Extraordinary Meeting of the Council on 31 March 2025, Council endorsed placing the “*preferred scenario*” on exhibition; and
 - 5.7.3 the Preferred Scenario was exhibited for a period of 21 days commencing on or about 4 April 2025.
- 5.8 In our view, the Preferred Scenario is a draft instrument for the purpose of s 4.15(1)(a)(ii) and **must** be considered by the Minister in its assessment of the SSDA.¹⁴
- 5.9 The Preferred Scenario is otherwise a recent document evidencing Council's strategic planning objectives for the Development Site and is, therefore, relevant under the public interest head of consideration in s 4.15(1)(e) of the EP&A Act: see *Maygood Australia Pty Ltd v Willoughby City Council* [2013] NSWLEC 142.
- 5.10 Relevantly, Council's website confirms that the intent of the Preferred Scenario is to (inter alia):¹⁵
- 5.10.1 “*protect*” heritage conservation areas and by doing so, “*preserve[s] early 20th century neighbourhoods which have been assessed as being unique in Sydney*”; and
 - 5.10.2 limit building heights near low-density areas “*to reduce the impact of new development on neighbouring properties*”.
- 5.11 In this regard, it is relevant to note that under the Preferred Scenario, the Development Site remains zoned R4 High Density Residential (consistent with the existing provisions of the TOD SEPP), however, it is subject to the following development standards:
- 5.11.1 a maximum building height of 9.5m;¹⁶ and
 - 5.11.2 a maximum floor space ratio (**FSR**) of 0.3:1;¹⁷
- over the majority of the Development Site.

¹³ See Council's website, accessed online: [Ku-ring-gai Council | Transport Oriented Development - Preferred Alternative Scenario](#)

¹⁴ To the extent that there is any uncertainty as to the status of the Preferred Scenario, we refer to and rely on the reasoning of Pepper J in *Maygood Australia Pty Ltd v Willoughby City Council* [2013] NSWLEC 142 at [34], where her Honour says that where there is some uncertainty whether a proposed EPI or a gazetted EPI is a relevant consideration under 4.15(1)(a)(ii), it may still be relevant as an aspect of the public interest under s 4.15(1)(e) of the EP&A Act. In either event, the Preferred Scenario is a mandatory relevant matter for consideration under s 4.15.

¹⁵ See Council's website, accessed online: [Ku-ring-gai Council | Transport Oriented Development - Preferred Alternative Scenario](#)

¹⁶ See the Height of Buildings Map at page 22 of the Preferred Scenario: Exhibition Document (4 April 2025)

¹⁷ See the Floor Space Ratio Map at page 24 of the Preferred Scenario: Exhibition Document (4 April 2025)

- 5.12 Interestingly, these controls are consistent with the *existing* development standards that would apply to the Development Site under the KLEP but for the application of the TOD SEPP.
- 5.13 The Proposed Development is significantly non-compliant with these development standards, as outlined in the table below:

Control	Proposal	TOD SEPP control	Preferred Scenario / KLEP control	Extent of non-compliance
Building height	35m	28.6m (being 22m + 30% uplift for providing 15% of GFA as affordable housing)	9.5m	<u>Additional 6.5m above the TOD SEPP control, and 25.5m above the Preferred Scenario / KLEP control</u>
FSR	2.22:1	3.25:1 (2.5:1 + 30% uplift for providing 15% of GFA as affordable housing)	0.3:1	Compliant with the TOD SEPP control, but <u>significantly above the Preferred Scenario / KLEP control</u>

- 5.14 The SSDA is supported by a written request submitted pursuant to cl 4.6 of the KLEP (**4.6 Request**)¹⁸ which seeks to justify the proposal's non-compliance with the building height controls imposed under the TOD SEPP, although is silent as to the non-compliance with the Preferred Scenario.
- 5.15 The fact that the SSDA (including the 4.6 Request) does not consider or respond to the Preferred Scenario and the abovementioned non-compliances is somewhat surprising, given that the EIS post-dates the commencement of the public exhibition of the Preferred Scenario.¹⁹ To this extent, the Applicant was surely aware of the Preferred Scenario at the time the EIS was submitted to DPHI for assessment.
- 5.16 This causes significant challenges to the lawful assessment of the SSDA because a development application must be determined having regard to the law that applies at the time of *determination* of the application – not the time of *lodgement*.²⁰
- 5.17 Further, it also likely has the result that there has not been substantial compliance with the SEARs which expressly provides that the EIS **must** (our emphasis added):
- Address all relevant legislation, environmental planning instruments (EPIs) (including drafts), plans, policies, guidelines and planning circulars.
 - Identify compliance with applicable development standards and provide a detailed justification for any non-compliances.
- 5.18 The fact that the EIS is silent regarding the Preferred Scenario (and the extent to which the Proposed Development does not comply with that draft instrument) means that it does not comply with the SEARs, in breach of s 191 of the EP&A Regulation. The SSDA is therefore incompetent as a matter of law.
- 5.19 Consequently, any decision of the Minister to approve the SSDA in the absence of a detailed consideration of the Preferred Scenario would be *ultra vires* – being a decision infected by

¹⁸ The 4.6 Request is prepared by Gyde and dated 22 April 2025, at Appendix 4 to the EIS.

¹⁹ The EIS is dated 22 April 2025, and the Preferred Scenario was exhibited on or around 1 April 2025.

²⁰ *Sofi v Wollondilly Shire Council* (1975) 31 LGRA 416.

5.20 In circumstances where:

- 5.20.1 the Council's legal challenge to the validity of the TOD SEPP remains on foot;
- 5.20.2 it is clear that the Council and the State are in active negotiations as to the Preferred Scenario, which aims to deliver the housing yield envisaged under the TOD SEPP but in a more nuanced and sensitive way;
- 5.20.3 the Proposed Development is significantly non-compliant with the draft controls which have been exhibited as part of the Preferred Scenario; and
- 5.20.4 the SSDA does not include the information expressly requested in the SEARs as to the extent to which the Proposed Development complies (or does not comply) with development standards in relevant instruments and draft instruments,

5.21 To do otherwise would be to give this developer the benefit of a significant development uplift where there is a clear concern, expressed by the Council, that the controls undermine good planning outcomes in its LGA, particularly given the sensitive heritage context.

- 5.22 It would also infringe the public interest where the Council's latest strategic planning documentation (as reflected in the Preferred Scenario) reflects a deliberate intention **not** to adopt the built form that might otherwise be presently allowed for under the TOD SEPP because of the heritage and low density residential context of the Development Site.

6. Objection Ground 2: Excessive building height

- 6.1 As identified in the table at paragraph [5.13] above, the Proposed Development is significantly non-compliant with not only the controls that would apply under the Preferred Scenario, but also the applicable controls under the TOD SEPP (as they exist at the time of writing).
- 6.2 The SSDA relies upon a 4.6 Request to justify the 6.5m or 22.7% exceedance of the 28.6m height limit imposed under the TOD SEPP, even accounting for the 30% bonus height awarded because of the provision of affordable housing as part of the proposal.
- 6.3 The 4.6 Request appears to primarily justify the non-compliance on the basis that the Applicant is seeking to deliver the greatest housing yield possible on the Development Site (noting the desire to provide more housing to address the housing crisis), whilst still seeking to “*retain and protect*” the heritage significance of our clients’ Home at 12 Stanhope Road and to the heritage conservation area more broadly. They say this has resulted in a reduced built form in the secondary tower which fronts Stanhope Road (‘Building A’), and requires additional yield to be provided by the dominant rear tower (‘Building B’).
- 6.4 This justification is inadequate to overcome the jurisdictional constraints of cl 4.6 which expressly provides that consent **must** not be granted unless the consent authority is satisfied that the Applicant has demonstrated that:²¹
 - 6.4.1 compliance with the development standard is unreasonable or unnecessary in the circumstances; and

²¹ KLEP, cl 4.6(3)(a) and (b).

- The proposed building form and scale delivers a development that is generally in compliance with the bonus provisions of the TOD and in-fill affordable housing of the Housing SEPP. The height non-compliance is largely as a result of the project being focused on protecting the heritage significance of the dwelling at 12 Stanhope Road and the Stanhope Road Conservation Area. The proposed

²³ EIS, page 26.

development is substantially below the maximum building height requirement at the frontage of the site and exceeds the maximum building height requirement at the rear of the site where the impacts are reduced and negligible.

- 6.12 Our clients strongly disagree with the characterisation of the proposal as being “*generally in compliance*” with the building height control, and also objects to conclusions that the impacts to the heritage significance of their Home are “*reduced and negligible*”. In this regard, we rely on our detailed submissions outlined in Objection Grounds 1 (see Part 5) and Ground 3 (see Part 7) of this submission.
- 6.13 We note that while development standards relating to height and FSR are intended to set a “*maximum*” expectation as to built form, whether such an intensity is nevertheless *achievable* is something that needs to be assessed having regard to various site constraints, following a review of the proposal as a whole.
- 6.14 In this case, the heritage context of the Development Site is a significant site constraint which necessarily means that the unit yield envisaged by the developer is simply unachievable based on the current site arrangements.
- 6.15 Similarly, the fact that the Proposed Development is situated in a low density residential context means that a substantially smaller scale of development is likely necessary in order to balance the impacts of the proposal to neighbouring landowners, including our clients.
- 6.16 There are, therefore, ample reasons for the Minister to form the view that the SSDA should be refused on the basis that the height of the Proposed Development is excessive and is not capable of support on merit, either by reference to:
 - 6.16.1 the Council’s Preferred Scenario which envisages building heights of no greater than 9.5m in this location; or
 - 6.16.2 the TOD SEPP, noting that the proposal exceeds even the 28.5m height limit prescribed under that instrument.
- 6.17 The Planning Opinion enclosed at Annexure A of this submission addresses the impacts arising from the excessive height of the Proposed Development and further supports the matters raised above.

7. Objection Ground 3: Unacceptable impacts on heritage

- 7.1 The Development Site is located in an area of rich heritage significance. Specifically, the Development Site is mapped within the Stanhope Heritage Conservation Area (C25) under Part 2 of Sch 5 to the KLEP (**Stanhope HCA**), and is also located in an area densely populated by heritage items, including but not limited to our clients’ Home at 12 Stanhope Road, being Item #I388.
- 7.2 The deficiencies in the SSDA in relation to heritage are 3-fold:
 - 7.2.1 *firstly*, the SSDA does not include any assessment of the impacts of the Proposed Development on relevant heritage items and on the Stanhope HCA more generally;
 - 7.2.2 *secondly*, the conclusions reached in the HIS as to the acceptability of the Proposed Development rely significantly on achieving the planning objectives of the TOD SEPP, rather than demonstrating how the impacts are acceptable on heritage grounds; and
 - 7.2.3 *thirdly*, a review of the proposed architectural plans identifies that the scale, form and character of the Proposed Development will significantly undermine and adversely impact on the heritage values of Item #I388 (our clients’ Home).

7.3 We consider each of these in more detail below.

Failure to consider impacts to relevant heritage items and the Stanhope HCA

7.4 Figure 4 below is an extract from the HIS which shows the Heritage Map to the KLEP:



Figure 4: Extract of Figure 3 from the HIS showing the Development Site in the context of the Stanhope HCA (hatched in red) and local heritage items (shaded in gold)

7.5 Despite including this image which clearly shows the extent to which the Development Site is mapped within the Stanhope HCA, and that there are at least 10 heritage items in the immediate vicinity of the Development Site, the HIS only identifies (in a cursory manner) the following 3 heritage items:

- 7.5.1 Item #1388 "Dwelling House" at 12 Stanhope Road;
- 7.5.2 Item #1387 "Dwelling House" at 7 Stanhope Road; and
- 7.5.3 Item #1386 Dwelling House" at 6 Stanhope Road.

7.6 The HIS extracts the Statements of Significance for each of these heritage items and the Stanhope HCA at Part 4.3 of the document, but otherwise provides no substantive impact assessment whatsoever (either in Part 6 "*Impact Assessment*" or elsewhere in the HIS) in respect of the likely impacts of the Proposed Development to each of these items and the Stanhope HCA more generally.

7.7 Critically, the HIS does not acknowledge or assess the impacts of the Proposed Development on the heritage significance of the *other* heritage items on the map, all of which are located within approximately 130m from the Development Site and contribute to the heritage values of the Stanhope HCA. This includes:

- 7.7.1 Item #1382 "Dwelling House" at 2 Stanhope Road;
- 7.7.2 Item #1383 "Dwelling House" at 3 Stanhope Road;
- 7.7.3 Item #1385 "Rydal Mount", "Dwelling House" at 5 Stanhope Road;
- 7.7.4 Item #1389 "Dwelling House" at 18 Stanhope Road;
- 7.7.5 Item #1390 "Delville", "Dwelling House" at 21 Stanhope Road; and
- 7.7.6 Item #1340 "The Oaks", "Dwelling House" at 517 Pacific Highway.

- ²⁸ HIS, Part 6.2, page 62.

7.18 This reliance on the alleged achievement of the planning objectives of the TOD SEPP is misplaced and subverts the nature of the impact assessment required under cl 5.10 of the KLEP.

7.19 This is because it seeks to rely on the TOD SEPP as an overarching justification for the proposal, despite the fact that the TOD SEPP only answers the permissibility component and does not override the need for the consent authority to be satisfied that the impacts of a proposal are acceptable such that consent should be granted. This is discussed earlier in Part 4 of this submission.

7.20 The impact assessment in Part 6 of the HIS is, therefore, inadequate in demonstrating how and why the impacts of the Proposed Development are acceptable from a heritage perspective, as required by cl 5.10 of the KLEP and ss 4.15(1)(b) and (c) of the EP&A Act.

7.21 In fact conversely, the assessment in Part 6 identifies various impacts which arguably demonstrate why a proposal of this kind is *not* acceptable having regard to the heritage values of the locality, including because:

7.21.1 the scale and typology of the proposal is starkly contrasted to the low-density residential context and contrary to the characteristics of the Stanhope HCA; and

7.21.2 the vertical scale and massing of the Proposed Development will impact the views and vistas to and from various heritage items in a manner which will result in a “*degree of change*”, which is not quantified in the HIS, and that such impacts cannot be reasonably mitigated.

7.22 Therefore, the information submitted with the SSDA supports a position that the heritage impacts of the Proposed Development are not acceptable and that the Development Site is not suitable for the proposal given the proximity to a high density of heritage items which, separately and collectively, contribute to the heritage value of the Stanhope HCA. It follows that the Minister should refuse to grant consent to the SSDA.

7.23 The potential impacts foreshadowed in Part 6 of the HIS, summarised above in paragraph [7.16], will play out most starkly when considering the likely impacts of the Proposed Development to the heritage values of our clients' Home at 12 Stanhope Road.

7.24 These impacts will be most prominent when the item is viewed from the public domain from the south, along Stanhope Road. This is because the 2 storey brick residence will be visually dominated – both by the RFB tower to the east ('Building A'), but most significantly by the 10 storey twin towers to the rear of the dwelling ('Building B').

7.25 This is illustrated in Figure 5 below, which is an extract of the Southern Elevation and shows the enormous scale of Proposed Development when compared to our client's Home, which we have highlighted in yellow for convenience:

³⁰ HIS, Part 6.2, page 55.



Figure 5: Extract of the Southern Elevation – see Drawing DA200 Rev 01 (annotated in yellow)

7.26 The following Figure 6 is similarly helpful in providing an understanding of the comparative scale of the Proposed Development:



Figure 6: Extract of the Height Plan Diagram 3 – see Drawing DA522 Rev 01 (annotated in yellow)

7.27 It is clear from the above that the scale, form and character of the Proposed Development will adversely impact the aesthetic significance of the heritage item, including by reason of:

- 7.27.1 the proximity of the Proposed Development to the item, which appears to visually enclose the dwelling on two sides in a manner which makes it appear diminutive and undermines the historic significance of the grandeur of the dwelling and its setting;
- 7.27.2 the height of the proposed towers, which at the rear exceed even the controls (and associated uplifts) allowed for under the TOD SEPP,³¹ and which results in a bulky form which overbears and overwhelms the heritage item; and
- 7.27.3 the siting of the rear towers, which results in building envelopes which are excessively dominant and intrusive in form, particularly when viewed from Stanhope Road.

7.28 These factors in combination obstruct and interfere with the views of the heritage item from the public domain, in a manner which is unacceptable and incapable of being managed or mitigated to render it acceptable.

³¹ see Objection Ground 2 at Part 6 of this submission.

- 7.29 This is consistent with the observations recorded in the NSW Heritage Office's *Design in Context: Guidelines for Infill Development in the Historic Environment* which says, in respect of building scale:

The scale of a building is its size in relation to surrounding buildings or landscape. Infill design should recognise the predominant scale (height, bulk, density, grain) of the setting and then respond sympathetically. The impact of an inappropriately scaled building cannot be compensated for by building form, design or detailing.

[Emphasis added]

- 7.30 There are, therefore, ample reasons for the Minister to make merit findings that the SSDA results in unacceptable heritage impacts to Item #I388 which warrant refusal of the application, similar to those made in cases such as *George v City of Parramatta Council* [2017] NSWLEC 1366,³² *G & J Drivas Pty and Telado Pty Ltd v City of Parramatta Council* [2025] NSWLEC 1033,³³ and *Howe Architects Pty Ltd v Ku-ring-gai Council* [2021] NSWLEC 1233.³⁴
- 7.31 Our clients would welcome the opportunity to engage an independent heritage expert to provide an opinion in respect of the impacts of the Proposed Development to our clients' Home, but would need an assurance that this report would be considered by the Minister notwithstanding that it will be submitted following closure of the public exhibition period.

8. Objection Ground 4: Unacceptable privacy impacts

- 8.1 In addition to the above heritage impacts, the SSDA also results in adverse amenity impacts to our clients' enjoyment of their Home by reason of an unacceptable intrusion into their visual and acoustic privacy.
- 8.2 This is largely because it appears that the built form has been "*strategically placed away*" from the north of the Development Site which is said to have "*biodiversity values*",³⁵ with the bulk pushed closer towards 12 Stanhope Road.
- 8.3 Consequently, the built form of the Proposed Development, including areas of communal and private open space, are located in close proximity to the northern and eastern shared boundaries between the Development Site and our clients' Home.
- 8.4 The outcome is that there will inevitably be a conflict in use between the enjoyment of those areas by the future occupants of the Proposed Development, and our clients' use and enjoyment of their Home.
- 8.5 Here, it is important to note that our clients' Home is oriented towards the rear of the site, so that it can enjoy the amenity of the extensive rear backyard including paved terrace, lawn, pool area and tennis court.
- 8.6 Figure 7 below shows the orientation of the Home, taken from an elevated position along the northern boundary, near to where the rear RFB ('Building B') is proposed to be constructed:

³² Per Commissioner Dickson at [53]-[54].

³³ Per Commissioner Dickson at [60].

³⁴ Per Commissioner O'Neill at [82].

³⁵ Design Report prepared by PBD Architects dated 22 April 2025 (**Design Report**), at Appendix 5b to the EIS, page 18.



8.7 Specifically, we draw your attention to the following features of the Proposed Development:

8.7.1 at the lower ground floor level:

- (a) the communal open space for 'Building A' is located at the north eastern corner of our clients' backyard. Relevantly, this is the location proposed to be used as a "*Kids Play area*" with play equipment as identified in the proposed Landscape Plans;³⁶
- (b) the communal entrance ways to both 'Building B' towers are located along the rear shared boundary with the Home;
- (c) the communal open space which is intended to separate to two rear towers is located at the north western corner of our clients' backyard. Relevantly, there is proposed to be constructed a terraced area with bench seating,³⁷ presumably capable of being used by any future occupants of 'Building B'; and

8.7.2 the primary living areas and private open spaces (including outdoor “*terrace*” areas) for a number of units in ‘Building B’ are oriented to face our clients’ backyard, including in particular:

- (a) lower ground floor units: B.LG1.05; B.LG1.06; C.LG1.03;
- (b) ground floor units: B.G.05; B.G.06; C.G.03;
- (c) levels 1 and 2 units: B.L1.05; B.L1.06; C.L1.03; B.L2.05; B.L2.06; C.L2.03;
- (d) levels 3 to 6 units: B.L3.05; C.L3.03; B.L4.05; C.L4.03; B.L5.05; C.L5.03; B.L6.05; C.L6.03; and
- (e) level 7 unit: C.L7.02.

³⁶ See Landscape Plan, General Arrangement Plan – Sheet 2, Drawing LA-202 Rev A.

³⁷ See Landscape Plan, General Arrangement Plan – Sheet 3, Drawing LA-203 Rev A.

- 8.8 In addition to this, we understand that the Proposed Development is intended to be accessed by pedestrians on all 3 of the shared boundaries with our clients' Home, as indicated by the broken blue lines and arrows in Figure 8 below:

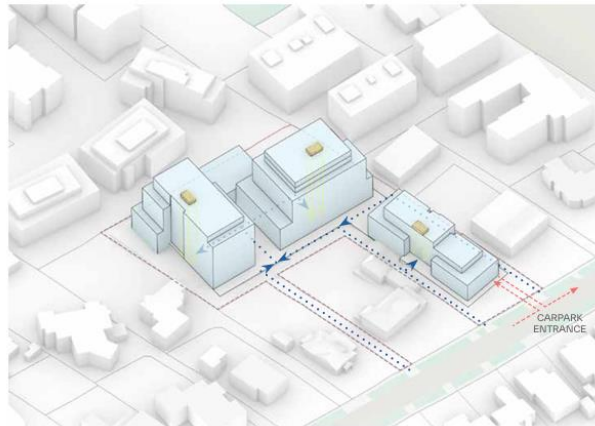


Figure 8: Extract of the "Core Entry" plan at page 20 of the Design Report

- 8.9 Access along the western boundary is facilitated by an extended footpath which connects 'Building B' to Stanhope Road.
- 8.10 Critically, the SSDA fails to include information identifying any of these impacts and no analysis (qualitative or quantitative) is provided to demonstrate to any reasonable degree of satisfaction that the privacy impacts arising from the Proposed Development are acceptable – both in terms of acoustic amenity and visual privacy / overlooking.
- 8.11 This failure is significant, noting that the Proposed Development results in a material intensification of the use of the Development Site and is capable of being occupied by at least 730 people.³⁸
- 8.12 In circumstances where the SSDA documents reveal a potential for significant impacts to our clients, and there is no attempt by the Applicant to assess, quantify, or demonstrate that such impacts can be appropriately managed, the SSDA ought to be refused because the Minister cannot undertake the assessment required by ss 4.15(1)(b) and (c) of the EP&A Act.
- 8.13 It is also another example of how the EIS fails to comply with the SEARs, which expressly requires the EIS to:³⁹
- Assess amenity impacts on the surrounding locality, including solar access, visual privacy, view loss and view sharing, as well as wind, lighting and reflectivity impacts. A high level of environmental amenity for any surrounding residential or other sensitive land uses must be demonstrated.
- 8.14 The fact that the EIS is silent regarding the likely amenity impacts to our clients' Home, which is the most sensitive adjacent land use, means that the EIS arguably does not comply with s 191 of the EP&A Regulation, which may potentially render any decision of the Minister to approve the SSDA open to legal challenge on the basis of an error of law.

³⁸ Calculated assuming that each bedroom will be occupied by 2 people.

³⁹ SEARs, Part 7, page 3.

- 9.1 The EIS asserts that the proposed built form “*has been shaped... to minimise overshadowing to the neighbouring properties*”.⁴⁰ However, little to no substantive analysis is provided justifying that conclusion.
- 9.2 At best, the documents indicate a substantial reduction in the quantity of solar access enjoyed by the Home, particularly as it concerns the amenity afforded to the backyard area which is our clients’ principal (and only) private open space.
- 9.3 The solar impacts of the Proposed Development are considered in detail in the Planning Opinion enclosed, which is relied upon for this purpose.
- 9.4 The SSDA should be refused on the basis that the consent authority has insufficient information to be satisfied that the impacts of the Proposed Development in terms of solar access are acceptable. In the alternative, the Applicant should be required, at a minimum, to quantify:
 - 9.4.1 the amount of solar access enjoyed by our client’s Home presently;
 - 9.4.2 the amount of solar access that would be enjoyed, should the Development Site be improved as per the controls in the KLEP and Preferred Scenario; and
 - 9.4.3 the extent to which the Proposed Development reduces the solar access enjoyed at the Home because it exceeds:
 - (a) the height limits under the KLEP and Preferred Scenario; and
 - (b) the height limits under the TOD SEPP.
- 9.5 Unless and until the above information is provided, the Minister cannot give proper and genuine consideration to whether the solar impacts resulting from the approval of the SSDA are acceptable.

10.1	The unusual battle-axe lot shape of the Development Site has the effect of isolating our clients' Home between the two pan-handles.
10.2	Such an approach is not consistent with good planning practices as it effectively renders our clients' Home incapable of any future development.
10.3	The impacts of this site isolation is visually depicted in the following extract from the Design Report:

[PLAN:48575855_7]



Figure 8: Extract of the “Future Context (Maximum Height)” plan at page 22 of the Design Report

- 10.4 Whilst this image has presumably been prepared on the assumption that the “future context” of the locality will be driven by the controls envisaged in the TOD SEPP as it presently exists and not by reference to the Council’s Preferred Scenario,⁴¹ it highlights the poor planning outcomes that would be achieved by the proposal. This is because, as Figure 8 shows, the approval of the SSDA would mean that:
- 10.4.1 our clients’ Home would be incapable of being developed, either by itself or in an amalgamated form with the site to west at 8 Stanhope Road; and
 - 10.4.2 in circumstances where the Home remains largely as is (and undeveloped), it will in the future be surrounded with large scale RFBs on all sides, including on the opposite side of Stanhope Road.
- 10.5 The SSDA does not discuss the issue of site isolation, nor the associated impacts of this isolation on exacerbating the heritage impacts identified in Objection Ground 3 (see Part 7) and the amenity impacts identified in Objection Ground 4 (see Part 8).
- 10.6 At a minimum, the Applicant should be required to address the potential impacts of the isolation of our clients’ Home as a consequence of the Proposed Development, and having regard to the various environmental impacts identified in this objection.
- 10.7 In doing so, the SSDA should consider and respond to the relevant principles in *Karavellas v Sutherland Shire Council* [2004] NSW LEC 251 which apply to circumstances of site isolation. These principles are explored in greater detail in the Planning Opinion which is enclosed with this objection.

11. Conclusion

- 11.1 For all of the above reasons, we consider that the Minister is compelled to refuse the SSDA as currently formulated.
- 11.2 This is because:
- 11.2.1 *firstly*, the SSDA is critically lacking in various respects and does not meet essential jurisdictional preconditions, which has the consequence that the Minister does not have the power to approve the Proposed Development and consent **must** be refused; and
 - 11.2.2 *secondly*, that following a proper consideration of each of the merit matters required by s 4.15, the Minister could not be satisfied that the impacts of the

⁴¹ See discussion at Objection Ground 1, Part # of this submission.

- 11.3 Balancing all of these relevant factors, and applying the precautionary principle, the Minister must find that the SSDA is contrary to the public interest and should be determined by way of refusal.
- 11.4 In the alternative, it is open for the Minister to invite the Applicant to withdraw the SSDA and request that detailed consideration be paid to the matters raised in this letter of objection.
- 11.5 In this regard, our clients wish to note that they accept the need for more housing and acknowledge the policy reasons behind the introduction of the TOD SEPP. However, as has been acknowledged, the purpose of the TOD SEPP is to facilitate the delivery of more affordable, well-designed and well-located homes. It is not the intent of the TOD SEPP to simply allow as much housing as possible to be 'shoehorned' into any site, regardless of the impacts and effect on the surrounding community and character of the area. Our clients would be open to an alternative proposal for the Development Site which is smaller in scale and which appropriately has regard to the constraints of the site and surrounding area.
- 11.6 For completeness, we note that the SSDA has been on public exhibition since 7 May 2025. However, we are instructed that our clients were not aware of the proposal until on or about 29 May 2025, following the settlement of their purchase of their Home on 14 May 2025. This letter has therefore been prepared at short notice and reflects our clients' preliminary objections and is not a comprehensive reflection of all their objections to the proposal.
- 11.7 Our clients request that the Minister grant them the benefit of an extension to enable our clients to (should they wish to do so) engage additional suitable consultants to evaluate the SSDA documents and provide independent opinions which may be relied upon in the Minister's consideration of this submission.
- 11.8 We wish to thank the Minister for considering this submission.

Yours sincerely



Breellen Warry
Partner



31 May 2025

Attention: Ms Adela Murimba
NSW State Government

Dear Sir/Madam,

**Submission in regards to SSD-81890707 Development Application ("the DA")
10, 14 and 14A Stanhope Road, Killara ("10-14A Stanhope Road")**

"Demolition of existing residential dwellings on the site and the construction of part 3 storey to part 10 storey residential flat buildings with infill affordable housing and associated works."

Corona Projects has been engaged by the property owners of 12 Stanhope Road, Killara to undertake an assessment of SSD-81890707 and provide a submission to Council on their behalf. 12 Stanhope Road lies to the south and west of the development site at 10-14A Stanhope Road. This assessment is based on a review of the development application plans and documents available for inspection on the NSW DPHI Major Projects tracker website and a site visit.



Figure 1 – Site Locality Map (NearMaps, 2025)



Figure 2 – 12 Stanhope Road as viewed from street (Google Maps, 2021)



Figure 3 – Development site viewed from street (Corona Projects, 2025)

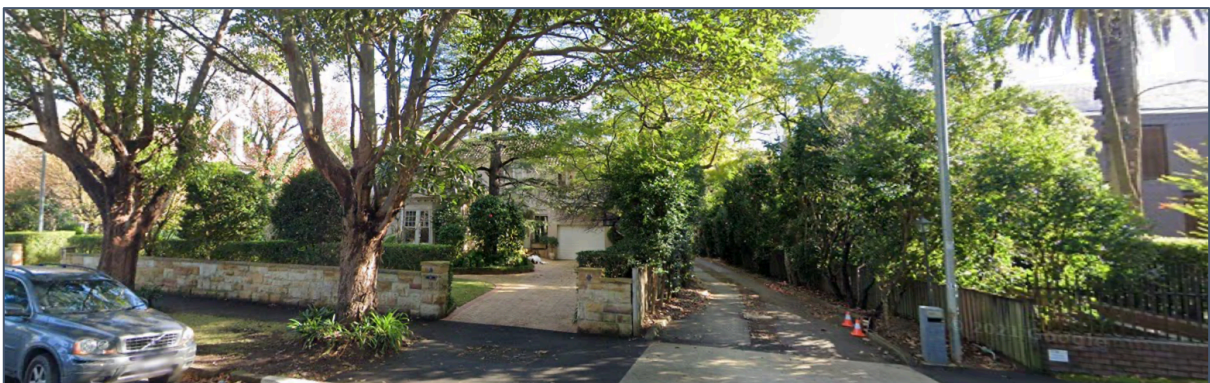


Figure 4 – Development site viewed from street (Google Maps, 2021)



1. Introduction

The residential flat building proposal at 10-14A Stanhope Road raises considerable concerns regarding:

- Site isolation;
- Overshadowing and solar access;
- Privacy and overlooking;
- Acoustic privacy;
- Visual bulk;
- Heritage and streetscape character impacts;
- Traffic and parking impacts;
- Stormwater management;
- Ecological concerns;
- Excavation, construction, noise and vibration issues;
- Non-compliances with the Ku-ring-gai Local Environmental Plan (KLEP) 2015 and the Ku-ring-gai Development Control Plan (KDCP) 2024.

Consequently, it will pose an unacceptable impact on the residential amenity of 12 Stanhope Road and on the character of the locality.

2. Site Isolation

SSD-81890707 will isolate 12 Stanhope Road by developing a residential flat building development which bounds 12 Stanhope Road on all shared boundaries, without providing opportunity for land contained on 12 Stanhope Road to contribute to the development.

It is acknowledged that 12 Stanhope Road contains a heritage listed dwelling house, however, the rear garden area is of limited heritage significance and is therefore suitable for incorporation within a future redevelopment. Without amalgamation with surrounding sites (10, 14 and 14A Stanhope Road), the rear portion of 12 Stanhope Road is incapable of accommodating additional residential development alone.

Where site isolation is suspected, tests established under *Karavellas v Sutherland Shire Council* [2004] NSW LEC 251 must be considered. In *Karavellas v Sutherland Shire Council* [2004] NSW LEC 251, Tuor C sets out the planning principle for the isolation of a subject site.

Paragraph 17 states: "The general questions to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are: Firstly, is amalgamation of the sites feasible? Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?"



In determining the answer to the first question outlined above by Tuor C, one may apply the principles established by Brown C in *Melissa Grech v Auburn Council* [2004] NSWLEC 40:

“Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements, then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.

Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.

Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s 79C of the Environmental Planning and Assessment Act 1979”.

The current owner of 12 Stanhope Road who recently purchased the property in May 2025 is unaware of any genuine efforts by the applicant of SSD-81890707 to amalgamate 10, 12, 14 and 14A Stanhope Road. Documents submitted under SSD-81890707 do not address the proposed site isolation created for 12 Stanhope Road. The outcome of the first question under *Karavellas v Sutherland Shire Council*[2004] NSW LEC 251 is therefore unresolved.

In regards to the required setback and minimum planning controls when a site is being isolated, Brown C set out principles to answer the second question in *Cornerstone Property Group Pty Ltd v Warringah Council* [2004] NSWLEC 189 and stated that:

“The key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non-compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.

To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.



The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments.”

An indicative development scheme of 12 Stanhope Road has not been provided by the applicant as part of the SSD-81890707. Therefore, there is no evidence to suggest that additional residential development can successfully be developed on 12 Stanhope Road alone when compliance with local planning controls is required.

In Cornerstone, Brown C stated that *“the subject application may need to be amended, such as by a further setback than the minimum in the planning controls to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments”*. In the instance of SSD-81890707, no evidence of improved setbacks has been noted.

In conclusion, the lack of offers for amalgamation and any indicative development scheme for 12 Stanhope Road fails to obey the planning principles established in *Cornerstone Property Group Pty Ltd v Warringah Council*. As such, SSD-81890707 in its current form cannot be supported for its unreasonable site isolation impact on 12 Stanhope Road.

3. Solar Access and Overshadowing

At present the principal private open space (rear patio, swimming pool and tennis court) and indoor habitable spaces (rear-facing living room and bedroom windows) of 12 Stanhope Road receives pleasant sunlight throughout the Winter Solstice. This sunlight reduces the reliance of non-renewable energy sources for the home and pool, and contributes greatly to the quality and amenity of the home.



Figure 5 – Principal private open space and habitable space windows of 12 Stanhope Road (Realestate.com.au, 2025)

The works proposed under SSD-81890707 will substantially decrease the amount of sunlight received by this space, with new shadow cast upon the rear yard and dwelling at 12 Stanhope Road during all times of day during the Winter Solstice.

Even if the proposal did comply numerically with numerical Council solar access controls, “reasonable sunlight” should be subject to consideration against planning principles established in *The Benevolent Society v Waverley Council* (2010) NSWLEC 1082 and *Parsonage v Ku-ring-gai* (2004) NSWLEC 347.

Senior Commissioner Moore established the planning principles to properly assess the impact of solar access to open space in *The Benevolent Society v Waverley Council* (2010) NSWLEC 1082 and it is concluded that:

“overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guideline”
and,

“for private open space to be assessed as receiving adequate sunlight, regard should be had to the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space.”



The overshadowing by SSD-81890707 is a direct result of “poor design” given the ability for a development to occur with a reduced scale and lesser shadow impact. Furthermore, the rear areas of 12 Stanhope Road which are being overshadowed are the only private open space areas for the site. As they are located directly accessible from the primary living areas of the dwelling, the rear outdoor space at 12 Stanhope Road is frequently used and important for the current and future residents.

In addition, Senior Commissioner Roseth concludes in *Parsonage v Ku-ring-gai (2004) NSWLEC 347* that numerical guidelines should be applied with a great deal of judgement with the following example provided:

“Consider a dwelling that now receives sunlight all day. Taking away that sunlight from 9am till noon would satisfy most guidelines; and yet the occupants of such a dwelling are likely to perceive it as a devastating impact on their dwelling’s amenity”

The above example is identical to the circumstances imposed by SSD-81890707 on the rear garden and living areas of 12 Stanhope Road.

It can therefore be reasonably concluded that SSD-81890707 will impose an unjustified overshadowing impact on the rear garden and living areas of 12 Stanhope Road that cannot be supported, in accordance with an assessment against both the KLEP and KDCP, and the findings under *The Benevolent Society v Waverley Council (2010) NSWLEC 1082* and *Parsonage v Ku-ring-gai (2004) NSWLEC 347*. A reconfigured design, as detailed in the Recommendations of this letter will assist to protect the solar access for 12 Stanhope Road, whilst still allowing 10-14A Stanhope Road to increase their residential amenity.

4. Visual Privacy and Overlooking

Most south and west-facing windows and balconies proposed under SSD-81890707 will allow for direct, unobstructed and close views into the principle private open space and primary habitable living areas of 12 Stanhope Road. Figure 6 shows the expected views from the proposed windows and balconies, straight into the private spaces of the single dwelling at 12 Stanhope Road, resulting in a substantial and unacceptable visual privacy breach.

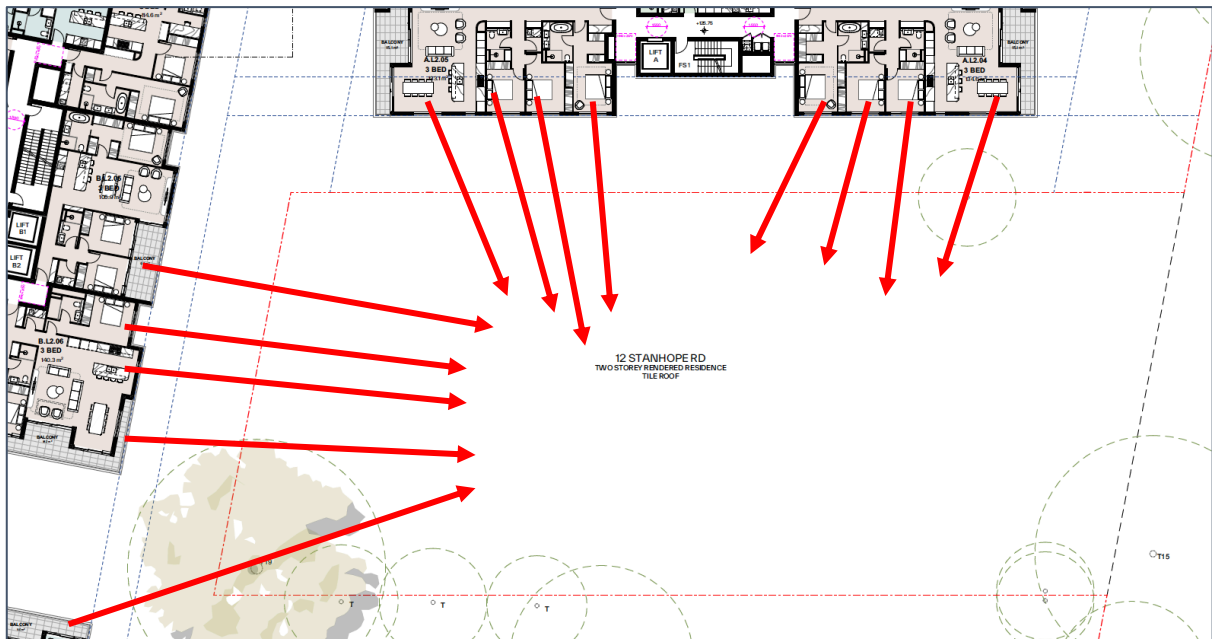


Figure 6 – Overlooking Diagram (Corona Projects, 2024) Note: Identical or similar overlooking occurs on all levels except for the ground floor

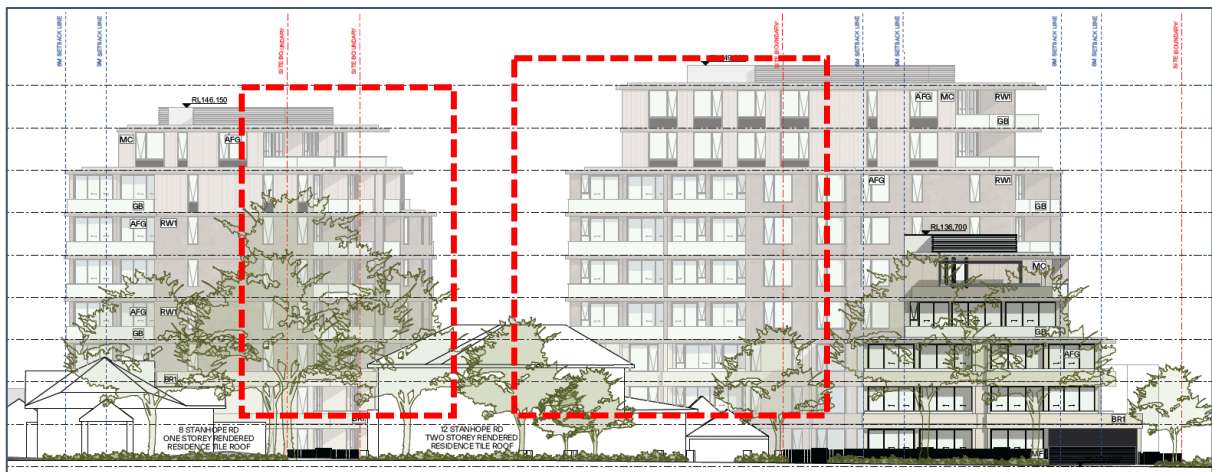


Figure 7 – South-facing areas of concern, including balconies and windows above ground floor level (Corona Projects, 2025). East and west-facing balconies and windows are also problematic.

Furthermore, under *Meriton v Sydney City Council [2004] NSWLEC 313* SC Roseth concludes that;

*“Generalised numerical guidelines such as above [Council DCP Privacy controls], need to be applied with a great deal of judgment, taking into consideration **density, separation, use and design**”.*

Roseth states that the principles discussed below may be applied when assessing privacy:



Assessment Principle	Comment
1. Ease of Privacy Retainment The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.	As the development site and 12 Stanhope Road are all located within an R2 Low Density Residential zone, it remains a reasonable expectation that the primary living spaces of 12 Stanhope Road should retain their privacy.
2. Separation Privacy can be achieved by separation . The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the <i>objective</i> should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)	SSD-81890707 should improve the physical separation between the position of overlooking (windows and balconies) and the rear garden and living spaces of 12 Stanhope Road. Increases in setbacks and the addition of privacy screens can achieve this.
3. Use of Space The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.	<p>The rear garden area and rooms with rear-facing windows of 12 Stanhope Road are the most used areas of the home. Therefore, overlooking from the proposed windows and balconies is unacceptable.</p> <p>The proposed upper floor spaces that will facilitate the overlooking, will provide direct sightlines into spaces of identical use, where people spend the majority of waking time. Living rooms into living rooms. Bedrooms into bedrooms. Outdoor spaces into outdoor spaces.</p>
4. Poor Design Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.	An alternative design which does not sacrifice the amenity of 10-14A Stanhope Road and protects that of 12 Stanhope Road as suggested in the Recommendations of this report, can be very reasonably achieved.
5. Hierarchy of Space Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.	The area of rear yard that adjoins the living room of 12 Stanhope Road is subjected to overlooking.



6. Additional Solutions Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.	Inadequate privacy screening devices have been implemented within SSD-81890707.
7. Landscaping Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.	Fixed screening for the balconies and frosting for the windows alone is considered inadequate given the substantial visual bulk impact that this would have. A combination of hard screening, landscaping screening and increased setbacks is required.
8. Change In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.	12 Stanhope Road contains a heritage item and all sites are located within a heritage conservation area. As such, the areas is not expected to undergo significant or drastic change.

In accordance with *Meriton v Sydney City Council [2004] NSWLEC 313*, more considerate design would assist to reasonably mitigate overlooking concerns between the sites. Without the changes proposed in the Recommendations of this letter, the development cannot be supported in its current form.

5. Acoustic Disturbance

SSD-81890707 will result in adverse noise impacts for 12 Stanhope Road and other surrounding properties.

The proposed balconies under SSD-81890707 will create opportunity for entertaining large groups, inherently associated with great levels of noise. The proposed lifts and air-conditioning (and associated equipment) are also likely to create adverse noise for 12 Stanhope Road, given their likely location along shared boundaries.

Vehicle noise caused by the substantial increases in car movements to and from the site will also contribute to negative acoustic impacts for 12 Stanhope Road.

The location of a pedestrian walkway along the entire western boundary of 12 Stanhope Road will introduce substantial noise too.

No obvious acoustic screening or acoustic barriers have been shown, creating concern for adjoining neighbours who have windows, bedrooms and outdoor areas close to the shared boundary with the development site.



6. Visual Bulk and 'Sense of Enclosure'

The up to 10-storey proposal under SSD-81890707 will appear bulky and obtrusive from the primary living spaces of 12 Stanhope Road. The non-compliant (height variation) extent of extrusion will provide the current and future residents of 12 Stanhope Road with a feeling of enclosure from their primary habitable spaces and rear garden principle private open spaces.

7. Destruction of Heritage Significance and Streetscape Character

The existing dwelling at 12 Stanhope Road exhibits a heritage listed dwelling house identified as a local heritage item #388 under the Ku-ring-gai Local Environmental Plan 2015. It also exhibits qualities rendering it suitable for identification as a contributory building within the Stanhope Road Heritage Conservation Area (HCA).

It is acknowledged that numerous sites have undergone alterations and additions throughout history, however, the changes are typically modest in scale in order to preserve the heritage value of the HCA and curtilage of the heritage item.

The new works under SSD-81890707, however, are highly visible from the street and heritage item, given their substantial scale. This will have a negative and visually overbearing impact upon the heritage values of the area and 12 Stanhope Road.

8. Traffic and Parking Impacts

The proposed development plans to introduce 135 residential apartments and 195 parking spaces, significantly increasing the area's residential density. This scale of development is likely to generate hundreds of additional vehicle trips per day. The reliance on 195 parking spaces indicates a car-centric design, which will exacerbate existing traffic issues in a locality already strained by high vehicle volumes.

Stanhope Road currently experiences significant traffic congestion, particularly during peak hours, as it serves as a key arterial route for both local and through-traffic. Property owners, such as those at 12 Stanhope Road, report considerable difficulties exiting their sites due to limited gaps in traffic flow, frequent delays, and near-misses. The road's existing infrastructure, characterised by narrow lanes and limited turning provisions, struggles to accommodate current vehicle movements. These conditions highlight the local network's limited capacity to absorb additional traffic without significant upgrades or mitigation measures.

The addition of 135 apartments and 195 parking spaces is expected to intensify congestion on Stanhope Road and surrounding intersections, further degrading the level of service during peak periods. The increased vehicle



movements will likely worsen access challenges for properties along the road, with residents at 12 Stanhope Road facing even greater delays and safety risks when exiting their site. The influx of vehicles could also elevate the risk of accidents, particularly at access points and intersections where visibility and manoeuvring space are already constrained, creating unsafe conditions for both drivers and pedestrians.

To mitigate the anticipated impacts, the development must incorporate robust traffic management strategies, such as improved access designs, traffic calming measures, or enhanced public transport options to reduce reliance on private vehicles. Without these interventions, SSD-81890707 risks significantly exacerbating congestion, compromising road safety, and negatively affecting the quality of life for residents in the Stanhope Road locality. Further traffic studies and community consultation are recommended to ensure the development aligns with the area's infrastructure capacity and safety requirements.

9. Stormwater Management

There are concerns that the substantial increase of impervious area proposed under SSD-81890707 (total of near 5000sqm of impervious area) will create issues regarding stormwater drainage for the area.

The stormwater drainage plan submitted with the DA notes that 163 cubic metres of detention storage is required to achieve compliance with catchment requirements and that 165 cubic metres is being provided. There are concerns that whilst the proposal is just meeting the minimum amount required, in a heavy rain event (which are occurring more frequently and more severe than current controls anticipate) the storage will be inadequate and overflow will occur onto neighbouring sites.

10. Excavation, Construction, Noise and Vibration

The significant extent of excavation associated with new basements under SSD-81890707 at such close proximity to 12 Stanhope Road raises serious concerns regarding the impacts on the structural integrity of the home at 12 Stanhope Road during demolition, excavation and construction stages of the development under SSD-81890707. The dwelling house at 12 Stanhope Road relies significantly on strength and stability provided to it by the earth below. Its heritage construction places greater risk too.

Noise and vibration during construction are also likely to disturb the amenity of surrounding neighbours, with little detail provided within the proposal surrounding mitigation measures relating to these aspects.



11. Ecological Concerns

The proposed development under SSD-81890707 raises significant concerns regarding its potential ecological impacts on the local environment. The extensive demolition, excavation, and construction activities, combined with the substantial increase in impervious surfaces (approximately 5,000 sqm), risk disrupting local ecosystems and biodiversity. The removal of existing vegetation and potential disturbance of mature trees (Blue gum and Iron bark trees) on or near the site could result in habitat loss for local fauna, including native birds and small mammals common to the Ku-ring-gai area.

The absence of detailed ecological assessments or mitigation measures in the development application exacerbates these concerns, conflicting with the environmental protection objectives of the Ku-ring-gai Local Environmental Plan (KLEP) 2015.

12. Against the Public Interest, and LEP and DCP Non-compliances

The KLEP and KDCP are considered to be contemporary documents which do have relevance in State Significant Development assessment.

As part of the planning policy process, changes to the KLEP and KDCP are placed on public exhibition prior to finalisation and gazettal, in order to ensure that the documents reflect the local communities sentiments. Therefore, any non-compliance with the KLEP and KDCP can be considered to be **directly against the public interest**.

As such, the proposal under SSD-81890707 in its current form is not in the public interest, and cannot reasonably be supported as the “public interest” is a key consideration that consent authorities such as Council must consider under Clause 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

SSD-81890707 exhibits major non-compliance with the objectives and controls of the KLEP and KDCP, as per the below table. Non-compliances with the State Environmental Planning Policy (Housing) 2021 are also proposed with regards to building height. In its current form, the proposal can therefore not be supported as it does not contain planning merit.

Key non-compliances - State Environmental Planning Policy (Housing) 2021

Control	Comment
Maximum building height is 28.6m.	Non-Compliance – 35m height is proposed.



Key non-compliances – Ku-ring-gai Local Environmental Plan 2015

Control	Comment
Development objectives in the R2 Low Density Residential zone are as follows: <ul style="list-style-type: none">• To provide for the housing needs of the community within a low density residential environment.• To enable other land uses that provide facilities or services to meet the day to day needs of residents.• To provide for housing that is compatible with the existing environmental and built character of Ku-ring-gai.	Non-Compliance – The proposal will have a visually overbearing impact upon the character of the area, and detrimentally impact upon the amenity and heritage value of 12 Stanhope Road.
Maximum building height is 17.5m.	Non-Compliance – 35m height is proposed.
Maximum floor space ratio is 1.3:1	Non-Compliance – 2.22 FSR is proposed.

Key non-compliances - Ku-ring-gai Development Control Plan 2024

Control	Comment
<u>Part 7A.1 Local Character and Streetscape</u> This Part of the KDCP requires new development to consider and respect the established local character of the area surrounding the site.	Non-Compliance – The proposal will have a visually overbearing impact upon the character of the area.
<u>Part 7A.2 Site Layout</u> Overshadowing should not compromise the development potential of the adjoining yet to be redeveloped sites.	Non-Compliance – The proposal will overshadow significant portions of 12 Stanhope Road, reducing the amenity of future works on the site.
<u>Part 7A.5</u> Maximum site coverage is 30%	Non-Compliance – The proposal does not appear to comply with this control.

13. Local Character and Strategic Vision Non-Compliance

Suburban Killara holds a unique character, acknowledged by the existence of the Stanhope Road Heritage Conservation Area containing the development site and surrounds. However, the character of immediate locality extends past the heritage aspects and architectural beauty, and includes the high quality of private open space and high level of privacy enjoyed by its current residents achieved through appropriate design.



The proposal in its current form will set a precedent for reducing the established high quality of residential living that the dwellings in Killara currently enjoy. The expectation for someone living in a detached dwelling in an R2 Low Density Residential zone to have a high level of residential amenity needs to be upheld and protected. The amenity changes for neighbours proposed under SSD-81890707 reflect the expectation of an R3 or R4 land use zone instead and cannot be supported.

14. Recommendations

The owner of 12 Stanhope Road welcomes discusses with the applicant of SSD-81890707 in relation to site acquisition in order to avoid site isolation. The principles established under *Karavellas v Sutherland Shire Council*[2004] NSW LEC 251 must be followed.

In the event that negotiations with regards to site isolation do not result in site amalgamation with 12 Stanhope Road, then the following design changes are requested in order to allow 12 Stanhope Road to retain their amenity.

- a) **Action:** Reduce the scale of all buildings to ensure that sunlight is retained to at least 50% of the rear tennis court, swimming pool and rear paved area at 12 Stanhope Road during all hours of the Winter Solstice.
Outcome: This will protect the solar amenity of 12 Stanhope Road.
- b) **Action:** Apply 1.8m solid privacy screens to all balcony edges facing 12 Stanhope Road. Apply frosted glazing to all windows facing 12 Stanhope Road.
Outcome: This will reduce overlooking, privacy and acoustic disturbance concerns.
- c) **Action:** Relocate deep soil areas to adjoin shared boundaries with 12 Stanhope Road.
Outcome: This will improve physical separation between the development buildings and the existing dwelling at 12 Stanhope Road.
- d) **Action:** Prepare a Dilapidation Report prior and post construction for 12 Stanhope Road. Any damage caused during construction must be rectified at the total expense of the applicant within 14 days of the damage being identified.
Outcome: This will protect the structural integrity of the home at 12 Stanhope Road.
- e) **Action:** Locate mechanical equipment associated with the lifts, air-conditioning and other mechanical components within soundproof enclosures.
Outcome: This will mitigate acoustic issues.
- f) **Action:** Install vibration and noise monitoring equipment on site during construction to ensure that levels are recorded and that when they exceed levels considered excessive (Council engineering and health teams to advise), this is identified and immediate action is taken to reduce it to compliant levels.



Outcome: This will mitigate acoustic issues.

- g) **Action:** Install acoustic screening along all boundaries shared with 12 Stanhope Road, including but not limited to dense hedging and acoustic fencing.

Outcome: This will mitigate acoustic issues.

- h) **Action:** Reduce the scale of development to no more than 40 units.

Outcome: This will mitigate acoustic and traffic disturbances. It will also allow the development to exhibit a reduced scale which will improve other amenity impacts, stormwater management circumstances and local character outcomes.

Conclusion

We have strong concerns about the proposed development and believe it cannot be supported in its current form. The development will have an adverse impact on the residential amenity and heritage value of 12 Stanhope Road and the character of the area. A development of this scale cannot be supported on this site. It is therefore requested that the proposed development in its current form be revised. Any future development on the site should ensure compatibility with the local area and address the issues raised in this submission.

The owners of 12 Stanhope Road are available for a site inspection of their property to best understand the perspective of the discussed concerns. Please contact Ms Anne Bi and Ms Jane Bi (nej2008@hotmail.com) to arrange a visit.

Kind regards,

Emma Rogerson

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