818 Pacific Highway, Gordon NSW 2072
Locked Bag 1006 Gordon NSW 2072
T 02 9424 0000 F 02 9424 0001
DX 8703 Gordon TTY 133 677
E krg@krg.nsw.gov.au
W www.krg.nsw.gov.au
ABN 86 408 856 411

Contact: Brodee Gregory

Ref: SSD-82395459

10 June 2025

Department of Planning Housing and Infrastructure
Locked Bag 5022
PARRAMATTA NSW 2124

Via: NSW Major Projects Portal

Attention: Delia Galao,

Dear Madam,

RE: SUBMISSION TO SSD-82395459 at Nos. 3A, 3B, 5A and 7 Burgoyne Street, Nos. 1 and 3 Pearson Avenue and No. 4 Burgoyne Lane, Gordon

Thank you for the opportunity to comment on State Significant Development (SSD) application SSD-82395459 at Nos. 3A, 3B, 5A and 7 Burgoyne Street, Nos. 1 and 3 Pearson Avenue and No. 4 Burgoyne Lane, Gordon.

This submission should be considered as an **objection** to the proposal. The submission (**Attachment 1**) gives a detailed explanation of the reasons for Council's objection.

The key concerns with the proposed development are lack of engagement and consultation, desired future character, heritage impacts, biodiversity and tree impacts, accessibility/circulation, provision of affordable housing and building height. Serious concerns are raised regarding the mechanism in which additional building height is sought and the fact that the 'bonus' provisions under Chapter 2 of State Environmental Planning Policy (SEPP) Housing are not proposed to be utilised. This is a poor social outcome which lacks clear public benefit.

It is requested that the Applicant's Response to Submissions (RtS) is forwarded to Council for review prior to a determination being made. Council will be able to provide recommended conditions of consent following review of the RtS, unless there are substantial unresolved issues.

Subject to satisfactory resolution of the issues raised in this submission, Council may withdraw its objection to the proposal.

Should you have any further enquiries, please contact Brodee Gregory on 02 9424 0780.

Yours sincerely,

Selwyn Segall
Team Leader Development Assessment

ATTACHMENT 1

Ku-ring-gai Council's objection to SSD- 82395459 at Nos. 3A, 3B, 5A and 7 Burgoyne Street, Nos. 1 and 3 Pearson Avenue and No. 4 Burgoyne Lane, Gordon

A. ENGAGEMENT AND CONSULTATION

The Social Impact Assessment Report (prepared by Willowtree Communications, dated 6 May 2025) indicates that stakeholder engagement was sought with Ku-ring-gai Council via email on 22 April 2025 and that an 'automated response [was] received.' However, a search of Council's records system has not reveal any emails of this date concerning the proposed development. If engagement with Council was sought as indicated, it is likely that the development was not appropriately described/identified by the proponent and therefore the request was not able to be actioned.

It is also noted that the submitted architectural plans are dated 22 April 2025, the same day the proponent attempted to engage with Council. This suggests that the attempt at engagement took place once the proposal had effectively been finalised. Concern is therefore raised that a genuine attempt at engagement with stakeholders did not take place as required by SEARs Issue 4.

B. STRATEGIC PLANNING CONTEXT

The NSW Government introduced the Transport Oriented Development (TOD) provisions of State Environmental Planning Policy (Housing) 2021 in May 2024, allowing 6–7 storey buildings within a five minute walk of selected Sydney train stations. This policy affects four Ku-ring-gai town centres: Gordon, Killara, Lindfield, and Roseville.

In response, Council is working with DPHI on finalising and implementing alternative planning controls to the TOD to accommodate new housing while preserving the area's valued heritage and environmental assets. Council's TOD Alternative Scenario was exhibited for 3 weeks in April 2025 and formally adopted by Council on 5 June 2025. The TOD Alternative will now be submitted to the DPHI for approval.

The TOD Alternative scenario was developed using a set of seven planning principles based on Ku-ring-gai's Strategic Vision and local policies. The principles most relevant to the proposed planning controls for the subject site are:

PRINCIPLE 1 – Avoid Environmentally Sensitive Areas
PRINCIPLE 2 - Minimise impact on Heritage Items
PRINCIPLE 3 - Preserve Heritage Conservation Areas
PRINCIPLE 5 - Manage transition impacts

The TOD Alternative proposes to retain the existing zoning - R2 Low Density Residential - for Nos. 3A, 3B, 5A and 7 Burgoyne Street, Nos. 1 and 3 Pearson Avenue and No. 4 Burgoyne Lane, with a building height of 9.5m and a Floor Space Ratio (FSR) of 0.3:1. Refer to the maps below (**Figures 1-3**).

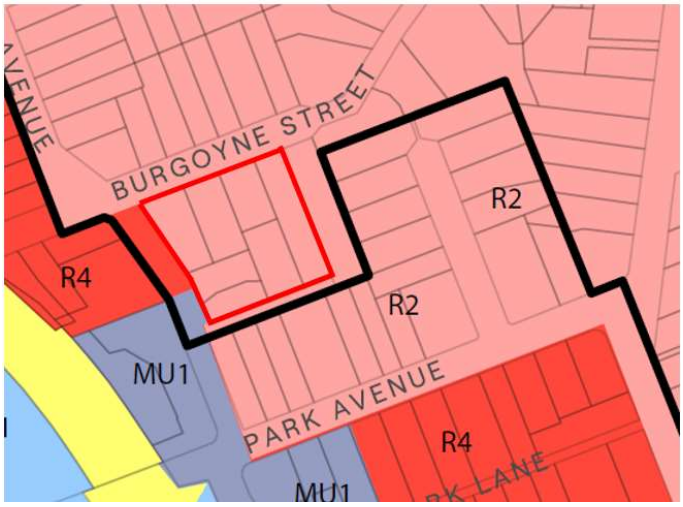

Figure 1: Alternate TOD - Proposed zoning

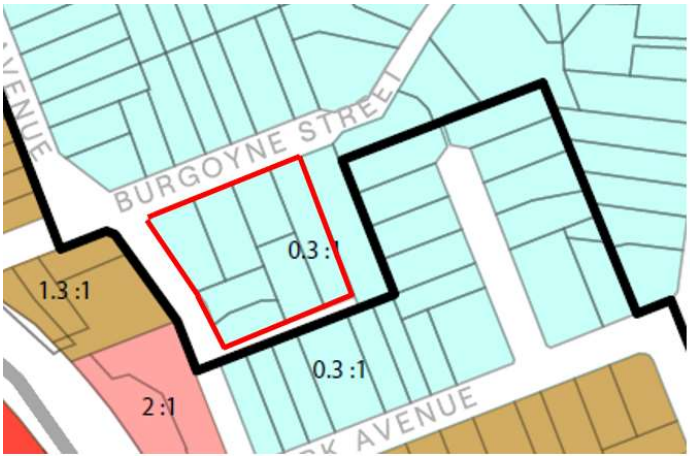

Figure 3: Alternate TOD – FSR

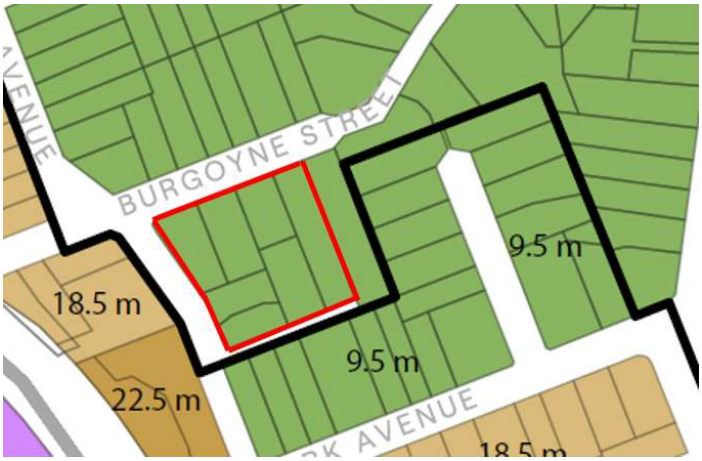

Figure 3: Alternate TOD – Height of Buildings

The exclusion of the subject site from the TOD Alternative scenario was explicitly and carefully considered by Council's Strategic Planning team in forming the TOD Alternative scenario. The following explanation was provided within the report to Council:

'This block consists of seven properties (3A, 3B, 5A, 7 Burgoyne Street, 1 & 3 Pearson Avenue, and 4 Burgoyne Lane). These properties are located on the edge of the revised TOD boundary neighbouring low density housing to their north and C12 Gordondale Estate Heritage Conservation Area (HCA) to their east and south. There is a high concentration of heritage items adjoining this block which would likely limit its development potential. Furthermore, one of the properties (3A Burgoyne Street) contains biodiversity that supports core biodiversity land. Unlike TOD, the Preferred Scenario excludes these seven properties from high density development. This is to avoid interface impacts on the adjoining Heritage Items and C12 Conservation Area which is proposed to be fully protected.'

The design and configuration of the proposed development, with a stated FSR of 2.5:1 and a height of 27.4m is completely inconsistent with Principles 1, 2, 3 and 5 as outlined above.

The future character for the site as envisaged under the exhibited TOD Alternative scenario comprises retention of the existing zoning - R2 Low Density Residential. The TOD Alternative scenario is directly relevant to the future character of the area. Importantly, the TOD Alternative includes a 50% deep soil landscaping control for residential development. Since the application of a similar control more than 20 years ago under Ku-ring-gai LEP 194 this requirement has been proven to achieve residential flat building developments with a generous landscape setting characterised by canopy tree planting.

The proposal fails to achieve consistency with the desired future character because:

i. The height and density of the proposed development exceeds the current and proposed planning controls, is not characteristic of the locality and will be highly visible within the local area.
ii. The proposal results in significant adverse impacts upon nearby heritage items and the HCA.
iii. The proposed development results in adverse impacts upon biodiversity significant vegetation as well as removal of existing trees of high landscape significance.
iv. The proportion of the site that is deep soil landscaping is significantly less than the character of existing and likely future development in the locality.

C. DESIGN PRINCIPLES

Pursuant to section 147 of SEPP Housing, the consent authority must be satisfied that the design of the RFB adequately addresses the design principles outlined in Schedule 9 of the SEPP. The proposal fails to meet the design principles for the reasons described below:

Principle 1: Context and neighbourhood character

The site can only be accessed on three sides: Burgoyne Street, Burgoyne Lane and Pearson Avenue. As the architectural plans (prepared by Marchese Partners, dated 22 April 2025) show, this means that the eastern most building has no direct access from the street. The solution that is proposed is to bring vehicles into the basement of the building from Pearson Avenue with a subterranean drop-off point at the centre of the building/site. All arrivals and departures by car to the main building lobby appear to be via this internalised route. This has implications for access, as detailed below.

A departure from the minimum front setback provided by Control 1 of Part 7A.3 of Ku-ring-gai Development Control Plan (KDCP) is proposed. The street setback from Pearson Avenue should be adhered to. The impact to Pearson Avenue of the non-compliant street setback is, as applicant argues, minimal in streetscape alignment terms. However, the setback non-compliance contributes to the proposed site coverage non-compliance. The proposed site coverage is 42.3% which is a substantial departure from the maximum of 30% permitted by Control 1 of Part 7A.5 of KDCP. The setback non-compliance also has a detrimental impact on existing landscape character. A significant number of healthy high-value trees are proposed for removal. Compliance with setbacks would likely lead to the retention of a greater number of trees.

The landscape and topographic character of the site is rated highly as a key feature of the surrounding urban area and is worthy of retention. The proposed extent of tree removal is unacceptable. This is reinforced by the fact that the site is located in an area of biodiversity significance (refer to comments below).

Principle 2: Built form and scale

The step-downs in height of building mass in response to topography is generally managed in a good way. It helps to mitigate the scale of the development. A further reduction in the overall height to Buildings A and B, to accord more closely with the 22m height limit and to provide a better relationship with surrounding heritage, would further facilitate this.

The proximity of the heritage listed two storey brick dwelling house at No. 9 Burgoyne Street to the north-eastern corner of the subject development is of concern. This property is not shown in full on the northern elevation (DA3.01). Some modification of the building height and mass in this corner must be sought to align more closely with the 1-2 storey height of the adjacent heritage house.

The permissible height limit is NOT shown on any of the street or internal elevations so height exceedances are difficult to ascertain. Reference to Architectural plans DA4.03 Site Sections 5 and 6 show that the height exceedance is most apparent on Building A. The whole floorplate of Level 7 and a part of Level 6 would appear to exceed the height limit.

The proposed height exceedance is not acceptable. Consideration should be given to a reduction in building, scale, height and mass to achieve compliance with the 22m hight limit and better manage the relationship with the heritage listed No. 9 Burgoyne Street.

Principle 3: Density

In light of the substantial increase in density that is facilitated by the TOD provisions of SEPP Housing, consideration should be given to ensuring that all other factors including building setback, height, landscape, building accessibility, apartment and Communal Open Space (COS) amenity, as well as the heritage considerations of surrounding buildings can all be demonstrated to achieve full compliance (KLEP, KDCP and ADG). As proposed, the development does not comply with these key metrics.

Principle 4: Sustainability

Good levels of natural ventilation and access to sunlight appear to have been provided.

Refer to comments regarding vehicular arrival below.

Principle 5: Landscape

Existing mature trees are a key feature of the site. Whilst those along Burgoyne Street and Pearson Avenue are most apparent when viewed from the public domain of the street, there are many other trees of equal value elsewhere over the seven amalgamated sites that should ideally be retained.

The following information is summarised from the Arborist's Report (prepared by Anne Clements & Associates, dated 22 April 2025, page 21):

- Of the 155 trees surveyed and adjacent to the site 62 [54%] will require removal. This is a significant number.
- The following 46 trees are designated for removal due to "major encroachment:"
    - 98,100,103,105,107,109,110,111,113,114,121,123,132,134,136,139,145,146,152,153,158 159,164,165,166,171,176,184,190,199,201,202,211, 230,244,303,304,307,308, 312, 320, 322, 325.
- Removal of 3 more trees is due to "grade changes."
- A further 11 trees will "most likely require removal" during construction.
- A further 5 trees are proposed to be removed due to ill health.

As the conclusion of the Arborist's report states: *"The majority of the 115 assessed trees on site were of good health and vigour and good structural condition. The majority had with a long safe useful life expectancy (SULE), medium landscape significance and high retention value."* (emphasis added)

The loss of 54% of landscaping with the removal of trees with “medium landscape significance and high retention value” (as identified by the submitted Arborist’s report) is unacceptable in an area of biodiversity significance. Options to reduce the building and basement footprint must be explored to enable retention of all trees of medium-high landscape significance (refer to further comments below).

Principle 6: Amenity

The siting strategy (Option D with two parallel building forms to Pearson Avenue) creates a unique set of issues for access and arrival.

All vehicular arrivals and departures occur underground in the basement carpark. No provision is made for natural light or ventilation. To increase general amenity and ensure that accessibility is offered, opportunities to bring in natural light and air (over the drop-off) should be considered.

Depths of the combined living, dining and kitchens in apartments 102, 202, 302, 402 and 502 in Building A do not appear to be compliant with ADG 4D-2 which allows a maximum depth of 8m. No dimensions are shown.

Good levels of natural ventilation and access to sunlight appear to have been provided, however the amenity of the affordable apartments cannot be verified as these apartments have not been nominated. These apartments are required to be nominated.

There are ‘ease of access’ issues created by the proposed separation of the northernmost lift cores from the vehicular arrivals and entry lobby. These lift cores can only be accessed from the basement carpark and cannot be easily accessed from the lobby without traversing the communal open space. This a poor amenity outcome and gives rise to equity concerns. Anyone departing (or arriving at) the building by uber, taxi etc - who lives or is visiting an apartment that is accessed by one of those two remote lift cores - has to traverse the courtyard, go inside the lobby, and take a lift up to ground floor. This path of travel is long and circuitous and will disadvantage many. If someone with mobility issues (highly likely in this building) is dropped off at the (ground floor) entry, and they are going to an apartment accessed off one of these northern lift cores (even if it’s the same ground floor level as the drop off entry), they have to go down, exit, come back inside and go up another lift to get to the same floor.

The proponent must also ensure that all lift cores and lobbies can be accessed directly, safely and under cover from the ground floor vehicular arrival point. It is recommended that the access consultant review this aspect of the proposal and provide design recommendations to improve circulation and accessibility.

Principle 7: Safety

The safety of the underground vehicle drop-off area is queried. The arrival point of the drop-off is not directly visible from the street entry. The vehicle pathway involves two right-angled bends. The first view once turning into the basement entry is unfortunately of the bulky waste collection and drop off holding area. Improvements are recommended to be made to the visual sequence of arrival (opening up direct lines of sight from road entry to stop off location) and to ensure that the subterranean arrivals area can benefit from natural light, ventilation as well as views to and from to the COS landscape above.

Principle 8: Aesthetics

Refer to Heritage comments below.

Summary

The proposal raises several key concerns regarding non-compliance with planning controls. The street setback from Pearson Avenue should be adhered to, as the proposed non-compliance contributes to excessive site coverage and negatively impacts the area's valued landscape character. Significant tree removal—particularly along Burgoyne Lane—is unacceptable in this biodiverse area, with 54% of medium-to-high value trees proposed for removal. The proposed height exceedance beyond the 22m limit is also unacceptable, particularly given the sites proximity to heritage listed No. 9 Burgoyne Street. Reducing the building scale, massing, and basement footprint is encouraged. Improvements are needed to circulation,

visual amenity, and natural light access, especially within the underground arrival zone and communal open space.

D. BUILDING HEIGHT

As noted above, the proposed building height is difficult to verify from the documentation provided. Amended elevations clearly showing the height variation should be provided, and a site plan overlaying existing ground levels should also be provided.

The proposed development includes a clause 4.6 request for building height (prepared by Willowtree Planning, dated 30 April 2025). The proposed building height is stated at 25.875m which exceeds the maximum building height permitted by section 155(2) of SEPP Housing by 3.875m or 17.6%.

The clause 4.6 request argues that compliance with the development standard is unreasonable and unnecessary for the following reasons (summarily):

- *The proposed height and scale of the development is generally consistent with the future character of the area as established by the new built form controls within Chapter 5 Transport Oriented Development and Chapter 6 Low and Mid Rise Housing in the Housing SEPP.*
- *The proposed height will not be responsible for any discernible impacts beyond that of a building with a compliant height in terms of visual bulk, privacy, solar access and views*

The reasons advanced by the proponent are not acceptable for the following reasons:

- The proposed development is contrary to section 150(b) of SEPP Housing as it does not provide mid-rise residential flat buildings which are of an appropriate bulk and scale having regard to the site constraints. Further, the development is inconsistent with section 150(c) as it does not provide a suitable amount of affordable housing to meet the needs of essential workers and vulnerable members of the community.
- The proposed height exceedance results in a poor transition to the adjoining heritage item and adjacent HCA.

The environmental planning grounds advanced by the proponent are as follows:

- *The proposed development is entirely consistent with the underlying aims or purpose of Chapter 5 of the Housing SEPP, as demonstrated in Section 4.1.*
- *The proposed development fully achieves the objectives of the R2 Low Density Residential zone, as described in Section 4.2.*
- *Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in Section 4.3.*
- *There would be no impacts on any sensitive receptors due to the proposal in relation to solar access, privacy or visual bulk as the non-compliant elements are suitably setback from the boundaries of the Site.*
- *Compliance with the remaining development standards applicable to the Site is achieved. There would be no measurable environmental or amenity benefits in maintaining the standard.*

The environmental planning grounds advanced by the applicant are not acceptable for the following reasons:

- The applicant has not given adequate consideration to the unique circumstances of the site. The grounds are generic and not specific to the elements of the development that breach the height of building development standard.
- The proposed development is insufficiently set back from the adjoining heritage item at No. 9 Burgoyne Street and does not respect the heritage significance of this building. Rather, the application documentation infers that this building should be de-listed. This is not a well founded argument.
- The proposed development at seven storeys in height is wholly inconsistent with the desired future character of the locality which envisages low density (two storey) residential development on the

site due to its specific characteristics and constraints.

- The proposed development is contrary to section 147 of SEPP Housing as it fails to satisfy the Design Principles set out in Schedule 9 of the SEPP.
- The proposed development is contrary to section 150(b) of SEPP Housing as it does not provide mid-rise residential flat buildings which are of an appropriate bulk and scale having regard to the site constraints.

Of serious concern, the provisions of Chapter 2, Part 2, Division 1 of SEPP Housing have not been utilised by the proponent. In principle, if the proponent is seeking additional building height, they should do so via the mechanism provided within the Environmental Planning Instrument in return for additional affordable housing. The eschewal of this mechanism, in favour of the minimum provision of affordable GFA, is contrary to the public interest. If additional building height is sought, the bonus provisions of Chapter 2, Part 2, Division 1 should be utilised.

Further, section 192(c) of *Environmental Planning and Assessment Regulation 2021* (Regulation) requires an Environmental Impact Statement (EIS) to provide an analysis of feasible alternatives to the carrying out of the development, its objectives and the consequences of not carrying out the development. The EIS (prepared by Willowtree Planning, dated 1 May 2025) includes no analysis as to why the provisions of Chapter 2, Part 2, Division 1 have not been utilised. In the absence of this justification and having regard to the provisions of clause 4.6(3)(a) and (b) of the KLEP discussed above, it is doubtful that the consent authority can find the proposed variation request to be well founded.

E. AFFORDABLE HOUSING

Section 156 (2), Chapter 5, of SEPP Housing states that development consent must not be granted unless the consent authority is satisfied that:

(a) at least 2% of the gross floor area of the building will be used for affordable housing, and
(b) the affordable housing will be managed by a registered community housing provider in perpetuity.

The proponent states within the Environmental Impact Statement (EIS) that the requirement for affordable housing is 'acknowledged, and it is anticipated that a condition of consent as per section 86A of *Environmental Planning Regulation* will be provided' (p. 73).

The proponent has not identified the proposed affordable housing units within the Gross Floor Area (GFA) plan as required by SEARs Issue 6. Further, the proponent has not provided the name and ABN of the registered community housing provider that will be responsible for managing the affordable housing component of the development as required by SEARs Issue 1. For these reasons, the consent authority cannot be satisfied that the affordable housing requirements are or will be met.

F. CONTRIBUTIONS AND PUBLIC BENEFIT

The applicable s7.11 contributions plan is Ku-ring-gai Contributions Plan 2010 and the current inflated contributions rates can be found on council's website and on the Planning Portal. These are updated quarterly.

The proponent indicates that an exemption from development contributions is sought for the affordable housing component on the development (EIS, p. 83). Per section 1.30 of Ku-ring-gai Contributions Plan, formal applications for the suspension of contributions must comprehensively argue the case for suspension including the specific circumstances that would distinguish the subject proposal's merit case from others. A comprehensive argument has not been put forward by the proponent and it is unclear why contributions would be exempted in this instance. The requirements of SEARS Issue 3 have not been met.

It is Council's view that unless the affordable housing is dedicated to a Community Housing Provider (CHP)/Council for use in perpetuity then it is not housing provided "by a CHP" (or on behalf of them), so the development would not be eligible for exemption from Local Infrastructure contributions under the Ministerial Direction. Nothing in the Contribution Plan requires Council to grant the discretion requested, especially where there will be a significant cumulative impact on infrastructure delivery.

G. GROSS FLOOR AREA

As noted above, the submitted GFA diagrams do not differentiate between affordable and market dwellings. The proposal is therefore inconsistent with SEARS Issue 6.

Further, the GFA plans are not to a legible scale and concern is raised that GFA may not have been calculated correctly. Areas to check include: the thickness of walls to common vertical circulation such as lifts and stairs (where not external walls), the thickness of walls to risers, internal walls of areas used for plant/services with common lobbies and the areas shaded green at Ground floor level (**Figure 4**). The cumulative GFA of these features is likely to be significant.

To assist in verifying the GFA, clearer GFA plans should be provided as well as additional sections and an overlay to verify the extent of basement as defined.

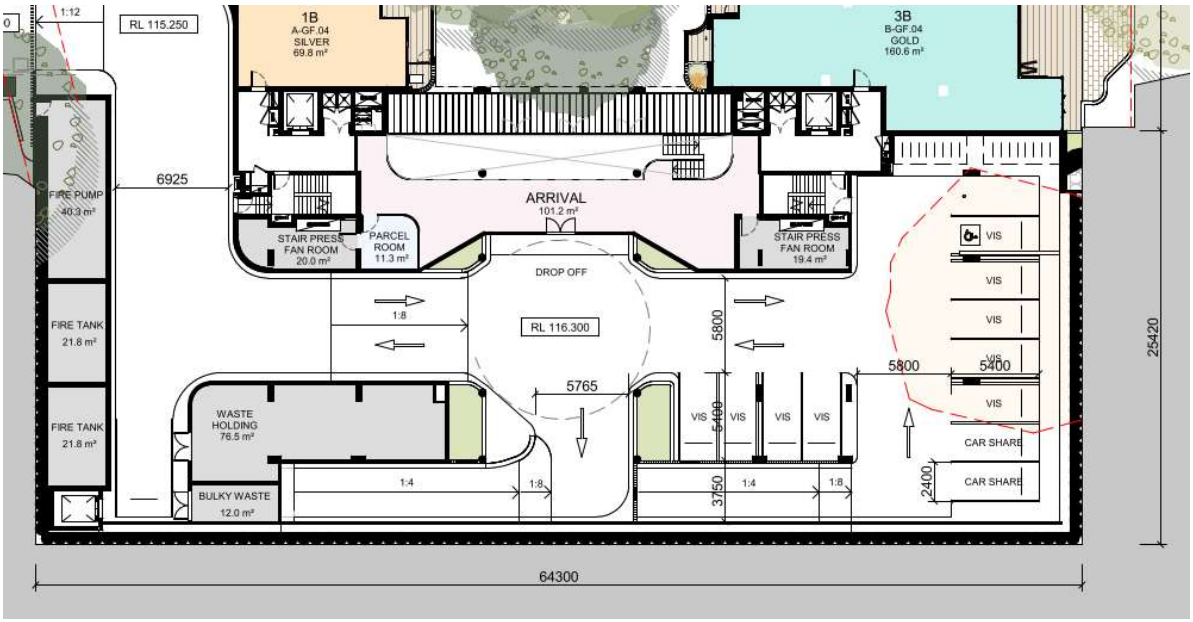

Figure 4: Excerpt of Ground floor plan showing areas shaded green

H. HERITAGE

Legislative framework

'Guidance to Transport Orientated Development' by the Department of Planning and Infrastructure dated May 2024 page 11 states that for Development Applications in HCAs:

'Any new apartment buildings proposed in an HCA should be appropriate to the context, and build upon the features of the HCA, whilst delivering increased housing density.'

The Guidance states that consent authorities are required to assess applications lodged under SEPP Housing under clause 5.10 of the relevant LEP. For the reasons outlined below the proposed development does not meet the requirements of clause 5.10 of the Ku-ring-gai LEP (KLEP) which is a relevant matter for consideration.

The heritage provisions set out under clause 5.10 of the KLEP set the objective *"to conserve the environmental heritage of Ku-ring-gai"*. A further objective set by the KLEP is *"to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views"*. These objectives follow the standard instrument established by the NSW Government SEPP.

The KDCP sets further detailed objectives and controls to implement these LEP objects in relation to conserving significance, fabric, setting and views for heritage conservation areas and heritage items. As outlined above, this document must be considered by the consent authority as it establishes the local context.

Proposed development

The site of the proposed development is immediately adjoining a heritage item at No. 9 Burgoyne Street, dwelling house '*Eudesmia'*, which is listed in KLEP as a heritage item of local significance (**Figure 5**).

The site is also across Burgoyne Lane (5-10m away) from local heritage items at No. 16 Park Avenue, Nos. 12-14 Park Avenue and No. 8 Pearson Avenue.

The site is semi-encircled by *Gordondale Estate* HCA from west and south. Another six local items are within a radius of 50m, and another eight within a radius of 50-150m (see **Attachment 2**).

Figure 5: Site of proposed development marked on KLEP Heritage Map

Council's Heritage Advisor has reviewed the proposed development and has advised it is unacceptable for the following reasons:

1. The proposed development is based on inadequate and insufficient heritage information.

The following concerns with the documentation are raised:

- The submitted Heritage Impact Statement (HIS) does not follow relevant guidelines for preparing statements of heritage impact issued on 19/06/2023 by the Department of Planning and Environment: https://www.environment.nsw.gov.au/publications/guidelines-preparing-statement-heritage-impact
- The submitted HIS report does not assess the adverse impact of the proposal on the heritage items in the vicinity at No. 8 Pearson Avenue, No. 16 Park Avenue and No. 12-14 Park Avenue, nor on the streetscape.
- The submitted HIS report does not examine the impacts of the proposal against applicable on

- The submitted Heritage Assessment (HA) is based on incorrect information and includes the statement 'Frances Street (sic!) Conservation Area is currently under review.'
- The submitted HA report is based on incorrect premise of "*future demolition*" of the heritage item at No. 9 Burgoyne Street. This information is incorrect, as there is no approval for demolition of the item. Notably, this is not part of any current proposal.
- The submitted HA does not follow the methodology of the Guidelines for assessing places and objects against the Heritage Council of NSW criteria because it does not use Criteria F and G to establish the degree of significance relative to other places. Conversely, it uses the existence of "similar examples" to discard the significance of the item.

2. The proposed development is of an overwhelming scale.

The proposed development addresses the adjoining heritage items and HCA with its eight level scale, dominating over the predominantly single storey scale of the majority of the houses in the area (**Figures 6 and 7**).

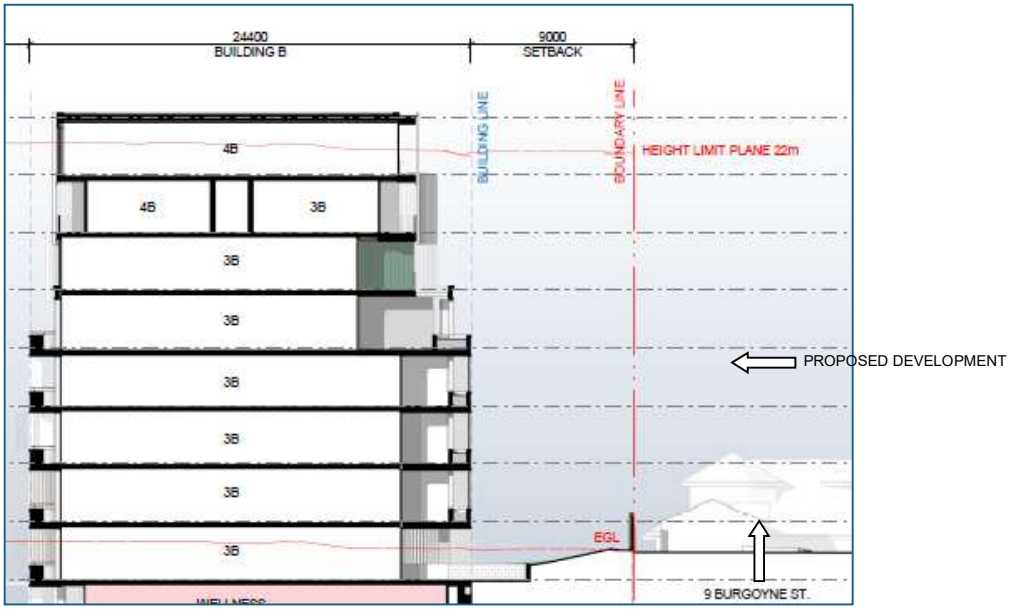

Figure 6: Proposed Section through the Site (excerpt from plans by Marchese Partners)

Figure 7: Proposed View from rear backyard of No. 9 Burgoyne Street (View Analysis by Audax Urban)

The proposed forms and proportions do not have regard to the adjoining heritage item and HCA as follows:

- The proportions of the proposed windows have a base/height ratio of 1:3 to 5:2, which is strikingly differing from, and visually incompatible with the traditional ratio of approximately 1:1.618.
- The fenestration pattern is not aligned. This gives a visually distracting and intrusive fenestration pattern, which is visually incompatible with the traditional imagery.
- The proposed development has an incoherent form with deep recesses, and floor plates and awnings with rounded corners. This creates imagery which is intrusive to the adjoining and adjacent items and the HCA (**Figure 8**).

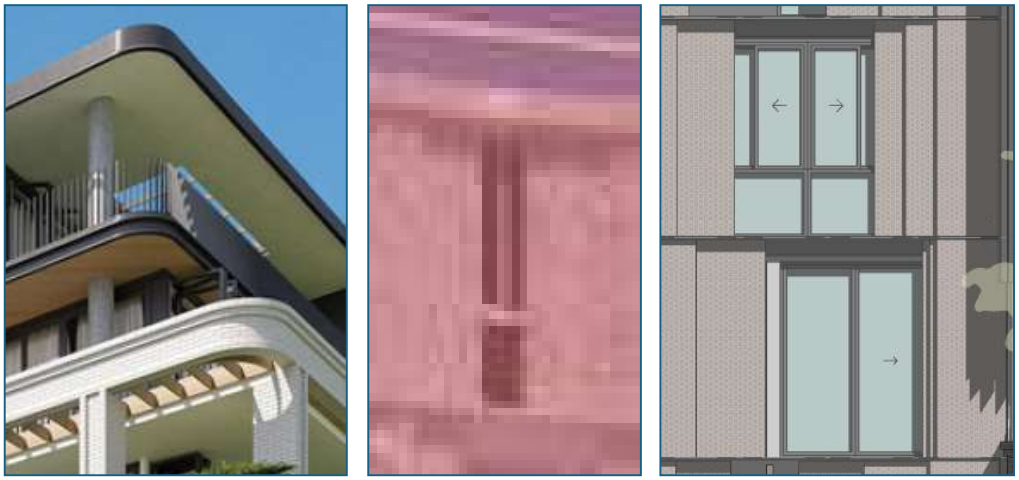

Figure 8: Examples of intrusive forms and proportions (excerpt from plans by Marchese Partners)

3. The proposed development features intrusive materials and finishes

The façades of contributory houses in the HCA are of dark red face brick or rendered, on a stone base, with timber window frames painted white.

The proposed building features light cream brick, corbelled (“lacework”) brick areas, black metal window

frames and industrial aluminum slats **(Figure 9)**. These materials create an imagery conflicting with that of the adjoining heritage item and the HCA.

Figure 9: Examples of intrusive materials (excerpts from View Analysis)

4. **The proposed development results in adverse impact on views to and from the adjoining heritage item and the HCA**

The following concerns are raised:

- The submitted documents do not demonstrate that the proposal will not reduce or impair important views to and from the heritage items or HCA from the public domain.
- The submitted 3D model indicates adverse impacts on the heritage item at No. 9 Burgoyne Street (**Figures 10 and 11**).
- No assessment is provided of any views to or from the heritage item at No. 8 Pearson Avenue, heritage items in Park Avenue, or in the HCA.

Figure 10: Street view of the heritage item (from View Analysis)

Figure 11: View from rear yard of the heritage item (from View Analysis)

5. The proposed setbacks are not sufficient and are not compliant with controls

The proposed setbacks do not allow sufficient curtilage to the adjoining heritage item at No. 9 Burgoyne Street, items in the vicinity in Park Avenue, or the HCA, as evidenced by non-compliance with the Controls and Objectives of KDCP Part 19F.2. Specifically, the following concerns are raised:

- there is no minimum 12m building separation to the heritage item or buildings in the HCA as per KDCP Figure 19D.2-1 (**Figure 12**); and
- the proposed building mass above 8m high from existing ground level is not stepped back an additional 6m from the heritage item as per Figure 19D.2-1 in the KDCP (**Figure 12**);

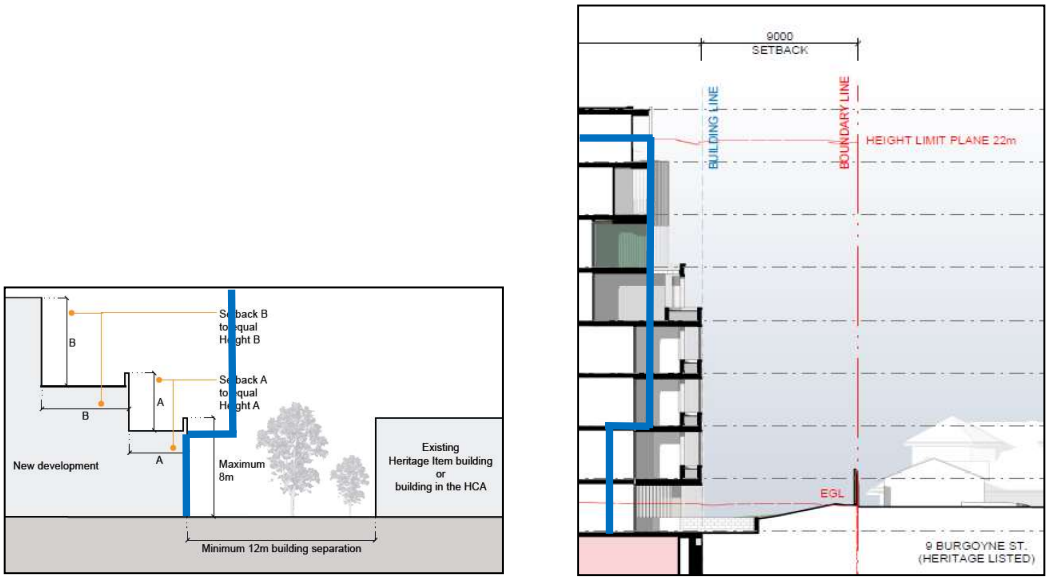

Figure 12: Comparison between KDCP controls and proposed setbacks.
Left: Side setback of proposed development (blue line) exceeding permissible in KDCP Figure 19D.2-1.
Right: Section of the proposed development, exceeding permissible setbacks (marked with a blue line).

6. The proposed lot amalgamation does not respect the streetscape pattern

The design of the proposed development does not reflect the current streetscape pattern of the adjoining HCA, which is part of its significance as the area is part of the late nineteenth century subdivision of Gordondale Estate. The site of the proposal amalgamates four allotments facing Burgoyne Street, which is not reflected in the design which centres around two buildings.

I. INSUFFICIENT BDAR

The Biodiversity Development Assessment Report (BDAR) prepared by Anne-Marie Clements and Associates fails to satisfy the statutory requirements under the *Biodiversity Conservation Act 2016* (BC Act), the Biodiversity Assessment Method (BAM) Operational Manual – Stage 2 and the requirements of SEARS Issue 16.

The proposal does not demonstrate genuine application of the avoid and minimise hierarchy and fails to provide the level of transparency, rigour and documentation required under the BAM. The following specific deficiencies are identified:

1. Insufficient Demonstration of Avoidance Measures

The BAM Operational Manual (Section 3.1) requires proponents to clearly demonstrate how potential impacts on biodiversity values—specifically native vegetation, threatened species, and threatened ecological communities—have been avoided as a first priority. The applicant's BDAR fails to provide a thorough and transparent exploration of feasible alternative locations or design configurations that could avoid impacts on high-value biodiversity assets. This includes inadequate assessment of options that could have prevented encroachment on critical root zones and removal of significant trees within the site, including *Angophora costata* (Tree 139), *Eucalyptus paniculata* (Tree 145), and *Eucalyptus saligna* (Tree 176), all of which are in good health and form part of the critically endangered Blue Gum High Forest (BGHF) ecological community.

2. Lack of Comprehensive Exploration and Documentation of Alternatives

Section 3.3 of the BAM Manual mandates that all reasonable avoidance and minimisation options considered—even those not selected—must be documented and justified in the BDAR. The BDAR does not adequately capture the spatial analysis or provide evidence of alternative site layouts, driveway alignments, or construction methodologies that could reduce or eliminate impacts on the mature trees and remnant native vegetation. There is a lack of cost-benefit or feasibility analyses to justify the rejection of alternative designs that would better protect biodiversity values.

3. **Failure to Minimise Impacts Where Avoidance is Not Feasible**

   Where impacts cannot be entirely avoided, the BAM requires minimisation measures to reduce the extent and severity of biodiversity harm. The current proposal relies on limited mitigation methods such as horizontal underbore drainage and locating the driveway outside some canopy areas, but these measures are insufficient to address the significant encroachments and removal of mature native trees identified. The BDAR does not adequately demonstrate how these measures meet industry best practice standards, nor does it assess their efficacy or risk of failure, as required by the BAM (Section 3.2).

4. **Inadequate Consideration of the Conservation Status and Ecological Function of Impacted Vegetation**

   The BDAR's argument regarding soil modification and historical garden establishment does not negate the legal and policy obligation to protect remnant native vegetation that qualifies as a critically endangered ecological community under the BC Act. The operational manual emphasises the importance of recognising and preserving biodiversity values regardless of site modification history. The removal of healthy, mature specimens of BGHF trees directly conflicts with this principle and is inconsistent with the mandatory avoidance and minimisation hierarchy.

5. **Insufficient Transparency and Support for Decision-Making**

   The BAM requires transparent documentation of the evolution of the proposal with respect to biodiversity impacts, including clear mapping and digital data showing avoided areas and detailed explanations supporting design choices. The submitted BDAR lacks this transparency, impairing the ability of consent authorities to confidently assess compliance with biodiversity legislation and policies.

Due to the above failures, the proposal does not satisfy the statutory requirements under the BC Act or the operational guidelines of the BAM for biodiversity protection. The lack of demonstrated genuine avoidance and minimisation of impacts to the critically endangered BGHF community and key mature trees within the site justifies refusal of the application. The proponent must provide amended plans and an updated BDAR that clearly documents a comprehensive and robust process of exploring, justifying, and implementing avoidance and minimisation measures in accordance with the BAM Operational Manual.

Recommendations for Redesign to Retain and Protect Trees 139, 145, and 176:

1. Realignment of built form and access infrastructure
   - The design should be amended to completely avoid encroachment into the Tree Protection Zones (TPZs) and Structural Root Zones (SRZs) of Trees 139, 145 and 176.
   - This may include the relocation of driveways, access handles, or basement entries to parts of the site with no canopy or significant native vegetation.
   - Consider relocating or reorienting buildings or structures to allow for adequate setback from retained trees.
2. Use of existing disturbed or non-native areas
   - Where possible, re-site built elements in previously cleared or landscaped areas with minimal ecological value, as required under the BAM Operational Manual (Box 2, Section 3.1).
   - Avoid development footprints in areas supporting native canopy or habitat-forming trees, especially those confirmed as part of the BGHF community.
3. Protection of TPZs and SRZs during and after construction
   - Construction must avoid any excavation, fill, or structural load within the TPZs and SRZs

of Trees 139, 145 and 176.
    - Employ low-impact construction methods near retained trees (e.g., pier and beam footings, suspended slabs) where structures must be proximate.
    - Temporary tree protection fencing must be installed to delineate no-go zones in accordance with AS 4970–2009.
4. Review of civil and landscape services
    - Stormwater, sewer and electrical services must be rerouted to avoid trenching within the TPZs and SRZs of the identified trees.
    - Use trenchless technologies (e.g., horizontal directional drilling) where underground infrastructure must pass near retained vegetation.
    - Ensure landscape elements (e.g., paving, swales, garden beds) do not alter hydrology or compact soil within the TPZ.
5. Update arboricultural and biodiversity documentation
    - A revised arborist report is to be prepared that assesses the redesign, provides accurate TPZ/SRZ mapping, and confirms all retained trees can be viably protected.
    - The BDAR must be amended to reflect the updated layout, confirm that removal of high-value trees is avoided, and document compliance with the avoid and minimise hierarchy under the BC Act and BAM (Sections 3.1–3.3).
6. Long-term tree management and monitoring
    - Include a Tree Management Plan that outlines protective measures during construction and long-term care strategies for Trees 139, 145, and 176.
    - Post-construction monitoring should occur for a minimum of five years, particularly for signs of decline due to indirect impacts.

J. TREES AND LANDSCAPING

The proposed development is inconsistent with SEARS Issue 14 which requires provision of a detailed arboricultural report.

The proposal fails to provide evidence that opportunities to retain significant trees have been explored and/or inform the plan. Trees 132, 139, 145, and 176 are all highly significant trees, with high retention value, with heights greater than 25m, in good health and condition with long life expectancies. The trees are listed as species that form part of the critically endangered Sydney Blue Gum High Forest (BGHF) plant community and are mapped as having biodiversity significance as canopy remnants.

Furthermore, Trees 164, 166 and 244 are all highly significant trees, with high retention value, with heights greater than 25m, in good health and condition with long life expectancies. The trees contribute positively to the existing landscape character and context.

The proposal includes a central area of deep soil landscape zone between Buildings A and B. This area of deep soil landscape does not correspond to any trees of significance and is inconsistent with ADG Part 3E design guidance which states that deep soil landscape zones are to be located to retain existing significant trees.

With a large site area of over 7,000m^2, there is design opportunity and flexibility to relocate areas of deep soil to enable the viable retention of Trees 132, 139, 145, 164, 166, 176 and 244. There is insufficient evidence that the design reflects the principle of avoidance, which is inconsistent with Issue 14 of SEARS

Root mapping of trees of significance has not been undertaken where development encroachment is greater than 10%, for example, Tree 244 *Aaraucaria hetrophylla* (Norfolk Island Pine) of high significance and high retention value with a long life expectancy. The tree has grown in association with the existing dwelling and driveway located within the Tree Protection Zone (TPZ) which would have influenced root development and growth when assessed against AS4970-2009. While the tree is identified to be removed, no TPZ encroachment calculations comparison (existing and proposed) has been provided within the arboricultural impact assessment. There may be opportunity to viably retain the tree as it has not been demonstrated that development encroachments result in the trees unviability or there isn't further design opportunity to enable the trees viable retention given its high significance and retention value.

Further detailed assessment should also be provided for Tree 145 *Eucalyptus paniculata.*

No tree protection plan is submitted although recommended by the project arborist.

The report fails to provide a detailed assessment of pruning outcomes to retained trees that spatially conflict with the building e.g. Tree: 203 *Liquidambar styraciflua* (Sweet Gum). This pruning may adversely impact the trees structural form and must be considered.

K. TREE REMOVAL AND IMPACTS

Tree removal

The removal of trees of high significance and ecological/biodiversity significance including Trees 132, 139, 145, 164, 166, 176 and 244 fails to protect, maintain and preserve the tree canopy and established landscape character. The removal of these trees is inconsistent with the aims, objectives and controls of the KDCP.

The proposed tree removal is also inconsistent with ADG Objective 4O-2 which requires the landscape design to respond to existing site conditions including significant landscape features. The removal and loss of mature and significant trees associated with a critically endangered plant community of high significance and high retention values, in good health and condition, that characterises the established landscape context and streetscape, does **not** contribute to the streetscape and amenity and is inconsistent with ADG Objective Part 4O-2 and design guidance.

There is design opportunity to enable the viable retention of Trees 132, 139, 145, 164, 166, 176 and 244.

Stormwater

The proposed stormwater works include the installation of pipes and pits within the SRZ and TPZ of retained trees. The project arborist has required directional drilling/thrust boring of pipes within the TPZ, however the proposal has not adequately demonstrated that the arboricultural requirements can be practically achieved. For example, pipe connection points cannot be undertaken via directional drilling and appear to spatially conflict with retained trees such as Tree 231 - *Liquidambar styraciflua* (Sweet Gum). Excavation cannot be practically undertaken without significant tree impact and severance of structural roots.

In this regard the arboricultural impact assessment report fails to adequately assess the impacts of the proposal.

There is design opportunity to relocate the proposed stormwater pipes and pits at greater setbacks from retained trees. Amended stormwater plans are recommended for clarity and certainty of outcomes.

Arborist's report

The report fails to adequately detail pruning outcomes for retained trees to enable construction. For example, Tree 203 is a mature *Liquidambar styraciflua* (Sweet Gum) that has an existing canopy that covers the Burgoyne Street site frontage reaching the existing dwelling's footprint. The proposed development encroaches within and spatially conflicts with the canopy. To enable assessment of impact and consistency with pruning standards, the arboricultural impact assessment report shall provide assessment on the extent of pruning required and how this impacts the tree's structural form.

The trees proposed to be impacted or unnecessarily removed by the proposed development are shown in **Figure 14** below (tree numbers highlighted in yellow):

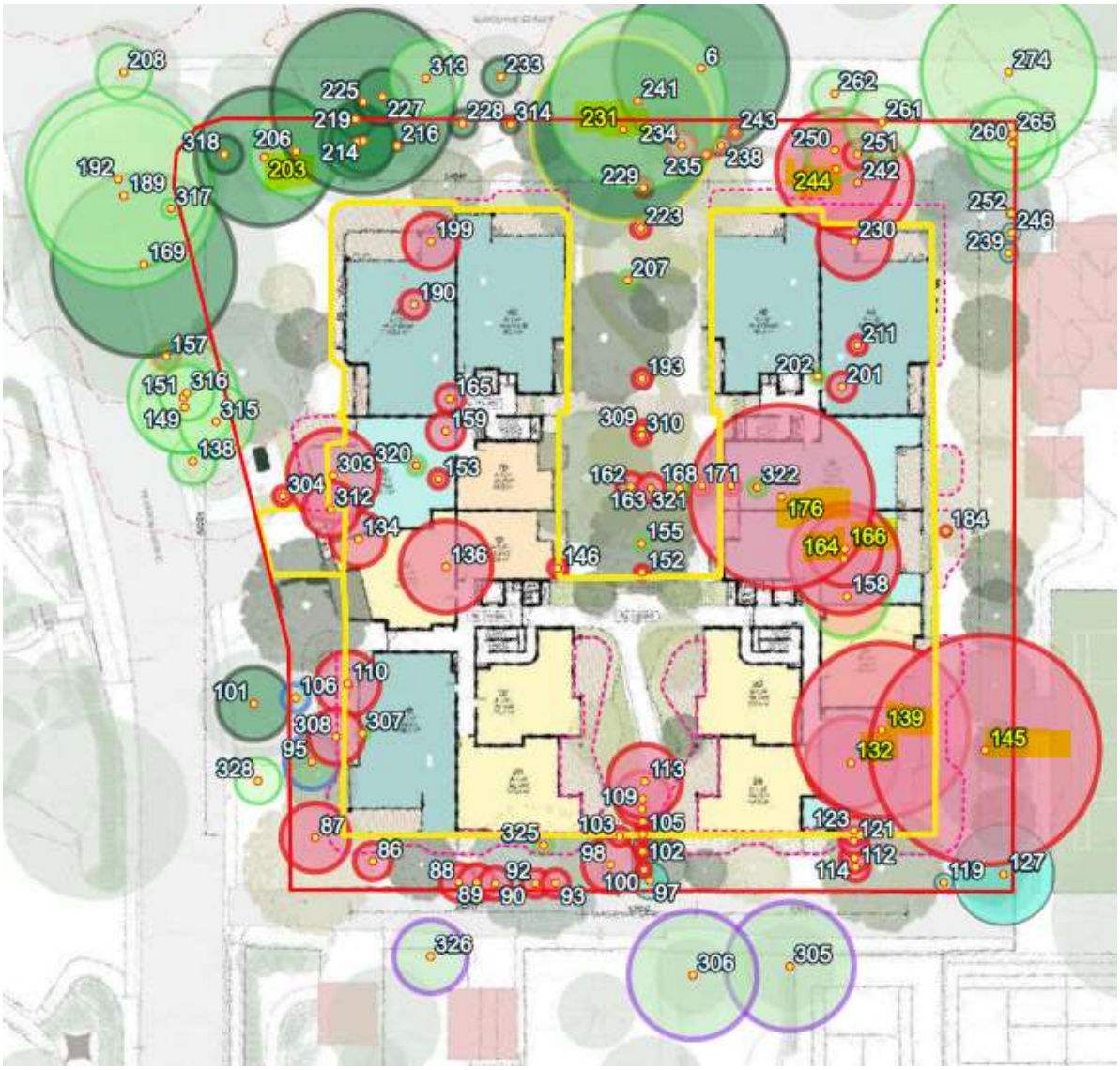

Figure 14: Excerpt from arborist's report highlighting in yellow inappropriate tree removal and trees likely to be impacted

L. LANDSCAPE CHARACTER

Pursuant to section 147 of SEPP Housing, the consent authority must be satisfied that the design of the residential flat building adequately addresses the design principles outlined in Schedule 9 of the SEPP. The proposal fails to satisfy Principle 5 for the following reasons:

- The proposed removal of Trees 132, 139, 145, 164, 166, 176 and 244 fails to retain an existing positive natural feature that creates a micro-climate, forms part of the local context and character and provides habitat (3a, d, e & f).
- The proposed removal of Trees 139 and 145 fails to respect neighbour's amenity (4d).
- Insufficient information and detail regarding soil depth and volumes for on-structure planters fails to provide for practical establishment and long-term management of the proposed landscape design outcomes (5).

The landscape plans fail to provide detail as to the proposed wall heights, soil depth and volumes for the proposed planters on structure. To enable assessment of planting outcome viability, planter soil depths and volumes, consistent with the ADG shall be specified.

The planting of tall Eucalypts (>20m) with broad canopy dimensions (>20m) e.g. *Eucalyptus saligna* (Sydney Blue Gum) in close proximity to the building is ill-advised and will lead to future and ongoing conflict resulting in the planting being unviable. While the planting of tall Eucalypts that strongly define Ku--ring-gai's landscape character is encouraged, they should be appropriately located with suitable setbacks to enable their future canopy growth and development. For example, the planting of four tall trees with dimensions greater than 20m high x 15m canopy spread is unviable within the 6m southern setback that is also encroached by private open space.

M. DEEP SOIL ZONES

Section 147(1)(b) of SEPP Housing requires the consent authority to consider the ADG. The proposed deep soil zone is inconsistent with Part 3E of the ADG. The location of proposed deep soil zones has not adequately considered the retention of trees with high significance (Trees: 132, 139, 145, 164, 166, 176 and 244) and fails to satisfy the ADG design guidance to retain existing significant trees.

It is important to note that deep soil zones and canopy tree planting (existing and proposed) are considered fundamental to the desired future character of residential apartment development in Ku-ring-gai. This is further reinforced in the Local Strategic Planning Statement which describes the established tree canopy in Ku ring gai is a defining characteristic and essential to the 'look and feel' of Ku-ring-gai.

The proponent's deep soil compliance plan incorrectly includes areas that are inconsistent with the definition. For clarity and certainty of design outcomes, an amended compliance plan and area calculation/s, consistent with the definition is required.

N. BASIX

The submitted BASIX certificate (1786841M dated 11/03/2025) and development proposal are inconsistent.

The development does not propose any common lawn area, whereas the certificate nominates 822.54sqm.

The certificate fails to nominate private areas of garden and lawn that are proposed as part of the development. The following units have areas of private planters (areas of garden and lawn) proposed: ALG02, BLG01, BLG02, AGF01, BGF03, BGF04, B103, B104, A303, A304, B301, B302, B303, B304, B403, B404, B405, A505, B505, B506, A603, A604, A701, and B701

BASIX definitions include:

Common area: *means spaces within the development site that can be used by the occupants of more than one dwelling or services more than one dwelling, and includes shared open space, shared lobbies, corridors, gyms, pools, car parks and common service areas such as plant rooms and garbage areas.*

Private landscaping: *for a dwelling, means landscaping that is for the private use of occupants of the dwelling (and is not a common area).*

Therefore, the areas that are fenced as private courtyards and planter boxes directly associated with and only accessible from private balconies are assessed as private areas of garden and lawn. This inconsistency must be addressed.

O. WATER MANAGEMENT

A 13.5m^3 pump-out tank within the basement has been provided. No supporting calculation for the pump-out pit based on the 100 year 2 hour storm has been submitted as per Part 24B.5 of the KDCP.

Further, the stormwater design does not show the rising main from the pump-out tank directed to the on-site detention tank.

P. WASTE MANAGEMENT

Swept paths are to be submitted demonstrating that Council's waste collection vehicle of 6.7m Mitsubishi Canter can enter and depart the garbage/room recycle storage area in a forward direction. The 6.4m SRV as shown is no longer adopted by Council.

A clear head height of 2.6m has not been provided. The proponent should submit a longitudinal section through the driveway and into the basement carpark to clearly demonstrate that there will be 2.6m clear headroom along the whole of the travel path required for the small waste collection vehicle. The section must include realistic slab/beam depths, stormwater pipelines and other overhead services.

The Waste Management Plan (prepared by MRA Consulting Group, dated 22 April 2025) does not detail the process for recycling paper and cardboard materials. Separate bins are to be provided for paper and cardboard materials.

Q. CAR PARKING

Carparking provision

There are slightly different quantities in the apartment breakdown between the Transport Impact Assessment (TIA) and the EIS. This inconsistency is to be clarified.

While a breakdown of parking allocation has not been provided a notional breakdown has been prepared by Council's Strategic Traffic Engineer as follows:

	Total		**Allocation of proposed parking provision**				
Qty	Unit type	Max	Units with **0** spaces	Units with **1** space	Units with **2** spaces		
0	Studio					0	
11	1br		6	5		5	
21	2br			21		21	
74	3+br			8	66	140	
	visitor						
106	**Total**	**0**				166	Total spaces
			6	34	66	106	Total units
			6%	**32%**	**62%**		

The notional breakdown does not reflect household vehicle ownership in Ku-ring-gai. If resident parking was provided in accordance with the lower end of the KDCP range and supplemented with appropriate numbers of car share vehicles, the allocation could look something like this:

	Total		Allocation of KDCP parking provision (low end)				
Qty	Unit type		Units with **0** spaces	Units with **1** space	Units with **2** spaces		
0	Studio					0	
11	1br		7	4		4	
21	2br		6	15		15	
74	3+br			24	50	124	
	visitor						
106	**Total**					143	Total spaces
			13	43	50	106	Total units
			12%	**41%**	**47%**		

This would align better with the existing vehicle ownership per household in Gordon. Given that the site is located in close proximity to Gordon station, local and regional bus routes, shops and amenities, the parking provision should be reduced to better align with current vehicle ownership patterns in the area, and supplemented with additional on-site car share vehicle/s, so that residents that need access to a vehicle (or a second vehicle) do not need to own an additional vehicle and the car space associated with it.

Reducing the proposed parking provision will also improve affordability, as complying with the KDCP could result in reduced basement excavation, and would give future residents the opportunity of owning apartments with reduced car parking spaces (or even no car parking spaces) because of the availability of on-site car share vehicles.

Access point

At the roadway, the layback/gutter crossing is proposed to be 9m wide, connecting to a 7.3m wide access point at the property boundary, which is inclusive of a 0.7m wide median. Depending on the height of the car park entry and servicing areas on the Ground Level plan this layout at the boundary should be modified to accommodate home deliveries (e.g. groceries, parcels etc), bulky goods waste collection and other service vehicles that cannot access the basement - see comments regarding Internal Car Park Layout below.

Despite the footpath being behind the kerb, it would still be possible to walk along the boundary. Therefore, it is still considered there should compliance in the provision of the 2m x 2.5m sight triangle as per AS2890.1 (shown in green below in **Figure 15**):

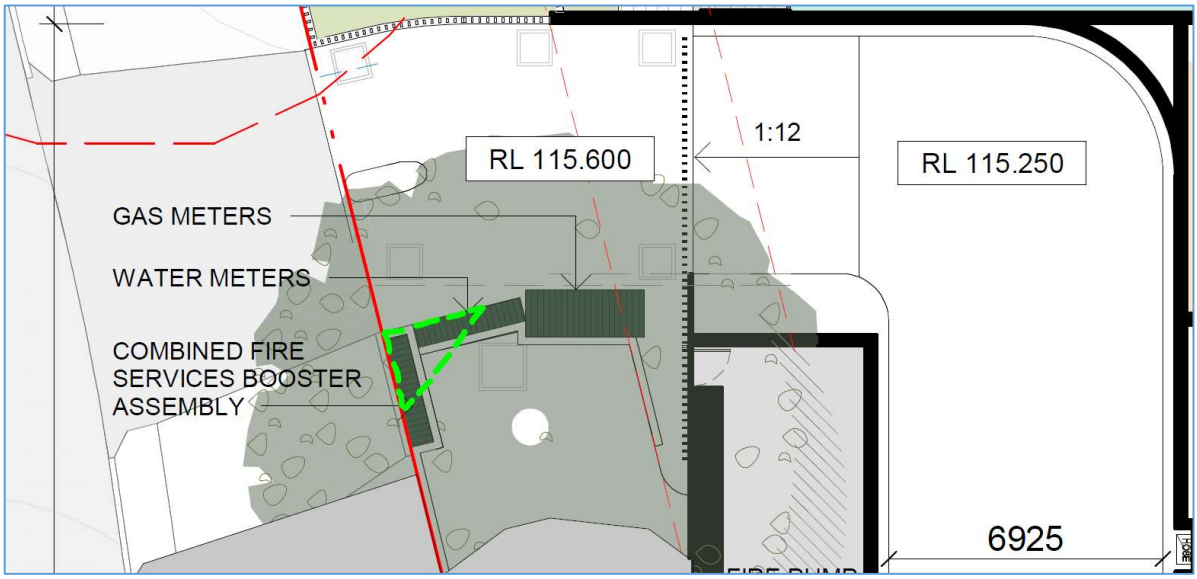

Figure 15: Required sight triangle

Internal Car Park Layout

The swept path analysis in the TIA indicates that SRV and B85/B99 vehicle would conflict, and recommends traffic signal operation to manage access. Details of the traffic signal arrangement have not been provided or discussed in the TIA. Council considers traffic signal controls visible from the street as inappropriate, as they detract from high quality outcomes. Before considering traffic signal control, it is recommended the following options be thoroughly investigated and exhausted:

- amend the internal road layout
- provide a passing bay
- consider using on-site convex mirrors to overcome visibility issues.

The site sections (Sections 3 and 4) in the architectural plans indicate a floor-floor height of 4.2m for the service area and loading bay. This would need to be clarified/confirmed. If the car park entry and loading bay/service area cannot accommodate access to the Parcel Room (on the Ground Floor plan) for home deliveries (e.g. groceries, parcels etc), bulky goods waste collection and other taller service vehicles that cannot access the basement due to the height clearance, the development should also provide an on-site loading area (a separate hardstand area is not permitted). The position of the loading area must not prevent access to and from the basement level car park, with at least one travel lane to be maintained at all times while loading/unloading takes place on the driveway. At least one on-site loading space which is at least 3.5m wide is to be provided to cater for a minimum 6.7m long service vehicle. This would require the width of the driveway next to the median to be modified. The loading space/s should be line marked and/or signposted as a designated loading area. Requests for an on-street Loading Zone in Pearson Avenue will not be considered.

On the Ground Floor level, the two car share parking spaces and one visitor car parking space are located in front of a roadway marked as One Way. The car share spaces and visitor space technically cannot be accessed directly from the car park entry (shown in green) due to the road markings indicating traffic flow in the opposing direction (circled in red in **Figure 16**):

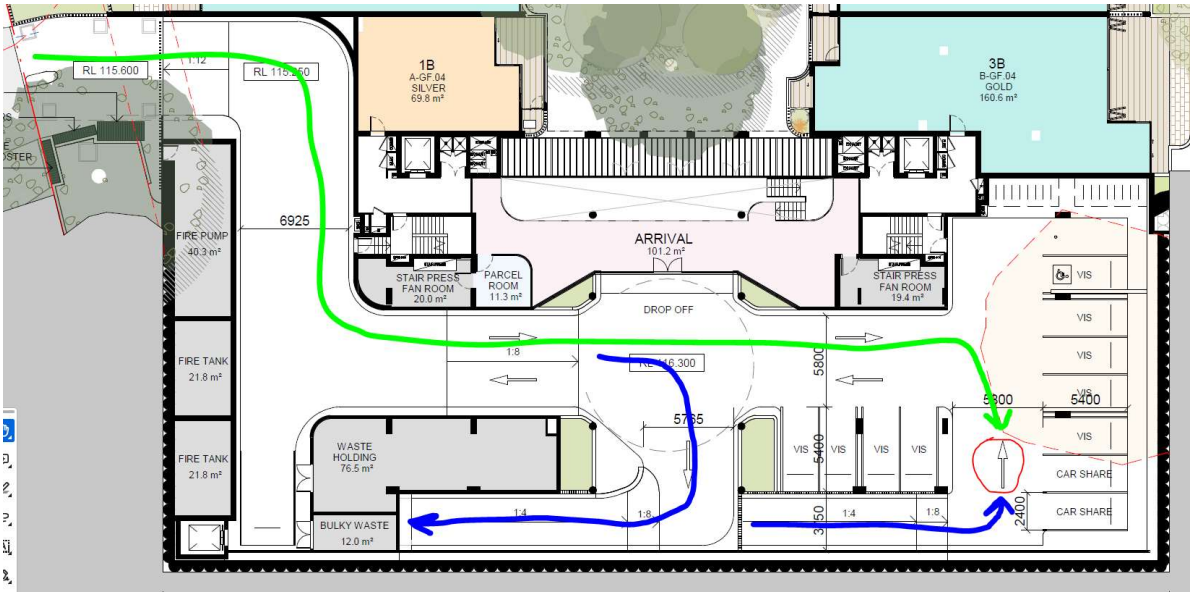

Figure 16: Proposed basement design inefficiencies

Vehicles accessing these spaces would need to enter the Lower Ground level and then return to the Ground Floor level via the connecting ramp (shown in blue). Users of these spaces are unlikely to follow the blue path, and conflicts would result if trying to access the spaces via the green path. The layout and access to the spaces must be reviewed.

Electric Vehicles (EVs)

In accordance with the KDCP (and market expectations), EV readiness is to be provided for all car parking spaces within the development, with design and construction (provision for conduits, switchboards, electrical capacity etc) to enable installation of electric vehicle charging points that are linked to each individual dwelling electricity meter.

R. BICYCLE PARKING

Bicycle Parking

Resident bicycle parking is proposed to be located on Basement 1 and Basement 2 levels, either in allocated resident storage areas or open bike racks. The entry ramps and the ramps connecting the basement levels have gradients of up to 1:4 (25%), which generally will exceed the capability of many bicycle users to remain mounted with stability (1:12, or 8% is practical). Therefore, the lifts and lobbies should be of a suitable size such that residents can transport their bicycles between their storage area and ground/street level without using the internal car park ramps.

18 visitor bicycle parking will be located on the Ground Floor level, at the far end of the car parking area (circled in red below **Figure 17**):

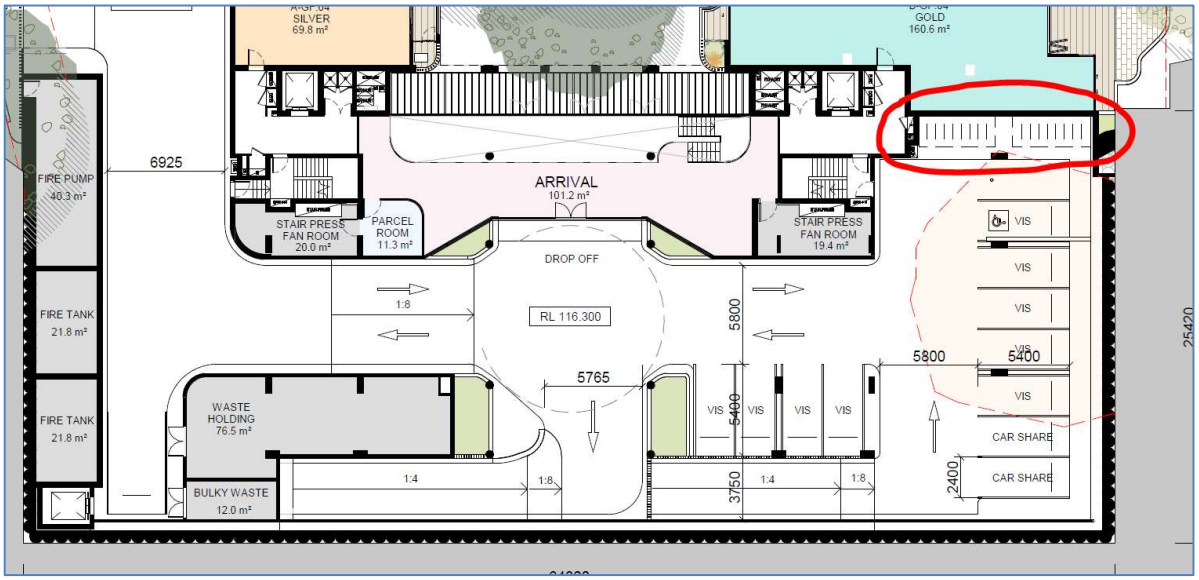

Figure 17: Undesirable visitor parking location

This location is considered to be too concealed and not offer enough passive surveillance. For ease of access and improved passive surveillance, it is recommended that the visitor bicycle parking be relocated to street level and spread across both pedestrian entrances from Pearson Avenue (as shown in red in the landscape plan extract below **Figure 18**), in accordance with AS2890.3:

Figure 18: Suggested alternative location for visitor bicycle parking

S. ACOUSTIC IMPACTS

The Acoustic report (prepared by Resonate, dated 24 April 2024) discusses noise emissions from mechanical plant and specifies compliance with noise criteria through appropriate equipment selection and layout. It also implies that air conditioning condenser units will be installed externally but does not specify where.

The architectural plans dated 22 April 2025 show:

- Areas labelled “mechanical exhaust fans and cowls” on the rooftops of Building A and Building B;
- “Exhaust fan room” and “supply air fan room” in the basement; and
- “Clubhouse AC plant” and “Wellness AC plant” on the corresponding lower ground levels of Building A and Building B.

However, the architectural plans do not clearly identify where the proposed air conditioning condenser units will be located.

Furthermore, the acoustic report refers to architectural plans dated 2 February 2025, while the submitted plans are dated 22 April 2025, creating a gap in confirming whether the acoustic assessment considered all relevant noise sources and their locations. The report also does not address whether rooftop acoustic screening is proposed or required to achieve compliance with the noise criteria.

The acoustic consultant must confirm that the assessment reflects the most current architectural floor plans and also clarify whether any external plant and/or condenser units will require further noise considerations based on their location.