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12/06/2025

Project Reference: 2025030

Delia Galeo

Major Projects Assessment

NSW Department of Planning and Environment

4 Parramatta Square

12 Darcy Street,

PARRAMATTA NSW 2150

Dear Delia,

SSD-82395459: BURGOYNE STREET, BURGOYNE LANE & PEARSON AVENUE, GORDON

We refer to the above State Significant Development Application lodged with the NSW Department of Planning and Environment (**DPE**). Hamptons Property Services Pty Ltd (**Hamptons**) acts on behalf of the owners of 16 Park Avenue, Gordon (Figure 1), which is located to the south of 3a-7 Burgoyne Street, Nos 1 and 3 Pearson Avenue and No. 4 Burgoyne Lane, Gordon (**site**).

Figure 1: 16 Park Avenue, Gordon (Source: Supplied by owner)



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Figure 2: 16 Park Avenue and the Site (red) the subject of this application (green) (Source: Archistar)



Summary

This submission is made on the premise that the owners acknowledge and accept the existence of relevant State Government policy, being State Environmental Planning Policy (**SEPP**) (Housing) that facilitates:

- opportunities for affordable housing to form part of residential development (Chapter 2),
- increased density in Transport-Oriented Development Areas (Chapter 5), and
- low and mid-rise housing under Chapter 6.

These endeavour to increase the supply of high and mid-rise residential development, including the provision of affordable housing.

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This submission does not object to greater density around transport hubs (including the provision of affordable housing). However, this submission supports that of Ku-Ring-Gai Council's Preferred Scenario, which was endorsed by Council on 5th June 2025, that these particular allotments should be removed from the TOD Precinct, specifically, *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.* It goes on to state that *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.*

Objection is raised to the scale of development that does not have adequate regard for the existing character of the area (noting it is in transition). In this circumstance, the application fails to consider:

- the importance of existing vegetation on this site and its contribution to the character of the locality
- the removal of vegetation in the south-eastern corner (Sydney Turpentine Ironbark Forest) which not only has ecological value but also provides a distinct landscape setting for those heritage items which flank the site to the east and south, and thus enhance the overall setting of these dwellings
- the interface of the proposed building form with heritage items aligning the eastern and southern boundary of the site in terms of separation and scale, nor the Gordondale Heritage Conservation Area
- the slope of the land, with the highpoint along the southern boundary at the interface with what will remain low density development, causes an intensity of scale at the interface that is not acceptable in terms of urban form.

Should the Council's position not be supported, the scale of the proposal should be reduced to three storeys along the southern side of the site to ensure an appropriate balance between the existing and future character. The importance of this is demonstrated at Figure 9 of this submission.

The Development Application

The Development Application (DA) has been lodged under Chapter 5 of the SEPP Housing and Chapter 2 for Infill Affordable Housing.

Under Chapter 5, the permitted maximum building height of 22m and floor space ratio of 2.5:1 is proposed.

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The proposal seeks consent for a building height of 25.875m and an FSR of 2.5:1. The proposal is non-compliant with the permitted building height and is subject to a Clause 4.6 variation request.

Heritage Attributes

As the Applicant's Statement of Heritage Impact correctly identifies, the site is not listed as a heritage item, nor is it in a heritage conservation area.

The table below, taken from the Statement of Heritage Impact¹ does, however, identify the following heritage items within the vicinity of the site, that is, not more than 163 metres from the site. There are 18 items and one conservation area.

Listing Type	Item Name and Address	Listing Number	Distance from Site
Located in the vicinity of items listed by the State Heritage Register or a s170 Register under the <i>Heritage Act 1977</i> (NSW).	Gordon Public School, No. 799 Pacific Highway, Gordon	SHR 00757	120m
	Gordon Railway Station, Middlemiss Street, Gordon	SHR 01150 s170 (no listing no.)	140m
Located in the vicinity of conservation areas listed by the State Heritage Register or a s170 Register under the <i>Heritage Act 1977</i> (NSW).	No	N/A	N/A
Located within the vicinity of local heritage items by Schedule 5 Part 1 of the <i>Ku-ring-gai LEP 2015</i>	"Eudesmia", dwelling house, No. 9 Burgoyne Street, Gordon	II	0m (adjoining the site)
	Dwelling house, No. 12-14 Park Avenue, Gordon	I22	5m
	Dwelling house, No. 16 Park Avenue, Gordon	I21	10m
	Dwelling house, No. 8 Pearson Avenue, Gordon	I24	10m
	Baptist Church and Manse, No. 20-22 Park Avenue, Gordon	I222	45m

Listing Type	Item Name and Address	Listing Number	Distance from Site
	Dwelling house, No. 1 Garden Square, Gordon	I192	23m
	Dwelling house, No. 4 Garden Square, Gordon	I194	90m
	Dwelling house, No. 2 Garden Square, Gordon	I193	90m
	"Annie Wyatt House", dwelling house, No. 26 Park Avenue, Gordon	I221	125m
	Dwelling house, No. 11 Park Avenue, Gordon	I20	90m
	Dwelling house, No. 23 Park Avenue	I73	163m
	Bradfield Memorial Garden, intersection of Park Avenue and Rosedale Road	I1102	160m
	Gordon Pre-School Building, No. 2A Park Avenue, Gordon	I23	53m
	Gordon Railway Station Group, No. 25 Henry Street Gordon (Gordon Railway Station)	I6	140m
	Old Gordon Primary School, No. 799 Pacific Highway, Gordon	I16	120m
Located within the vicinity of conservation areas identified by Schedule 5 Part 2 of <i>Ku ring gai LEP 2015</i> .	Gordondale Estate Conservation Area	C12	5m

The items are listed for their historical, associations, aesthetic, representative and social values and are evidenced on the heritage mapping below

¹ Statement of Heritage Impact, Weir and Phillips, 2025, Page 24

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Figure 3 Heritage items adjacent and opposite the site and the Gordondale Heritage Conservation Area (Source: NSW Planning Portal)



The Statement of Significance for the Conservation Area² is also reproduced from the Statement of Heritage Impact below:

4.6.2 Description

The SHI listing sheet provides the following description of the Conservation Area:

‘The Gordondale Conservation Area includes the northern side of Park Avenue (even Nos. 6 to 26) between Pearson Avenue and Rosedale Road, and all of Garden Square, Gordon.

The topography falls to Gordon Park to the east and to the south.

The streets are parallel to the Pacific Highway. The street grid is regular, distorted by the drainage reserve to the south. The lots are rectilinear but inconsistent in size due to successive subdivisions.

Key natural landscape elements include the reserves, water course and Gordon Park.

The area is a small precinct of high-quality residential housing including Federation Queen Anne and Bungalow styles, in addition to inter-war Georgian Revival, Mediterranean and Spanish Mission styles.

Detracting elements within the area include dominating garages and driveways, carports within the front setback, obstructive front hedges and uncharacteristic colour schemes.’¹⁹

See Figures 41-44 above.

² Statement of Heritage Impact, Weir and Phillips, 2025, Page 45

The Relevant Planning Controls

In the context of this submission, the following provisions are the most relevant, as set out below.

Chapter 2 Affordable Housing - Part 2 Development for affordable housing

20 Design requirements

Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with-

- (a) the desirable elements of the character of the local area, or
- (b) for precincts undergoing transition – the desired future character of the precinct.

Chapter 4 Design of residential apartment development

142 Aims

- (1) The aim of this chapter is to improve the design of residential apartment development in New South Wales for the following purposes— ...
- (c) to achieve better built form and aesthetics of buildings, streetscapes and public spaces,

Schedule 9 Design principles for residential apartment development

1 Context and neighbourhood character

- 1) Good design responds and contributes to its context, which is the key natural and built features of an area, their relationship and the character they create when combined and also includes social, economic, health and environmental conditions.
- 2) Responding to context involves identifying the desirable elements of an area's existing or future character.
- 3) Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.
- 4) Consideration of local context is important for all sites, including sites in the following areas—
 - (a) established areas,
 - (b) areas undergoing change,
 - (c) areas identified for change

2 Built form and scale

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- (1) Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Chapter 5 Transport oriented development

150 Aims

The aims of this chapter are as follows-

- (b) to deliver mid-rise residential buildings ... around rail and metro stations that:
- (i) ...
 - (ii) are of appropriate bulk and scale, and

Ku-Ring-Gai Council Submission

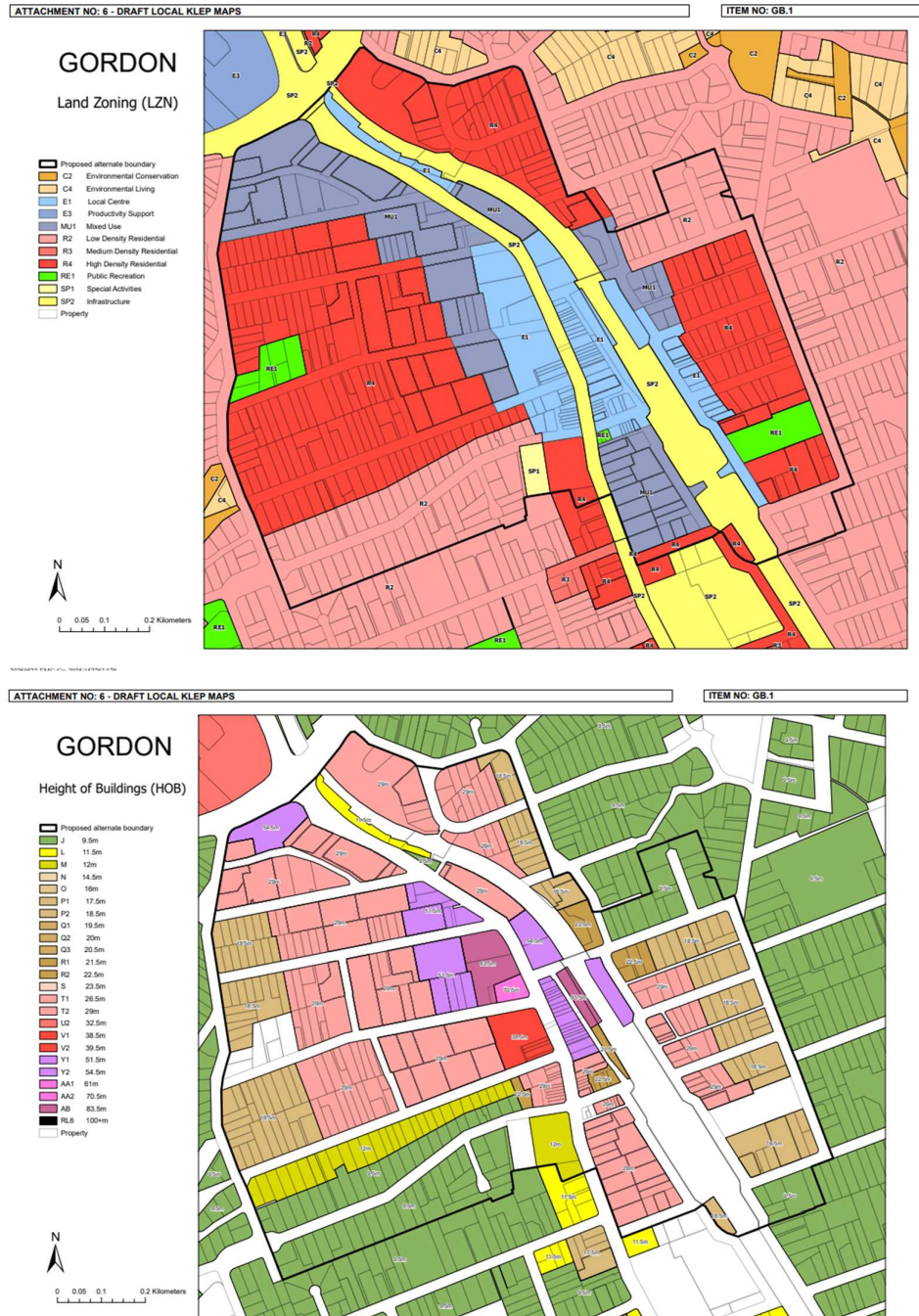
Ku-Ring-Gai Council's submission to DPE seeks a waiver to implement specific controls for the local government area and includes Council's preferred option, endorsed on 31 March 2025 and which were subject to a final endorsement by Council on 5th June 2025. Included in the initial report, the Technical Study at Attachment 4, dated March 2025, provides a superior outcome for this section of the Gordon precinct, which favours balance between the existing and future/transitional character. This is more responsive to the site-specific area and desirable outcomes, than the blanket approach that forms part of the TOD provisions for all the relevant local government areas.

The Council's report specifically recommends that all allotments the subject of this application are to retain their current planning controls, seeking to remove this site from the TOD precinct. The Council recommends the removal of these lots as *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.* It goes on to state that *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.*

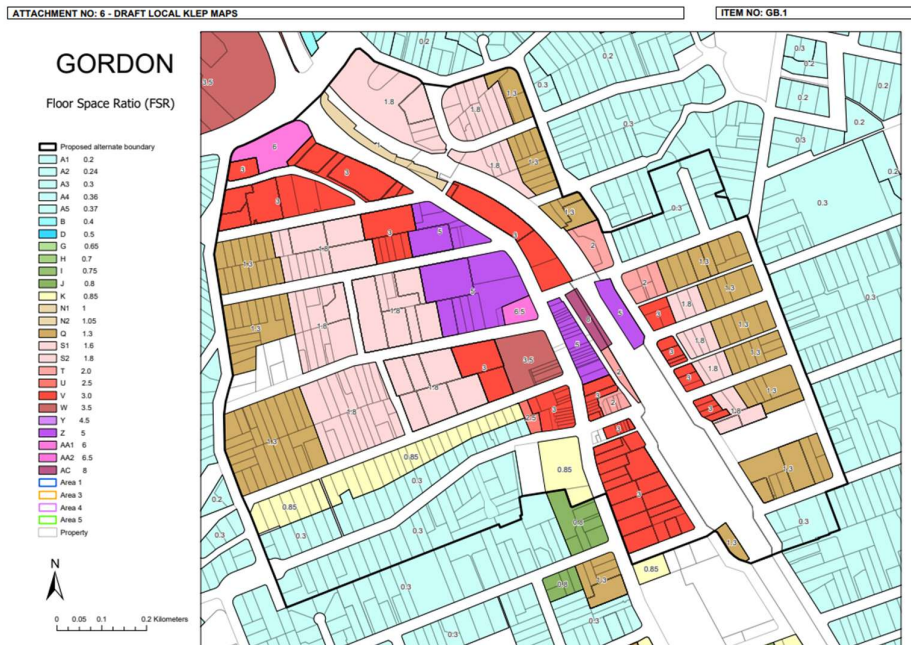


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Figure 4: Land use and built form (Source: Ku-Ring-Gai Council)



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This submission supports the Council's position.

Visual Impact Analysis

The Visual Impact Analysis undertaken is an extremely poor representation of what the proposal looks like in terms of its visual impact, taking a very selective approach to viewing locations that does not reasonably consider the impact of the proposed development in its setting and having regard for the items within the vicinity of the site, nor the conservation area.

View 4, taken from the front boundary of 16 Park Avenue, is a select view from the street, behind a substantial dwelling where only a slither of the development is visible. This fails to consider the scale of the development from Park Avenue, where there is a high concentration of heritage items and the Gordondale Heritage Conservation Area are positioned directly adjacent. Multiple views should have been presented of the proposal from the southern side of Park Avenue, taking account of the broader streetscape and how the elevated building form, which will preside behind these items, is visually dominant from that streetscape.

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Views 5A and 5B demonstrate not only the visual imposition of the proposal on these dwellings, but also the extent of visual privacy impacts with no fixed screening that would preclude direct overlooking into these adjoining properties.

Figure 5: View from 16 Park Avenue, looking towards the proposal (Visual Impact Analysis, Audax Urban)

VIEW 05A - REAR BACKYARD OF NO. 16 (I21 - KLEP 2015)



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Figure 6: View from 12-14 Park Avenue, looking towards the proposal (Visual Impact Analysis, Audax Urban)

VIEW 05B – REAR BACKYARD OF NO. 12-14 (I21 – KLEP 2015)



Visual Privacy

The assessment of Visual Privacy contained in the Environmental Amenity Assessment prepared by Audax Urban makes the following points in relation to the achievement of sufficient visual privacy:

- Burgoyne Lane provides additional separation and buffering to the south
- The façade of Building B is separated from the façade of Items I22 and I21 (12-14 Park Avenue) by 45.3m
- The built form to Burgoyne Lane occupies only 65% of that frontage
- With existing and proposed landscaping, this will filter views between the proposal and the adjoining sites to the south and therefore there are *no visual privacy issues to the properties south of Burgoyne Lane*.

The assessment fails to consider:

- The analysis has been undertaken from a distinct low point to downplay the actual impact of the development when viewed from the neighbouring property and thus the impact on its setting.

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- The visual privacy impacts of the proposal along the entire southern elevation, not just as it relates to two select heritage items
- That the lower levels of the building are provided without privacy screening to the southern side of the building, which will enable direct overlooking into these adjoining properties and impact the privacy of these allotments, specifically, their private open space areas
- That the screening proposed along the eastern side of the building, towards the southern end does not provide visual privacy protection for the adjoining properties to the south-east and again allows for direct overlooking into these.

The assessment also incorrectly emphasizes the existing and proposed landscaping as a means for affecting privacy screening; the development, in and of itself, must provide sufficient protection, absent landscaping, when there are such close and proximate impacts to adjoining properties, as proposed³.

Figure 7: Eastern elevation of Building B with lack of external privacy treatment at south-eastern corner of the building (Source: Marchese Partners)



³ Super Studio v Waverley [2004] NSWLEC 91, at [6]

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Figure 8: Southern elevation of Buildings A and B with lack of external privacy treatment (Source: Marchese Partners)



Setbacks

The proposed setback distances to the southern boundary are inconsistent with the requirements of the NSW Apartment Design Guide which encourages best practice design and layout to control both building bulk and scale, as well as visual privacy.

In summary:

- At Level 1, the proposed balconies intrude into the 6m setback
- At Level 5, the built form should be set back an additional distance as building height increases,
- At Levels 6 and 7 the balconies protrude into the required setback zone, and are absent screening, adding to the bulk of the building, and
- At Level 6, the proposed pergola adds to the bulk of the building when viewed from the south.

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Does the proposal respond to the relevant planning controls?

The current proposal does not respond to the relevant planning controls for the following reasons:

<p>Chapter 2 Affordable Housing - Part 2 Development for affordable housing</p> <p>20 Design requirements</p> <p>Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with-</p> <p>(d) the desirable elements of the character of the local area, or</p> <p>(e) for precincts undergoing transition – the desired future character of the precinct.</p>	<p>The site is in a precinct that is undergoing transition, such that a new desired future character will be established based on the TOD provisions. However, the desired future character must be considered in the context of those elements that will not change, that being, that a heritage conservation area and several heritage items are <i>in the vicinity of</i> the site. Therefore, the desired future character is one that requires a careful balance to be achieved between traditional elements and more contemporary form.</p> <p>It is specifically relevant to note that the Council's Preferred Scenario has these specific sites being removed from the TOD precinct because they are surrounded by both heritage items and the Gordondale Conservation Area. While the TOD approach is a blanket State policy, Council has recognised a more site-specific response is necessary, to the extent that it is not desirable for these lots to be redeveloped having regard to the character of the local area. This submission supports the Council's response to remove these allotments.</p> <p>If Council's position were not supported, the proposal, in its current form, does not respond to the desired characteristics of the area.</p> <p>The scale of the development is overbearing when viewed from the properties to the south, noting that the importance of the curtilage of these allotments has been dismissed in</p>
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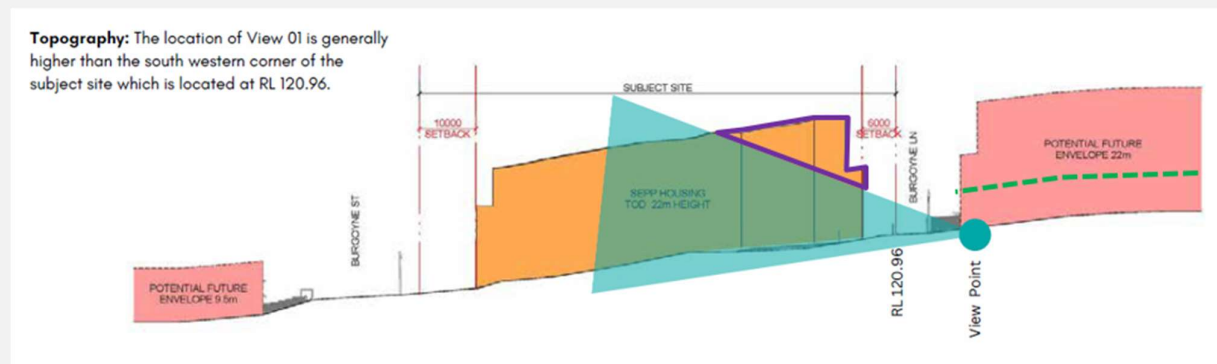
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	<p>the Applicant's Environmental Amenity Assessment, claiming that the importance relates only to the buildings, and not the setting of the overall allotments.</p> <p>Further the Applicant's Environmental Amenity Assessment is entirely misleading when it suggests that there is a 'Potential Future Envelope' on the southern side of Burgoyne Lane, up to 22m and demonstrates the lack of regard for the existing heritage items.</p> <p>For this proposal to respond to the character of the local area, the form at the rear of the proposal should be reduced to a three-storey form (maximum 9.5m height limit) that has a minimum setback distance (including balconies) of 6m and treated with sufficient privacy elements.</p> <p>Higher level form should be setback from the leading edge of the building so that it has limited, if any, visibility from the setting of the adjoining heritage items to the south and positioned towards the centre of the site.</p> <p>This is clearly evidenced in Figure 9, below from the Environmental Amenity Assessment. The proposed form that is above the blue view triangle demonstrates the overbearing nature of the proposal and how it is inconsistent with the desired future character. It is inconsistent because the 'Potential Future Envelope 22m' cannot be achieved because of the heritage status of these sites; the building height of 9.5m will be maintained. Therefore, Figure 9 is not an accurate representation of the</p>
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	<p>desired future character of the area that the Applicant is purporting to rely on..</p> <p>What Figure 9 does show is the need for a reduced height at the interface with Burgoyne Lane, if it is to be redeveloped so that the impact of the overbearing built form, which is inconsistent with the desired future character, is set back so as not to be visually obtrusive in the context of the southern side of Burgoyne Lane. Any built form requires an increased setback from this frontage to ensure the scale is consistent with the 9.5m/ three-storey form that will remain opposite the site.</p>
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Figure 9: View location diagram, Visual Impact Assessment Audax Urban, Page 20



<p>Chapter 4 Design of residential apartment development</p> <p>142 Aims</p> <p>(2) The aim of this chapter is to improve the design of residential apartment development in New South Wales for the following purposes— ...</p> <p>(f) to achieve better built form and aesthetics of buildings, streetscapes and public spaces,</p>	<p>The proposal fails to provide a built form that is acceptable in the context of both the heritage items and the Gordondale Heritage Conservation Area. As evidenced by the figure above, the built form proposed is intrusive and fails to respond to the aesthetics of the proximate buildings.</p> <p>The scale of the proposed form should be reduced to respond to the height of the existing (and future) building</p>
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<p>Schedule 9 Design principles for residential apartment development</p> <p>2 Context and neighbourhood character</p> <p>5) Good design responds and contributes to its context, which is the key natural and built features of an area, their relationship and the character they create when combined and also includes social, economic, health and environmental conditions.</p> <p>6) Responding to context involves identifying the desirable elements of an area's existing or future character.</p>	<p>form to the south (9.5m) at the interface which would see a more appropriate contextual response to the desirable elements of the precinct's existing and future character.</p> <p>Further, the extent of vegetation removal required to accommodate the proposal is also inconsistent with what is a key feature of this precinct, that is a densely landscaped setting, supporting Ku-Ring-Gai's tree canopy, green web and Blue Gum High Forest.</p>
<p>2 Built form and scale</p> <p>(1) Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p>	<p>As set out above, the proposal fails to provide an appropriate scale, bulk and height having regard to its relationship with the buildings to the south, noting that it fails to take account of what will be a continued built form attribute, that is both heritage items and the Gordondale Heritage Conservation Area.</p> <p>The proposal instead provides a harsh built form at the interface with the properties to the south that is not responsive to this context and require moderation. As suggested previously, the scale of the proposal should be moderated (if Council's Preferred Scenario is not supported), as evidenced in the annotated Figure 9, above.</p>
<p>Chapter 5 Transport oriented development</p> <p>150 Aims</p>	<p>For the reasons set out above, the proposal does not satisfy this Aim. A more moderated mid-rise form is</p>

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The aims of this chapter are as follows- (b) to deliver mid-rise residential buildings ... around rail and metro stations that: (i) ... (ii) are of appropriate bulk and scale, and	required to provide an appropriate bulk and scale of development.
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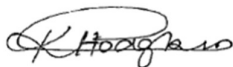
Conclusion

Our submission concludes that:

- The scale of development, as proposed, has insufficient regard for the heritage items and conservation area in the *vicinity of the site*, and disregards the heritage context of this precinct, which is unlikely to be altered
- Should the Council's Preferred Scenario not be supported by DPE, at the very least, the built form, at the interface to the south, should be reduced to three storeys (maximum 9.5m height limit) to ensure that visual privacy is maintained, along with the setting of the heritage items adjacent to the south. This would be carried through along the eastern interface and again reduce the scale directed of the built form towards this item.
- An improved response to visual privacy in its own right must be considered, as opposed to reliance on landscaping.

We would ask that the above matters are duly considered in the DPE assessment of this application.

Yours sincerely,



Kristy Hodgkinson
Co-Owner and Director