

# Submission in Opposition

**Development Proposal at 1–7 Rangers Road & 50 Yeo Street, Neutral Bay  
SSD-82875708**

**To:** NSW Department of Planning, Housing and Infrastructure

**Re:** State Significant Development Application – Objection

---

## 1. Introduction

We write on behalf of concerned residents and investors of Neutral Bay in response to the proposed State Significant Development (SSD) at 1–7 Rangers Road and 50 Yeo Street, Neutral Bay.

We do not oppose redevelopment of the site per se. Indeed, we would welcome a proposal that respects the existing planning framework, enhances amenity, and contributes positively to biodiversity and the character of the suburb. However, the current application is unacceptable in its present form.

Our primary objections are:

1. The excessive building heights sought, well beyond the controls in the **North Sydney Local Environmental Plan 2013 (LEP)**.
2. The request for a **waiver of the Biodiversity Development Assessment Report (BDAR)**, which disregards Council's obligation to improve biodiversity outcomes.

This submission sets out our concerns, with particular reference to the operation of **clause 4.6 of the LEP**, relevant judicial authority, and the planning objectives that must guide decision-making.

---

## 2. Building Height and Clause 4.6

The proposal seeks consent for mixed-use buildings of **8 and 12 storeys**, far exceeding the LEP's height standard. Such a departure cannot be justified on the evidence provided. A variation of this extent would typically require a LEP Clause 4.6 variation and that does not appear to be part of this application/proposal.

### 2.1 Clause 4.6 Framework

Clause 4.6 of the LEP permits variation of a development standard only where four mandatory preconditions are satisfied:

1. **Consistency with zone objectives** – the consent authority must be satisfied that the development is consistent with the objectives of the relevant zone (cl 4.6(4)(a)(ii)).
2. **Consistency with the standard's objectives** – the development must be consistent with the objectives of the development standard being varied (cl 4.6(4)(a)(ii)).
3. **Unreasonable or unnecessary compliance** – a written request must demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances (cl 4.6(3)(a), cl 4.6(4)(a)(i)).
4. **Sufficient environmental planning grounds** – the written request must also demonstrate sufficient environmental planning grounds to justify contravention of the standard (cl 4.6(3)(b), cl 4.6(4)(a)(i)).

The **Land and Environment Court** has confirmed in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* and *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* that **all four preconditions must be met**. Failure to adequately demonstrate any one of them renders the variation request invalid.

## 2.2 Application to the Current Proposal

The applicant's justification fails on at least three of the four preconditions:

- **Zone Objectives (Precondition 1):** While the proposal cites the site's "strategic location," it does not demonstrate how exceeding the LEP height control is consistent with the zone's objectives of maintaining character, protecting amenity, and ensuring appropriate scale in Neutral Bay.
- **Objectives of the Height Standard (Precondition 2):** The height control's objectives include preserving the human scale of the Military Road corridor, ensuring solar access, and protecting views. The proposed 8–12 storey development is in direct conflict with these objectives.
- **Unreasonable or Unnecessary Compliance (Precondition 3):** The written request asserts that compliance would restrict development yield and commercial outcomes. These are not valid planning reasons. As the Court has made clear, the request must show why compliance with the **height standard itself** is unreasonable or unnecessary, not why the development as a whole is desirable.
- **Environmental Planning Grounds (Precondition 4):** The request fails to identify legitimate planning grounds specific to the height variation. Broad statements about "urban renewal" or "economic benefit" are insufficient. In *Initial Action* and *Four2Five*, the Court rejected such generic arguments, emphasising that planning grounds must relate directly to the standard to be contravened.

In short, a Clause 4.6 variation request would not satisfy preconditions 2, 3 or 4. Accordingly, the proposal cannot lawfully justify the proposed departure from the height limit.

---

### 3. Character, Amenity and Environmental Impact

Neutral Bay's established character is low to mid-rise, with a village-scale identity anchored around Military Road. Council has repeatedly emphasised its planning objective to protect this character through the LEP.

Allowing buildings of 8 and 12 storeys would fundamentally alter this scale, overshadow adjoining properties, and create visual bulk inconsistent with the area's amenity.

Unlike in *HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021]*, where a modest breach was permitted because the development aligned with desired future character, this proposal is in direct conflict with the planning vision for Neutral Bay.

In addition to being out of character, the proposal impacts the local amenity due to

- **Overshadowing** – The excessive bulk will cause loss of sunlight and significant overshadowing of neighbouring properties and the public domain, particularly during winter months.
- **Traffic and congestion** – The proposal will substantially increase traffic, especially on Yeo Street and Rangers Road, which are already congested.
- **Infrastructure strain** – Local infrastructure, including water pressure and services, is already under stress. The proposal will exacerbate these issues without adequate mitigation.

A project of this scale must deliver genuine public benefit, not simply private gain.

---

### 4. Biodiversity Waiver

The applicant has sought a waiver of the **Biodiversity Development Assessment Report (BDAR)** under the **Biodiversity Conservation Act 2016 (NSW)**.

We submit that granting this waiver would be contrary to Council's statutory obligation to "maintain and improve" biodiversity values. Even if the site itself is currently degraded, redevelopment provides a unique opportunity to enhance ecological outcomes through:

- Increasing Native landscaping, especially at street level
- Green roof and wall systems,
- Urban habitat corridors and refuges.

By waiving the BDAR requirement, the proposal abandons these opportunities, placing developer convenience above community and environmental benefit.

---

## 5. Procedural Fairness

The Environmental Planning and Assessment Act 1979 requires genuine consideration of community submissions. Should the consent authority adopt the applicant's unsupported assertions without properly addressing these objections, the process risks the same errors identified in *Billyard Ave Developments Pty Ltd v City of Sydney [2025] NSWLEC 22*, where procedural fairness failures were determinative.

---

## 6. Conclusion

This development is **not opposed in principle**. However, the current proposal:

- Seeks unjustifiable height increases, failing the statutory and judicial tests under cl 4.6.
- Ignores planning objectives for character and amenity.
- Disregards biodiversity enhancement opportunities.

We respectfully submit that the application should be **refused in its current form**. We encourage a revised proposal that:

- Complies with the LEP height controls,
  - Incorporates genuine biodiversity improvements, and
  - Enhances rather than diminishes the character and amenity of Neutral Bay.
- 

**Yours sincerely,**

James Wall

Director  
Gilgamesh Pty Ltd

---