Objection Letter (Updated with CDC, Survey Evidence, EIS Inconsistencies, Structural Risk & Sunlight/Shadow Issues)

To: NSW Department of Planning, Housing and Infrastructure Re: SSD-83478456 – Residential Development (21–25 McIntosh St & 55 Werona Ave, Gordon) From: Owner – 12 Forsyth Street, Killara NSW

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1. Position Statement

I am the owner of 12 Forsyth Street, Killara, which directly adjoins the proposed development site. I strongly object to this State Significant Development Application. The submitted documentation contains serious factual errors, internal inconsistencies, and contradictions. The proposal will cause unacceptable impacts on my property, my family, and the wider community.

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2. Grounds of Objection (with Source Documents)

2.1 Serious Errors in Submitted Documentation (Procedural Defect)

- **Fact:** The applicant's Architectural Plans – Appendix K (pages 5–7) incorrectly identify my property (12 Forsyth Street) as a single-storey dwelling. In reality, my property has been rebuilt with a CDC-approved two-storey double-brick residence (see CDC Stamped Plans, pages 1–3, approved June 2023). The main structure was completed in 2024, and internal works are currently ongoing.
- **Consequences:**
  - Their shadow diagrams in Appendix K (pages 120–124) are inaccurate because they assume my house is only one storey.
  - Their privacy assessments ignore second-floor windows, bedrooms, balcony and study spaces shown in CDC Stamped Plans, page 3 (First Floor Plan).
  - Their visual impact conclusions are flawed because they understate the impact compared with my lawful two-storey home.
- **Legal Basis:** Under the Environmental Planning and Assessment Act 1979 (EP&A Act), Environmental Impact Statements must accurately reflect existing site and surrounding conditions. Submitting incorrect information is a procedural defect.

2.2 Internal Inconsistencies and Contradictions in the EIS

- **Fact:** Multiple contradictions exist between different appendices submitted by the applicant. For example:
  - Appendix EE – BASIX Certificate (pages 13, 21, 29) specifies gas cooktops and gas hot water, while Appendix DD – ESD Report (pages 6–7) claims the project will be entirely fossil-fuel free and all-electric by 2035.
  - Appendix DD – ESD Report (pages 6 and 35) references both 25 kW and 40 kW of solar PV capacity, while the Appendix FF – NABERS Report (page 4) suggests a much smaller provision, inconsistent with the energy strategy.
  - Appendix FF – NABERS (page 4) lists single glazing for windows, while Appendix EE – BASIX (pages 10, 18) implies double glazing is needed to meet thermal performance standards.
  - Appendix GG – Section J Report (page 21) requires EV charging facilities, but the Appendix V – Noise and Vibration Report does not model the acoustic impact of EV chargers or garage fans operating overnight.
  - Appendix W – CTMP (pages 14–15) references construction truck routes but provides no enforceable limits on daily or hourly truck volumes, nor anti-queuing protocols for Werona Avenue.
  - Appendix Z – Stormwater Drawings (pages 1–9) contain multiple references to OSD tanks and overflow, but there is no consolidated table of required vs provided detention volumes, nor confirmation of Q100 overflow paths away from adjoining lots such as mine.
- **Consequences:** These contradictions undermine the reliability of the EIS. If the applicant cannot present consistent details on fuel type, glazing, PV, noise, traffic, and stormwater, the impacts cannot be properly assessed.
- **Legal Basis:** The EP&A Act 1979 requires that assessments be accurate and comprehensive. Inconsistent documents are not capable of supporting approval. At minimum, the EIS should be returned for clarification and resubmission.

2.3 Building Height Non-Compliance, Clause 4.6 Variation, and Excessive Bulk

- **Fact:** The proposal seeks heights of up to 30.5 m (Appendix B – Statutory Compliance Table, page 12), above the TOD limit of 28.6 m.
- **Clause 4.6 Request:** The applicant relies on Clause 4.6 of the Ku-ring-gai Local Environmental Plan 2015 to justify this breach. Clause 4.6 allows flexibility only where strict compliance is unreasonable or unnecessary, and where better planning outcomes are achieved. In this case:
  - The objectives of the height control (protecting neighbourhood character, preventing overshadowing, preserving amenity) are not met.
  - The exceedances (up to 6.6% or 1.9 m for lift overruns and roof spaces) provide no genuine public benefit and instead cause

adverse amenity impacts.
    - The request is therefore both unreasonable and unnecessary.
- **Comparison:** My CDC-approved house ridge height is only 8.5 m (CDC Stamped Plans, Elevations, pages 5–6).
- **Impact:** Their proposal is nearly three times taller, overwhelming the low-density streetscape and undermining the intent of planning controls.

2.4 Loss of Sunlight, Shadow Impacts and Solar Energy Use

- **Fact:** My new roof (see CDC Stamped Plans, Roof Plan, page 4) is suitable for solar PV and hot water. The developer's shadow studies in Appendix J (pages 210–214) fail to clearly describe impacts on neighbouring private dwellings such as mine, focusing instead on their own apartments' compliance. In practice, this problem is not confined to a single window: all of the north-facing windows of my home, including ground floor, first floor, and roofline, are subject to severe overshadowing.
- **Impact on My Property:**
    - Independent geometric shadow modelling for Killara/Gordon shows that on the winter solstice (21 June) the sun reaches a maximum altitude of only ~32.8°. At this angle, a 30.5 m high building casts a shadow of approximately 35–38 m beyond its southern wall, completely covering my identified window, other north-facing windows, and roofline throughout the critical 9 am–3 pm period.
    - This means my affected second-floor window, ground floor windows, and roof solar panels will receive less than 3 hours of direct winter sunlight – in fact, effectively zero hours – contrary to the Apartment Design Guide standard.
    - My home will therefore lose direct sunlight to nearly all north-facing windows and the roof, reducing the efficiency of solar photovoltaic panels and solar hot water systems, and depriving my family of minimum daylight amenity.
    - The shadow diagrams provided are incomplete and misleading because they did not model the correct height of my two-storey house, further underestimating loss of sunlight.
- **Legal Basis:**
    - Apartment Design Guide 4A-1 requires neighbouring homes to receive at least 3 hours of direct winter sunlight.
    - Ku-ring-gai Development Control Plan 2015 requires protection of adjoining properties' sunlight and solar amenity.
    - EP&A Act 1979, Section 4.15 requires impacts on neighbours' living conditions, including sunlight, to be considered.

2.5 Severe Privacy Impacts

- **Fact:** My second-floor rooms (see CDC Stamped Plans, First Floor Plan, page 3) face the development. Their façades include extensive glazing

and balconies (Appendix K – Architectural Plans, pages 45–52).
- **Impact:** Direct overlooking of my bedrooms, office, and backyard. Light spill from rooftop communal areas (Appendix J – Architectural Design Report, page 185) will invade my property.
- **Legal Basis:**
  - Apartment Design Guide privacy provisions require new developments to avoid direct overlooking of habitable rooms and private open space of adjoining dwellings.
  - Ku-ring-gai Development Control Plan 2015 requires that balconies, windows, and communal spaces be designed to protect the privacy of neighbouring homes.
  - Under the EP&A Act 1979, Section 4.15, consent authorities must consider whether a development will cause unacceptable loss of privacy to adjoining residents.

2.6 Noise and Vibration

- **Fact:** The proposal includes rooftop air conditioning plant (Appendix Q – EDC Report, page 27) and excavation of two basement levels (EIS Main Report, page 154).
- **Impact:**
  - Roof plant noise will be directed toward Forsyth Street.
  - Basement excavation and piling will exceed noise limits (Appendix V – Noise & Vibration Report, pages 42–44).
- **Legal Basis:** The EP&A Act 1979 requires developments not to impose unacceptable risk to adjoining property. The Ku-ring-gai Development Control Plan 2015 requires builders to minimise noise and vibration impacts.

2.6A Structural Integrity Risk to My Newly Built Home

- **Fact:** My house is a newly constructed two-storey double-brick dwelling (currently under CDC approval with the main structure completed in 2024 and internal works ongoing). It represents a major investment, with new foundations, slab, brickwork and waterproofing systems. According to the applicant’s own Environmental Impact Statement (EIS Main Report, pages 150–160), the development will involve excavation for two full basement levels and foundations to support towers of up to 30.5 m in height. This requires deep excavation, piling, and the use of large-scale mechanical equipment immediately adjacent to my property boundary.
- **Impact:**
  - Prolonged vibration and deep excavation from the proposed two basement levels create a serious risk of foundation settlement, cracking of masonry walls, slab damage, and waterproofing failure in my newly built home.
  - Large-scale basement construction can alter groundwater conditions, creating risks of water ingress and dampness into adjoining lots.

    - The potential for damage is magnified because my property is directly downslope from the excavation site, making its foundations more vulnerable.
    - The EIS does not provide any independent condition survey, vibration monitoring, or compensation plan for adjoining homes, despite the recognised risks.
- **Theoretical and Legal Basis:**
    - Engineering studies and NSW Land and Environment Court precedents have recognised that basement excavation for multi-storey developments is one of the highest-risk activities for adjoining property damage.
    - The EP&A Act 1979 requires that developments must not impose unacceptable structural risks to adjoining property.
    - The Ku-ring-gai Development Control Plan 2015 requires construction practices to avoid structural harm to neighbouring dwellings.
    - To provide adequate protection, any approval must include conditions requiring:
        - Independent pre-construction and post-construction structural condition surveys of my property.
        - Continuous vibration and ground movement monitoring during excavation.
        - A developer-funded insurance bond or bank guarantee sufficient to cover the cost of repairs in the event of damage.

2.7 Traffic, Parking and Safety Issues

- **Fact:** The proposal includes 191 basement spaces, accessed via McIntosh Street (Appendix BB – Traffic Report, pages 23–26).
- **Impact:** Additional 31 AM peak trips and 24 PM peak trips will create congestion and overflow parking into Forsyth Street.
- **Legal Basis:**
    - The Ku-ring-gai Development Control Plan 2015 requires that traffic and parking impacts of new developments be fully assessed, including cumulative impacts with other projects.
    - The EP&A Act 1979, Section 4.15 requires decision-makers to consider traffic, parking, and road safety impacts on adjoining streets and the broader community.

2.8 Tree Loss and Landscape Impacts

- **Fact:** The Arborist Report (Appendix H – Arboricultural Impact, page 12) confirms removal of multiple high-value trees. My survey (Survey Plan, page 1) and CDC drawings show existing protected trees with 3 m protection zones.
- **Impact:** Removal of trees on their site eliminates screening, exposing Forsyth Street homes—including mine—directly to the 8-storey bulk.

- **Legal Basis:** The Ku-ring-gai Development Control Plan 2015 prioritises tree retention and the preservation of the area's leafy character.

2.9 Heritage Compatibility Claim – Theoretical Weaknesses

- **Fact:** In Appendix B – Statutory Compliance Table, the applicant acknowledges the heritage sensitivity of the area, including Forsyth Street, but asserts that the proposal "maintains compatibility." This assertion relies heavily on a planning principle that "compatibility does not mean sameness" (Project Venture Development Pty Ltd v Pittwater Council), and on claims that the area is in "transition" so compatibility should be judged against future, not current, character.
- **Impact:**
  - The surrounding neighbourhood includes multiple recognised heritage items and conservation areas, such as Eryldene (State heritage significance), Rochester (local heritage), and several houses along Forsyth Street (Appendix S – Heritage Impact Statement, pages 5–12). These places derive their heritage value from low-scale built form, established gardens, and intact inter-war and Federation character.
  - Introducing towers up to 30.5 m in height into a streetscape of predominantly one- and two-storey heritage dwellings is a radical discontinuity that undermines rather than maintains compatibility.
  - The applicant has provided no rigorous visual impact assessment, streetscape photomontage, or viewline analysis to demonstrate that the scale and form will not adversely impact the setting and significance of these heritage items. Instead, reliance is placed on general design gestures such as stepped facades and landscaping.
- **Theoretical and Legal Basis:**
  - While the cited case (Project Venture v Pittwater) established that compatibility does not require identical form, the Court also emphasised that the greater the difference in scale and character, the harder it is to achieve compatibility. An 8-storey block adjacent to heritage bungalows exceeds that threshold.
  - The Ku-ring-gai Development Control Plan 2015 requires that new development in or near heritage conservation areas must respect the scale, form, and setting of heritage items.
  - The EP&A Act 1979 obliges consent authorities under Section 4.15 to consider heritage impacts and ensure that development does not unreasonably compromise heritage significance.
- **Conclusion:** The claim of "maintained compatibility" is theoretically weak and unsupported by evidence. In reality, the proposal is incompatible with the established heritage context of Forsyth Street and its conservation area.

2.10 TOD Thresholds vs Local DCP Controls – Misapplication

- **Fact:** The applicant states in Appendix B – Statutory Compliance Table that “parking, traffic, and overshadowing standards are measured against TOD thresholds, not stricter local controls.”
- **Impact:**
  - By using only the broader Transit Oriented Development (TOD) thresholds, the applicant avoids the more protective standards of the Ku-ring-gai Development Control Plan 2015.
  - This results in systematic underestimation of overshadowing impacts on adjoining dwellings (including mine), and insufficient assessment of traffic congestion and parking overflow into Forsyth Street.
  - The use of TOD standards ignores the local street context, which comprises narrow residential roads not designed to absorb such intensity.
- **Theoretical and Legal Basis:**
  - The EP&A Act 1979, Section 4.15 requires that consent authorities take into account both State and local planning instruments, not one in isolation. Selectively ignoring DCP provisions is procedurally flawed and legally unsound.
  - The Ku-ring-gai Development Control Plan 2015 sets explicit overshadowing controls to protect solar access for neighbouring houses, and requires cumulative traffic and parking impacts to be assessed. These standards cannot be displaced by TOD benchmarks unless specific statutory authority allows it, which is not the case here.
- **Conclusion:** The applicant’s reliance solely on TOD thresholds is a misapplication of planning controls. Proper assessment must apply both State TOD policies and the stricter Ku-ring-gai DCP standards. Failure to do so renders the EIS analysis incomplete and unreliable.

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3. Public Interest Considerations

- The applicant’s Social Impact Assessment (Appendix Y, page 22) concedes the proposal will negatively affect local character and neighbourhood amenity.
- Under the EP&A Act 1979, Section 4.15, developments must be in the public interest. This proposal clearly is not.

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4. Conclusion and Request

For the reasons above, I strongly request that SSD-83478456 be refused.

Should the Department nevertheless consider approval, strict conditions must be imposed, including but not limited to:
- Maximum building height capped at 5 storeys.

- Guaranteed 3 hours of winter sunlight to Forsyth Street homes, including my two-storey residence.
- Privacy screens and deep landscaped buffers along southern boundaries.
- Acoustic and vibration isolation for rooftop plant equipment.
- Independent structural monitoring and pre-condition surveys of adjoining homes during excavation, including specific safeguards against foundation settlement, wall cracking, slab damage, and water ingress.
- Ban on construction traffic using Forsyth Street.
- High replacement ratios for tree removal with long-term maintenance obligations.
- Updated, consistent BASIX, ESD, NABERS, acoustic, stormwater and traffic documentation prior to any consent.
- A binding requirement that if construction vibration or excavation causes any damage to neighbouring homes (including mine), the developer must fully fund independent assessment, immediate repairs, and compensation for loss of value or amenity.
- A mandatory condition that the developer provide independent pre- and post-construction condition surveys, continuous vibration monitoring, and a developer-funded insurance bond or bank guarantee sufficient to cover structural repairs in the event of damage, as detailed in Section 2.6A above.
- Refer to Appendix A – Proposed Approval Conditions (Detailed) for the complete set of mitigation and compensation requirements grouped by topic.

Appendix A – Proposed Approval Conditions (Detailed) (Grouped by objection topic; ordered from higher to lower impact on the developer)

A. Building Height & Bulk (Relates to §2.3)

High-impact measures
1. Reduce overall height to ≤5 storeys (≤17 m to top of parapet) across all buildings.
2. If not feasible, step down the block closest to Forsyth Street by ≥2–3 storeys, and increase the southern setback so that overshadowing to 12 Forsyth St is mitigated to ≥3 h midwinter.
3. Remove/shorten lift overruns, rooftop plant rooms, and balustrades so that no element exceeds the 28.6 m control.
Medium/low-impact measures
4. Reconfigure roof profiles to staggered/terraced forms facing Forsyth St.
5. Prohibit communal rooftop spaces on the uppermost levels.

B. Sunlight, Shadow & Solar Energy (Relates to §2.4)

High-impact measures
1. Independent, calibrated shadow analysis based on my CDC drawings (latest stamped plans) and survey:
- Build a georeferenced 3D model using as-built reduced levels (RLs) for ground, eaves, ridges and all roof plant/overruns; include my dwelling’s actual floor-to-floor heights, window locations and sill heights.
- Use winter solstice (21 June) 9:00–15:00 as the core period; provide half-

hourly shadow overlays, and comparative frames at 9:00, 12:00 and 15:00.
- Quantify direct sunlight hours for the courtyard (including primary outdoor living area and pool), each window on each floor, and rooftop PV candidate zones; compile in a schedule.
- **Target:** each principal living-room window and principal private-room window, and the primary private outdoor area (courtyard/pool), shall receive ≥3 hours of direct sunlight in the 9:00–15:00 winter-solstice period. If not achieved, implement the following in order:
a) reduce overall and/or local tower height;
b) increase southern setbacks;
c) reduce parapet/roof-top plant heights and relocate roof plant away from my boundary;
d) delete or move any rooftop communal space to lower levels.
- **Verification:** prior to Occupation Certificate, submit as-built levels and an updated analysis, certified by an independent third party, confirming compliance with the ≥3 h target.
2. If compliance still cannot be achieved after optimisation, provide a solar/energy compensation package (e.g., fund additional PV capacity, heat-pump hot water, insulation upgrades) equivalent to the quantified annual loss.
Medium/low-impact measures
3. Prohibit highly reflective or excessively dark façade materials; require neutral, diffuse finishes to reduce glare and cold-radiation effects.

C. Privacy & Overlooking (Relates to §2.5)

High-impact measures
1. Prohibit any communal activity space/roof garden on the topmost level.
2. Remove or recess balconies directly facing my property.
Medium/low-impact measures
3. For balconies facing my property, require balustrades ≥1.5 m high and ≥75% opaque plus end-screen returns; for south-facing bedrooms/living rooms, use high-sill windows, obscure glazing or fixed panes to achieve an effective 12 m visual separation.
4. Limit the hours of use for any communal or shared terraces (8:00–20:00), set a maximum occupancy (≤10 persons at any time), and adopt a management and enforcement plan.
5. Establish a double row of evergreen trees along the southern boundary to provide a visual screen (target height 8–10 m, canopy spread 5–6 m), and prohibit topping under the guise of “maintenance.”

D. Noise, Vibration & Light Spill (Relates to §2.6 & §2.6A)

High-impact measures
1. Relocate rooftop mechanical plant away from the Forsyth Street edge and fully enclose it within acoustic housings; boundary noise must meet the NSW Noise Policy for Industry night-time limits.
2. During construction, comply with DIN 4150-3 and the NSW Interim Construction Noise Guideline for vibration/noise limits; install continuous vibration and ground-movement monitoring, and require immediate stop-work and rectification when thresholds are exceeded.
3. Provide a developer-funded insurance bond or bank guarantee covering

potential structural repair costs (see §2.6A).

Medium/low-impact measures

4. Construction hours: weekdays ≤7:00–18:00; Saturdays ≤8:00–13:00; no high-noise works on Sundays and public holidays.
5. Light spill: all external luminaires to be full cut-off, ≤3000 K, with occupancy/timer controls; automatic switch-off by 22:00 and no uplighting.

E. Traffic, Parking & Safety (Relates to §2.7)

High-impact measures

1. CTMP to state explicitly that all construction vehicles and heavy trucks are prohibited from using Forsyth Street; designate fixed haul routes and booked time slots; no kerbside queuing.
2. Provide traffic marshals during peak periods; impose daily/hourly caps on truck movements (both inbound and outbound) and publish logs.

Medium/low-impact measures

3. Provide additional on-site or designated worker parking during construction to prevent spillover to local streets.
4. In operation, increase visitor parking or adopt resident permit controls to avoid pressure on Forsyth Street.

F. Stormwater, Erosion & Sediment Control (Relates to §2.2 & §2.8)

High-impact measures

1. No cross-boundary overland flow under any conditions; Q100 overflow paths shall not be directed toward neighbouring land (including my property). Dissipate and discharge flows on-site, with certification by a qualified hydraulic engineer.
2. During construction, implement the “Blue Book” (Managing Urban Stormwater: Soils and Construction) measures: sediment basins, cutoff drains, filter socks/bags, fencing; install a temporary interception drain at the 12 Forsyth/55 Werona boundary to prevent muddy water entering my land.

Medium/low-impact measures

3. Provide an OSD schedule showing required vs provided detention volumes and design storm parameters; submit an as-built hydraulic review upon completion.

G. Heritage Interface (Relates to §2.9)

High-impact measures

1. Reduce/step down all building masses and rooftop appendages toward heritage streetscapes to protect key viewlines and skylines associated with heritage items and conservation areas.
2. Submit equalised street-view perspectives and key-view-corridor analyses, peer-reviewed by an independent heritage consultant.

Medium/low-impact measures

3. Avoid abrupt material/colour contrasts; adopt articulated base-and-horizontal banding with “landscaped podium” treatments to visually reduce bulk.

H. Controls Hierarchy & Compliance (Relates to §2.10)

1. The assessment and design must simultaneously satisfy State-level policies (including TOD) and the Ku-ring-gai Development Control Plan 2015. Where tension arises, supply a written comparison and impact assessment, with the overarching principle that neighbourhood amenity and heritage protection must not be diminished.
2. Independent third-party compliance reports are required at Construction Certificate and Occupation Certificate stages; no certificate to be issued if any condition remains unmet.

Sincerely, Owner – 12 Forsyth Street, Killara NSW