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Contact: Tahlia Alexander

Ref: SSD-
83431958

7 October 2025

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

Via: NSW Major Projects portal

Attention: Prity Cleary

Dear Ms Cleary,

**RE: SUBMISSION TO SSD-83431958 FOR CONSTRUCTION OF 9 STOREY
RESIDENTIAL FLAT BUILDING WITH IN-FILL AFFORDABLE HOUSING**

Address: 16 & 18 Middle Harbour Road, Lindfield

Thank you for the opportunity to comment on State Significant Development (SSD) application (SSD-83431958) for the demolition of existing structures and construction of a nine storey residential flat building with infill affordable housing at 16 & 18 Middle Harbour Road, Lindfield.

It is noted that the exhibition notice and DA documentation refers to the site as being "16-20 Middle Harbour Road, Lindfield". There is no formal address known as No. 20 Middle Harbour Road, Lindfield. The correct description of the site is 16 and 18 Middle Harbour Road, Lindfield which comprises Lot 1 DP 569232 (No. 16) and Lots 10 and 11 in DP5374 (No. 18).

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.

There are substantial issues with the proposal including: incorrect calculation of affordable housing bonus floor space ratio; excessive floor space ratio; excessive bulk and scale; substandard residential amenity; inadequate building setbacks; poor streetscape design outcome; failure to maintain the landscape character of the locality; insufficient deep soil zones; tree impacts; heritage impacts; site isolation; excessive car parking and associated traffic impacts; and various insufficient documentation. A substantial redesign, including reduction in the number of apartments, is required in order to achieve an acceptable streetscape, landscape and amenity outcome.

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 Tahlia Alexander, Executive Assessment Officer on 02 9424 0000.

Yours sincerely,



Luke Donovan
Acting Team Leader, Development Assessment

ATTACHMENT 1

Ku-ring-gai Council's objection to SSD-83431958, for construction of 9 storey residential flat building with in-fill affordable housing at 16 & 18 Middle Harbour Road, Lindfield

A) FLOOR SPACE RATIO & ALTERNATIVE TOD SCENARIO

It is noted that seeking the maximum floor space ratio (FSR) is not an automatic right for any type of development, including affordable housing. The consent authority must consider other planning controls and impacts of the development in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*. It is not considered that the proposed FSR of 3.01:1 can be achieved on the site whilst also complying with the ADG, providing a suitably scaled and articulated building, and providing sufficient deep soil and landscaping.

The proposed FSR is excessive and results in a significantly bulky building which is out of character with the desired future character of the area. The proposed FSR results in very poor amenity for the future residents of the building. Council is supportive of affordable housing, however it should be housing which is of a high standard of residential amenity. While a reduction in FSR would reduce yield, it would enable compliance with key ADG amenity controls and a building which better responds to the desired future character of the area.

The desired future character for the site and streetscape is more appropriately guided by Ku-ring-gai Council's adopted Alternative TOD Scenario (Council's Plan). This plan holds significant weight in shaping the future character of the area, particularly given that the NSW Government has publicly supported Council in developing an alternative scenario, the plan has undergone public exhibition, and it has been formally adopted by Council and submitted to the NSW Government for consideration.

In contrast to the current proposal, Council's Plan permits a FSR of 1.8:1 on the subject site which is a more considered and contextually appropriate transition from higher-density TOD precincts to surrounding low-density areas. The proposal is inconsistent with the desired future character as set out in Council's Plan as it includes excessive FSR which results in a poor design outcome and substandard residential amenity, as detailed further in this submission.

B) AFFORDABLE HOUSING GFA

The proposal appears to count areas that should not be included as affordable housing GFA. As the application provides more than 15% of the total GFA as affordable housing, it seeks to access the additional 30% bonus in height and FSR permitted under the TOD provisions. The proposal nominates 17.1% of the total GFA as affordable housing. To qualify for the bonus under Section 16 of State Environmental Planning Policy (Housing) 2021 ("Housing SEPP"), a minimum of 2,063.5m² of affordable housing must be provided. The application states that 2,066m² of GFA is allocated to affordable housing, which is presented as equating to 19 apartments out of the total 98 dwellings.

However, under the Housing SEPP, the affordable housing component is defined as "the percentage of the gross floor area used for affordable housing." This definition has not been correctly applied. The submitted calculations include GFA that is not directly associated with affordable housing and incorrectly attribute it as affordable housing GFA. On the lower ground level, several spaces not dedicated to affordable housing have been counted, including the indoor lap pool, both communal rooms, a part of the communal open space and the bicycle storage room. On the upper ground level, the entry and mail room, the visitors' bicycle parking, and a substantial portion of the horizontal circulation areas have also been included, even though

these are shared facilities or primarily serve the market housing.

The Applicant must correctly apply the definition under the Housing SEPP and recalculate the GFA, ensuring that a genuine 15% of the total gross floor area is dedicated to affordable housing.

C) SEPP (Housing) 2021 (“HOUSING SEPP”)

Chapter 2: Affordable housing

Landscaped area

The proposal does not comply with Chapter 2, Part 2, Section 19, subclause 2 (b) (ii) of SEPP (Housing) 2021 which requires a minimum landscaped area that is the lesser of— 35sqm per dwelling, or 30% of the site area. This is a non-discretionary development standard.

“Landscaped area” is defined in the Dictionary of the Housing SEPP as:

Landscaped area means the part of the site area not occupied by a building and includes a part used or intended to be used for a rainwater tank, swimming pool or open-air recreation facility, but does not include a part used or intended to be used for a driveway or parking area.

30% of the site area equates to 1143sqm. The proposal fails to provide a minimum 30% landscape area (which meets the definition) as required by the development standard.

There is design opportunity for compliance with the standard through amended design outcomes such as increasing building setbacks.

Future Desired Character

The proposal does not comply with Chapter 2, Part 2, Section 20, subclause (3) of Housing SEPP which states that *‘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... for precincts undergoing transition, the desired future character of the area’* (emphasis added).

The desired future character for the site is envisaged under Council’s adopted Alternative TOD Scenario (Council’s Plan). Council’s Plan is directly relevant to the future character of the area given that the NSW Government has publicly supported the development of an alternative scenario by Council, that public exhibition has occurred, that Council has adopted the plan and submitted the plan to the NSW Government.

The proposed development is not compatible the desired future character of the area as it proposes an excessive FSR of approximately 3.01:1. Council’s Plan proposes an FSR of 1.8:1 and a requirement for 50% deep soil. This will create a character of residential flat building developments with a high level of residential amenity and within a generous landscape setting characterised by canopy tree planting within all setback areas.

Chapter 5: Transport orientated development

The aims of Chapter 5 of the Housing SEPP include delivering mid-rise residential flat buildings that:

- (i) are well designed,*
- (ii) are of appropriate bulk and scale, and*

(iii) provide amenity and liveability.

Council's assessment indicates that the proposal does not adequately satisfy the aims of Chapter 5 from an urban design perspective, as detailed below:

Well-designed:

The proposed development includes layout inefficiencies, non-compliances with the Apartment Design Guide (ADG), and a poor streetscape outcome which demonstrate that the proposal does not exhibit design excellence and is not well designed and therefore inconsistent with Aims of chapter, specifically s 150 (b)(i) of SEPP (Housing) 2021

Appropriate bulk and scale:

The proposed development is not of an appropriate bulk and scale for the following reasons:

- Overshadowing of adjacent properties (ADG 3B): Shadow analysis is incomplete and does not compare against the compliant 22m base height under Chapter 5 of SEPP (Housing) 2021, therefore full extent of shadow impact from the infill "bonuses" under Chapter 2 of SEPP (Housing) 2021 are unknown. Further, no elevational shadow diagrams were prepared demonstrating impact on existing and future development.
- Low proportion of deep soil (ADG 3E / KDCP, Part 7A.6): The application claims 25% deep soil which falls well short of the 50% required under the Ku-ring-gai Development Control Plan (KDCP). The narrow 3–4m setbacks do not satisfy the 6m minimum dimension (that is clear of encroaching elements), which limits opportunities for viable canopy plantings.
- Impacts on adjoining land / site isolation (KDCP, Part 3B): 22 Middle Harbour Road (15.3m frontage) is isolated due the proposed development and SSD-82548708 at 24-28 Middle Harbour Road. With 6m side setbacks, its buildable footprint reduces to ~3m, making redevelopment of No. 22 unfeasible.

Amenity and liveability:

The proposed development fails to provide a high standard of residential amenity, evidenced by:

- Overshadowing (ADG 3B): Excessive GFA causes unreasonable overshadowing of neighbouring sites.
- Solar access (ADG 4A): 19 apartments rely on deep light wells as their only daylight source, contrary to ADG requirements.
- Natural ventilation (ADG 4B): Genuine cross-ventilation is achieved in only ~36% of apartments, well below the 60% requirement. Affordable housing apartments are particularly comprised in terms of natural cross ventilation which is unacceptable and significantly comprises amenity.
- Private open space (ADG 4E): Several ground-floor units (LG01, LG02, LG05, LG06, 111) do not achieve the 15m² minimum. Apartment 102 (and six others) should be treated as three-bedrooms due to size of the study rooms, which requires 12m² balconies, instead of the 10m² proposed.

Schedule 9: Design Principles for residential apartment development

The proposed development fails to comply with all 9 of the design principles, for reasons detailed throughout this submission.

D) APARTMENT DESIGN GUIDE

3B: Orientation

Objective 3B-2 of the ADG seeks to minimise overshadowing of neighbouring properties during mid-winter. It requires solar access to be maintained to living areas, private and communal open space, and solar collectors on adjacent sites. The ADG also recommends increased building separation and upper-level setbacks where overshadowing is significant, particularly to the south or on downhill sites.

The maximum height under the relevant controls is 22metres, with an allowance for bonus height under the In-fill Affordable Housing provisions. The submitted documentation suggests the proposal reaches a height of approximately 28.6 metres, reflecting the full 30% bonus. However, the shadow analysis provided is incomplete. It does not clearly assess the impact of overshadowing on existing neighbouring low-density residential dwellings, nor does it illustrate the difference between a compliant 22m form and the proposed building height. The additional overshadowing impacts on adjoining properties as a consequence of the infill affordable “bonuses” are therefore unknown

In the absence of this comparative analysis, the overshadowing impacts cannot be properly assessed. Based on the submitted material, it appears that the proposal will significantly increase overshadowing on adjoining properties, with no justification for exceeding the 22m height control. The failure to demonstrate compliance with ADG objectives or to transparently assess the additional impacts of the bonus height is a critical deficiency. A reduction in height and GFA is required to mitigate unacceptable overshadowing on neighbouring residential properties.

Elevational shadow diagrams and/or view from sun diagrams must be prepared that clearly indicate the proposed heights at 22m and 28.6m and overshadowing impacts on both existing and future development on adjoining properties.

3C: Public domain interface

The ADG emphasises that building entries should be legible, welcoming, and contribute positively to the character and safety of the street. Elements such as terraces, balconies, landscaping, and direct apartment entries are intended to create an attractive, pedestrian-scaled interface and avoid blank or dominant features.

Under the proposed development, the site’s slope presents challenges, and the provision of two entry points from Middle Harbour Road is a positive response. However, there are no direct entries to individual apartments, which reduces opportunities for street activation and casual surveillance. The pedestrian entries themselves are functional but utilitarian, dominated by mailboxes or bicycle storage, and do not provide a strong sense of address or identity. In addition, the main pedestrian lobbies are not directly integrated with vertical circulation, requiring residents to pass through corridors and external spaces before accessing lifts or stairs, reducing legibility and weakening wayfinding.

Council considers that the design of the public domain interface should be revised to improve the visibility and legibility of pedestrian entries, provide greater architectural emphasis and landscaping, and create a stronger sense of address and identity, consistent with ADG Objective 3C-1.

3D: Communal open space

The ADG establishes that communal open space is a critical environmental and social resource, enhancing amenity, wellbeing, and opportunities for recreation. Objective 3D-1 requires that at least 25% of the site area be provided as communal open space, with a minimum of 50% of the principal usable part receiving direct sunlight between 9 am and 3 pm midwinter. Importantly, the

ADG defines communal open space as outdoor space located within the site, in common ownership, and intended for the recreational use of residents. It is not intended to be residual or inaccessible planting areas, but instead must be useable, attractive, and consolidated to provide genuine amenity.

Under the proposed development, some of the communal open space is fragmented and consists of narrow strips of landscaping along site boundaries, which the submitted landscape plans indicate will be planted with shrubs and ground cover. These areas cannot reasonably be considered communal open space under the ADG definition, as they are not usable or capable of supporting recreation or social interaction. Furthermore, the majority of the communal open space located on the lower ground level to the east is covered by the building above at the upper ground level, significantly diminishing solar access, amenity, and usability.

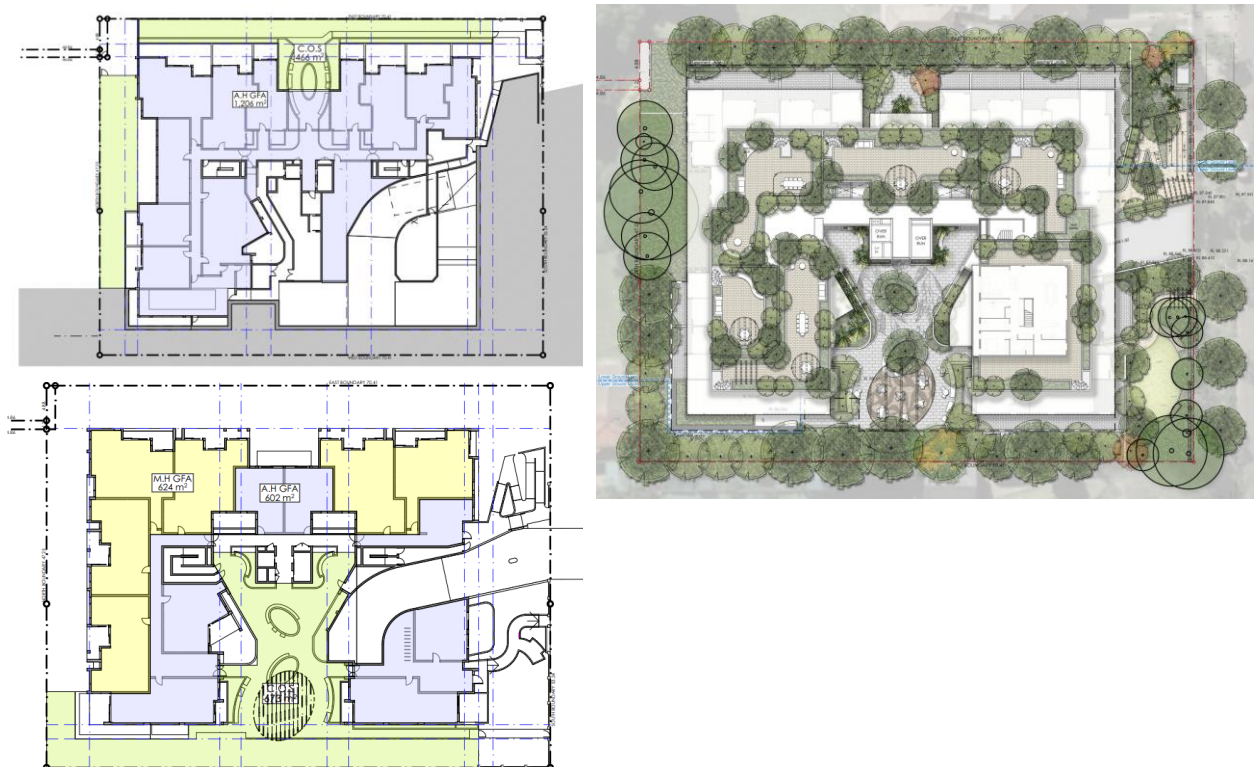


Figure 2: The lower and upper ground floor plans highlighting in green where the COS is located, many of which is not useable as shown on the Landscape Composite Masterplan

Council considers that the design of the communal open space must be revised to ensure compliance with intent of the ADG. Consolidated, uncovered, and genuinely usable areas should be provided that deliver opportunities for active and passive recreation, social interaction, and landscaping amenity. Boundary planting and residual covered spaces should not be counted towards the communal open space provision, as this undermines both the quality of the development and the amenity of its future residents.

3E: Deep Soil

The ADG defines deep soil zones as areas of soil not covered by buildings, basements, or impervious surfaces, intended to support large canopy trees, improve stormwater infiltration, and reduce urban heat. For sites greater than 1,500m², the design criteria require deep soil zones with minimum dimensions of 6 metres, with a design guidance target of 15% of the site area. These areas should be consolidated, co-located with communal open space where possible, and capable of supporting the long-term health of large trees.

Under the proposed development, building setbacks of only 4 metres to the northern and western boundaries and 3 metres to the eastern boundary are proposed. These widths fall short of the 6-metre minimum dimension required for sites of this size. Narrow side setbacks cannot be considered deep soil zones under the ADG definition, as they do not provide sufficient soil volume to support healthy tree growth and do not deliver the intended environmental or amenity benefits. As such, the quantum claimed substantially overstates the actual provision of deep soil.

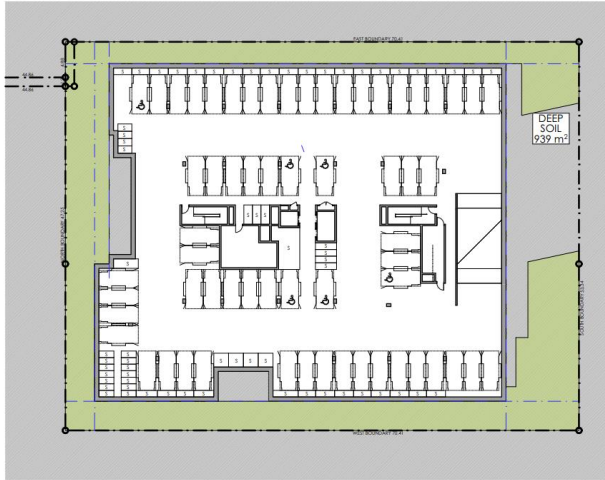


Figure 3: Deep soil plan, showing 4 metres to the northern and western boundaries and 3 metres to the eastern boundary

Council therefore forms the view that the proposed development does not comply with the ADG's deep soil requirements. The design should be revised to incorporate genuine, consolidated deep soil zones with minimum 6-metre dimensions, capable of supporting large canopy trees and meeting Objective 3E-1. Without such changes, the development will fail to provide the environmental and residential amenity outcomes required by the ADG.

NOTE: Council's alternate TOD proposal requires a minimum 50% deep soil landscape zone and reflects the desired future character of the area.

3H: Vehicle Access

The ADG requires that vehicle access points be designed and located to achieve safety, minimise conflicts with pedestrians, and contribute to high-quality streetscapes. Car park entries should be minimised in width and number, located at the lowest point of the site, and integrated into the building façade to reduce their visual impact. Where possible, entries should be located on secondary streets or lanes rather than dominating primary frontages.

Under the proposed development, vehicle access is located centrally on the Middle Harbour Road frontage. This placement creates a large void in the middle of the façade and visually dominates the streetscape (see Figure 4), contrary to the ADG's guidance. The design further detracts from the quality of the frontage by interrupting opportunities for pedestrian activation and landscaping. The width and placement of the entry exaggerate its prominence, creating a street address that is defined by car parking rather than by welcoming residential entries.



Figure 4: Middle Harbour Road Street frontage

Council considers that the vehicle access should be relocated or substantially redesigned to reduce its prominence, integrate more effectively with the building façade, and allow pedestrian entries and landscaping to take visual priority. Without these changes, the proposal fails to satisfy Objective 3H-1 of the ADG.

4A: Solar Access

The ADG provides clear guidance on daylight access to habitable rooms. It states that *“courtyards, skylights and high level windows (with sills of 1,500mm or greater) are used only as a secondary light source in habitable rooms.”* This establishes that habitable rooms should receive their primary natural light directly from an external window facing open sky, with light wells only supplementing, not substituting, that source.

Under the proposed development, 19 apartments are affected where one or more bedrooms rely solely on a window to a deep light/ventilation void. Given the void extends nine storeys in height, daylight penetration is significantly compromised, and these rooms are left dependent on a secondary light source as their primary daylight provision. This approach does not comply with the ADG and results in an unacceptably low level of amenity for affected residents.

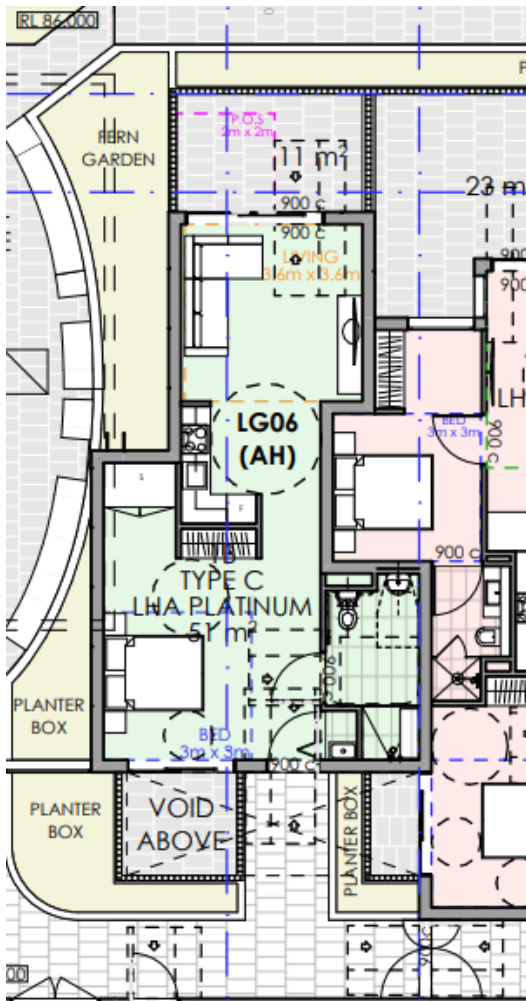


Figure 5: An example where a bedroom relies on a 9-storey void for daylight

Council considers it essential that the proposal be redesigned so that all habitable rooms, including bedrooms, receive adequate direct natural light in accordance with the ADG.

Additionally, it is noted that these bedroom windows relying on lightwells as the primary natural light source, are also located in very close proximity to common pathways which will result in acoustic impacts, exacerbating the poor level of amenity to the subject bedrooms.

4B: Natural Ventilation

The ADG sets out clear requirements for natural ventilation and natural cross ventilation. It states that natural cross ventilation requires a clear, unobstructed airflow path between positive pressure on the windward side of a building and negative pressure on the leeward side, ensuring comfort and amenity for occupants. For an apartment to be considered cross ventilated, the majority of the primary living space and $n-1$ bedrooms (where n is the number of bedrooms) must be located on such a ventilation path. The ADG further clarifies that light wells are not considered a primary air source for habitable rooms and that reliance on indirect airflow paths does not meet the intent of Objective 4B-3.

The proposal claims that 64 out of 98 apartments (65%) achieve natural cross ventilation, thereby meeting the ADG design criterion that at least 60% of apartments be cross ventilated in the first nine storeys. However, this is a significant overstatement. Several apartments have been incorrectly counted as cross ventilated when, in fact, they rely on compromised arrangements

such as small bedroom windows opening into deep light/ventilation voids, obstructed by privacy screens, planter boxes, breezeway corridors, and glazed louvres before reaching the exterior. Such configurations do not provide the unobstructed airflow path envisaged by the ADG and cannot be considered genuine cross ventilation.

Council's review indicates that when only apartments with a true cross ventilation path are counted, the number reduces to approximately 35 out of 98 apartments (around 36%). This falls well short of the 60% requirement. Council considers it essential that the proposal be redesigned so that at least 60% of apartments meet the ADG's cross ventilation criteria.

In addition, the affordable housing apartments have poor natural cross ventilation. Of the 19 affordable dwellings proposed, only 4 are predicted to achieve natural cross ventilation, equating to just 21%. The *In-fill Affordable Housing Practice Note* (p.15) makes clear that affordable housing should be delivered to the same standard of amenity as other dwellings within the development. The concentration of the lowest-performing apartments within the affordable housing stock highlights a shortfall in amenity for these residents, inconsistent with the Practice Note and contrary to the principle of equitable design outcomes.

4E: Private open space and balconies

The ADG emphasises that private open spaces, including balconies, courtyards, and terraces, are an essential component of apartment amenity. They provide outdoor living areas, extend internal living spaces, and contribute to the building's articulation and relationship with the street. Objective 4E-1 requires that all apartments be provided with appropriately sized private open space, with specific minimum dimensions: 8m² for one-bedroom apartments, 10m² for two-bedroom apartments, and 12m² for three-bedroom apartments (with corresponding depth requirements). For ground-level apartments, a private open space of at least 15m² with a minimum depth of 3 metres must be provided.

Several private open spaces fall are non-compliant with these minimum requirements. Some ground floor apartments, including LG05 and LG06 (11m² each) and LG01 and LG02 (14m² each), do not achieve the required 15m² minimum. Similarly, apartment 111 provides only 10m², below the standard for its type. In addition, Apartment 102 (and six other apartments of the same layout) is designated as a two-bedroom plus study. However, the study is of a size and configuration that could readily function as a bedroom, effectively making these apartments three-bedroom dwellings. On this basis, the private open space should be 12m² rather than 10m², and the current balcony provision does not comply.

Council considers that the design must be revised to provide compliant private open spaces across all apartment types, consistent with the minimum areas and depths set out in the ADG. Any apartment layouts that include a study capable of functioning as a third bedroom must be treated as three-bedroom apartments for the purpose of private open space calculations. Without these revisions, the proposal does not satisfy ADG Objective 4E-1 and fails to provide adequate residential amenity.

Part 4O: Landscape Design

Objective 4O-1

The landscape proposal is conceptual and lacks sufficient detail for a complete assessment. A planting plan has not been submitted, making it impossible to evaluate the quantity, type, or suitability of proposed planting species across the site area.

The design does not clearly respond to the site's existing natural or cultural features (existing

trees) and offers limited contribution to the building's setting or landscape character due to lack of meaningful deep soil landscape zones within development setback areas.

A revised landscape plan is required with a planting schedule, demonstrating compliance with a design that complements the site context and desired future landscape character as detailed within council's alternate TOD proposal.

Objective 4O-2

The proposal does not meet this objective due to the following issues:

- Deep Soil Zones and front setback tree plantings

The lack of meaningful deep soil zones surrounding the development fails to provide sufficient opportunity to accommodate large trees that contribute to the streetscape and amenity and fails to meet ADG objectives. The lack of tall trees within the site frontage fails to contribute meaningfully to the established streetscape character.

- Planting on Structures

The submitted documentation does not provide sufficient detail regarding planter soil depths as no planter depths are provided. Raised planters on structures shall meet the requirements of Part 4P of the Apartment Design Guide. Permanent, well-integrated planting solutions with low water requirement planting and known to perform well in proposed restricted areas are required to ensure long-term success and visual quality.

- Equitable access ramping

The expanse of equitable access ramping and pedestrian access adjacent to the driveway expanse results in the dominance of the built form and significantly limits the ability of the proposal to provide meaningful deep soil and tall tree replenishment planting within the site frontage.

There is further design opportunity to reduce built-upon area within the site frontage to increase available deep soil, tall tree replenishment opportunities, and soft landscape area, without compromising equitable and safe pedestrian access

Part 4P: Planting on structures

The Landscape and architectural plans provide insufficient information to assess the planting above structures. Refer to the 'Insufficient information' section of this submission for further detail.

E) KU-RING-GAI DEVELOPMENT CONTROL PLAN

While clause 2.10(1) of the *State Environmental Planning Policy (Planning Systems) 2021* states that Development Control Plans (DCPs) do not apply to State Significant Development, DCPs remain important policy documents when assessing applications. DCPs articulate the desired future character of an area and continue to shape nearby developments, including those on mapped TOD sites and development within the SSD threshold.

The proposal raises significant concerns in relation to this intended future character, including:

- Excessive site coverage well above KDCCP allowances (see Part 7A.5);

- Insufficient deep soil provision, limiting meaningful landscaping and canopy planting (see Part 7A.6); and
- Several apartments below ground level (see Part 7C.3).

Taken together, these issues suggest the proposal fails to adequately satisfy the objectives and provisions of the KDCP that seek to preserve the leafy, landscaped character of the locality. Some non-compliances are set out below:

Ku-ring-gai Development Control Plan

Part 3B: Land Consolidation

The KDCP requires site consolidation to avoid creating isolated or “stranded” sites that cannot be developed in accordance with planning controls. Where isolation occurs, applicants must show genuine negotiations with the adjoining owner, make a reasonable purchase offer, and demonstrate through diagrams that the site could still achieve a compliant development with appropriate setbacks, deep soil, and solar access.

The proposal adjoins 22 Middle Harbour Road, which has a frontage of only 15.3m and does not meet the minimum width for a Residential Flat Building. The applicant has provided diagrams suggesting development potential, but these are limited to 3D massing. Once the required 6m side setbacks are applied, the building footprint is reduced to only 3m wide, leaving no realistic opportunity for redevelopment. This means 22 Middle Harbour Road is effectively stranded due to the proposed redevelopment of 24-28 Middle Harbour Road (SSD-82548708).

The application was not accompanied by an documentary evidence of discussions that had taken place between the owners of the subject site and the owners of No.22 Middle Harbour Road.

The application is therefore inconsistent with KDCP Part 3B. The adjoining site cannot achieve a compliant building form, and the diagrams provided do not overcome this constraint. To address this, the proposal would need to include the adjoining site in consolidation or be redesigned to avoid isolating it. The re-design would likely necessitate greater building setbacks to the shared boundary to enable a more useable floor plates on the isolated development site and greater levels of amenity.

Furthermore, the isolation of 22 Middle Harbour Road is inconsistent with object (c) of the *Environmental Planning and Assessment Act 1979* “to promote the orderly and economic use and development land”.

Part 7A.5 Site Coverage

The KDCP limits site coverage to a maximum of 30% of the site area, conditional on compliance with the deep soil requirements in Part 7A.6. This control is intended to preserve the natural landscape character, support viable deep soil zones for mature tree growth, and reduce impervious surfaces that contribute to stormwater runoff.

In this case, the applicant has not provided a site coverage calculation. However, based on the extent of building footprint shown on the plans, it is likely that site coverage substantially exceeds the 30% maximum. This raises concerns of overdevelopment, both visually and functionally, and indicates non-compliance with the intent of the control.

Part 7A.6 Deep Soil

For sites over 1,800m², the KDCP requires that at least 50% of the site be provided as deep soil landscaping. This control is intended to contribute to Ku-ring-gai’s distinctive garden character, support urban biodiversity, and enable effective stormwater infiltration and the growth of mature

canopy trees.

Under the proposed development, setbacks proposed are only 4 metres to the northern and western boundaries and 3 metres to the eastern boundary, which are non-compliant with the 6-metre minimum dimension required. Narrow setbacks cannot be considered deep soil under the KDCP or ADG definition, as they do not provide sufficient soil volume to support large trees or achieve the intended environmental outcomes. On this basis, the actual provision of deep soil is likely to be significantly less than claimed and well below the 50% required.

Council considers that the proposal fails to comply with the deep soil requirements of the KDCP. A revised design is needed to provide consolidated deep soil zones of sufficient width and area to deliver meaningful landscape and environmental outcomes consistent with Ku-ring-gai's established character.

Part C.2 Communal Open Space

Shared facilities such as barbecue facilities, shade structures, and seating, are to be provided within the primary communal open space in accordance with Control 12.

The proposed development provides compromised communal open space at ground floor level which will receive reduced amenity and useability due to the location, design and irregular shape of the space. Consideration should be given to the removal of the private open space areas at roof top level and relocating communal open space to this level of the building

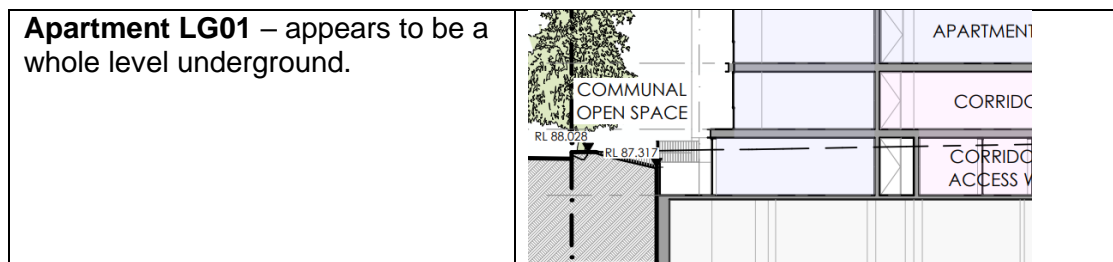
Refer to the 'ADG' section of this submission for further issues with communal open space.

Part 7C.3 Ground Floor Apartments

The KDCP requires that the internal finished floor level of any part of a ground floor apartment and/or its associated private open space must not be more than 0.9 metres below the existing ground level at the building line. This control is intended to ensure that ground floor apartments maintain adequate amenity, outlook, and natural light, and to avoid dwellings that are effectively located below ground level.

In this proposal, several apartments appear to breach this requirement as demonstrated in the submitted sections. LG09 and LG01 appear to be a full level below ground, while LG02 and 111 appear to be set more than one metre below existing ground level. Based on the available sections, these are the only examples visible; however, it is likely that other units are similarly affected. These layouts raise significant concerns regarding natural light, ventilation, outlook, and amenity for residents, and are inconsistent with the intent of the KDCP control.

Council considers that the design of these units must be revised to comply with the requirement for ground floor apartments to be no more than 0.9 metres below existing ground level. Without such changes, these dwellings will present as sub-grade apartments with poor amenity, contrary to both the KDCP and the objectives of the ADG.



<p>Apartment LG02 – appears to be more than 1m underground.</p>	
<p>Apartment LG09 – appears to be a whole level underground.</p>	
<p>Apartment 111 – appears to be more than 1m underground.</p>	

Part 13 Tree and Vegetation

The removal of the following tree T9 *Syncarpia glomulifera* / *Turpentine* is not supported due to its high retention value, high significance, good health and condition and contribution to local biodiversity and landscape character.

Note: Tree 9 is a mapped canopy remnant of the critically endangered Sydney Turpentine Ironbark Forest (STIF) plant community in addition to being mapped within the Ku ring gai Tree inventory, supporting the local urban forest. Refer to the 'Biodiversity' section within the submission for further detail.

F) HERITAGE

The objectives of Clause 5.10 Heritage conservation of KLEP are to “*to conserve the environmental heritage of Ku-ring-gai*” and “*to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views*”. Subclause 4 of Clause 5.10 states that “the consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned”.

Part 19 of the KDCP sets further detailed objectives and controls to implement these KLEP objectives in relation to conserving significance, fabric, setting and views for heritage conservation areas and heritage items.

The proposed development will have an unacceptable impact on three (3) heritage items and one conservation areas (1) in the vicinity of the site. The items and HCA are listed below:

- 9 Middle Harbour Road, Lindfield

- 31 Middle Harbour Road, Lindfield
- 19 Russel Avenue, Lindfield
- Trafalgar Avenue Conservation Area - C31

Inappropriate setting and view impacts

Inconsistent with Burra Charter

The Burra Charter – the Australia ICOMOS charter for the conservation of places of cultural significance – is the key document guiding conservation practice in Australia. The following *Article 8. Setting states,*

Conservation requires the retention of an appropriate visual setting and other relationships that contribute to the cultural significance of the place. This includes retention of the visual and sensory setting, as well as the retention of spiritual and other cultural relationships that contribute to the cultural significance of the place.

New construction, demolition, intrusions or other changes which would adversely affect the setting or relationships are not appropriate.

Poor Streetscape Relationship

Middle Harbour Road is a much-loved community streetscape characterised by contributory and heritage dwellings with gardens and mature trees dotted along the road. The section of Middle Harbour Road where the SSD site is proposed has a building topography of single and double storey residential dwellings which will be replaced with the proposed 9 storey apartment complex which will dominate Middle Harbour Road.

Inappropriate setting for the Heritage items within the vicinity

The proposed 9 storey apartment complex is in the vicinity of three (3) locally heritage items 9 Middle Harbour Road, 31 Middle Harbour Road and 19 Russel Avenue, Lindfield. Views from the individually listed items will be adversely affected as they will be severed by a 9 storey building. Views to the sky, trees and terracotta roof tops will be lost and replaced with a large residential flat building which will adversely impact the views from these heritage items.

Inappropriate setting for the Heritage Conservation Areas in the vicinity

The proposed 9 storey apartment complex is located beside the Trafalgar Avenue Conservation Area - C31. Views from the individually listed items will be adversely affected as they will be severed by the 9 storey apartment building. Views to the sky, trees and terracotta roof tops will be replaced by a large residential flat building. This will adversely impact on the setting of the nearby HCA.

Summary of adverse impacts to setting and views

The proposed development will adversely impact on the heritage items and HCA in the vicinity and will alter the context and setting of the existing streetscape of this section of Middle Harbour Road as it will completely dominate this part of Lindfield. The impacts heritage significance of the nearby heritage items and HCA will irreversible.

Inadequate setbacks

The proposed height of the building does not adequately transition to the buildings on either side which are 2 storeys high. There are inadequate setbacks to provide a transition between the adjacent buildings of different scales on the adjoining properties.

The proposed development is in the vicinity of several heritage items and conservation areas and does not harmonise or enhance the area's distinctive identity as it is very dominant in the streetscape and will be visible from all surrounding properties. There are limited setbacks and no transition in height.

Incompatible bulk-massing, scale and form

The proposed 9 storey development does not relate to the predominant scale (height, bulk, density) of the setting around it and will have an adverse impact on the heritage items and HCA in the vicinity. The overall scale of the proposed development is not in context with the streetscape, heritage items and HCA in the vicinity and has no transition to the buildings on either side.

The proposed increased density will irreversibly degrade the heritage significance of the heritage items and heritage conservation areas in the vicinity because of the inconsistency of the existing low scale historic built form.

Landscape loss

The loss of trees will have an adverse impact on the heritage items and HCA in the vicinity as it will change the leafy character of the street.

The lack of planting area within the proposed rear and side setbacks will have an adverse impact on the items and conservation areas in the vicinity as it does not provide adequate landscape amenity and is inconsistent with the neighbouring properties.

The proposed loss of landscaping will have a detrimental impact on the heritage items and conservation areas in the vicinity.

Materials, colours and finishes

The heavy reliance on concrete, bricks and glass will be obtrusive in the streetscape and will have an adverse impact on the heritage items and HCA in the vicinity.

Summary

For the reasons detailed above, the proposed development fails to meet the objectives and provisions of Clause 5.10 of KLEP.

G) BIODIVERSITY

The submitted BDAR has misclassified the vegetation community on site as Blue Gum High Forest (PCT 3136). Based on the BDAR's own floristic data, which records Tree 9 *Syncarpia glomulifera* (Turpentine) as the dominant canopy species, the correct classification is Sydney Turpentine-Ironbark Forest (STIF; PCT 3262). STIF is listed as a Critically Endangered Ecological Community under the BC Act 2016. This error requires correction, and all offset calculations and impact assessments must be revised to reflect the correct PCT.

The submitted Arborist Report identifies significant encroachment on numerous trees. Of particular

concern is Tree 9 (*Syncarpia glomulifera*), which is a canopy tree contributing to the STIF community. The report states that Tree 9 is subject to total encroachment by the proposed building footprint and cannot be retained. The removal of Tree 9 has not been justified in accordance with the mitigation hierarchy under Section 3 of the Stage 2 BAM Operational Manual, which requires that biodiversity impacts be avoided before reliance is placed on offsets. At present, the proposal fails to demonstrate genuine avoidance of this impact.

In its current form the BDAR cannot be accepted as compliant with the Biodiversity Conservation Act 2016 and BAM due to the misclassification of the vegetation community and the failure to demonstrate avoidance of Tree 9.

The BDAR must be revised to identify the vegetation as Sydney Turpentine-Ironbark Forest (PCT 3262) and offsets recalculated. In addition, the applicant must demonstrate avoidance of Tree 9 through redesign or, if removal is unavoidable, provide detailed justification consistent with BAM requirements

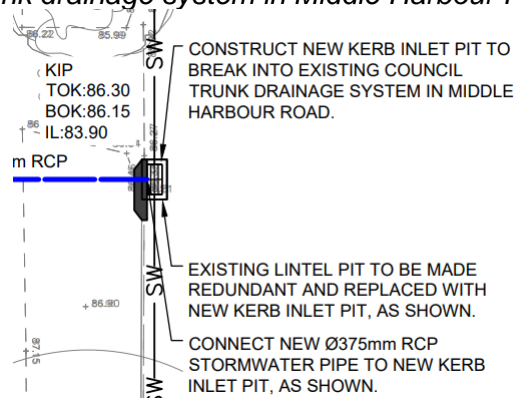
H) ENGINEERING

Water Management

1. Before you Dig Australia searches and overlay is recommended to ensure there is no conflict of existing utility services.
2. A CCTV video and report of the existing pit and pipe of Council's trunk drainage system shall form part of this required certification. The condition of the existing pipe is to be inspected by a licenced plumber/ drainage contractor to verify if the existing pipe is in good working condition. The findings of their report are to be submitted to Council.
3. Supporting hydraulic calculations are to be submitted to confirm that the pipeline to which connection is proposed has sufficient hydraulic capacity to accept the post developed flows. This shall be in the form of DRAINS modelling or equivalent.
4. The applicant has provided a Water Balance Model which concluded that a 5000L rainwater tank is considered sufficient enough in order to meet the 50% reduction in runoff days specified in control 24B.3-4. The submission of this model is to be provided to Council.

Civil Plans

1. The applicant has proposed to "construct a new Kerb Inlet pit to break into existing Council trunk drainage system in Middle Harbour Road".



However, according to Council record, there is no existing trunk drainage system along the same

4. For the 68 resident bicycle parking spaces on the Lower Ground Floor, clarification is required on the access path to the street frontage, and whether the accessways and gates are of suitable dimensions to be able to transport a bicycle
5. Clarification is required whether the accessways and gates are of suitable dimensions for a visitor to be able to transport a bicycle to/from the visitor bicycle parking spaces on the Upper Ground/Level 1 plan.
6. Swept paths are required that demonstrate that Council's standard waste collection vehicle can access the loading bay on the Lower Ground Floor.
7. Clarification is needed as to whether the dedicated loading bay may also be adequate to facilitate home deliveries. If so, a Loading Bay and Deliveries Management Plan is required so that there is coordination between the loading dock/home deliveries/groceries etc and residents.
8. Clarification is required as to the exact configuration of the access point within the site.
9. Demonstrate that the 2m x 2.5m sight triangle at the access point as per AS2890.1 is able to be provided.
10. Demonstrate that the swept paths of the largest construction vehicles can be accommodated without a Works Zone or No Parking restrictions in Middle Harbour Road.
11. There are restrictions to right turn movements between Archbold Road and Middle Harbour Road, which would impact on the proposed construction vehicle routes. Alternative routes need to be considered.
12. Plans to that one visitor car parking space is provided with a tap, to make provision for on-site car washing.
13. Plans to show that EV readiness is provided for all car parking spaces within the development.
14. If Council's standard waste collection vehicle and bulky goods waste collection vehicle cannot access the loading bay, provision is to be made for 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 is to be provided to cater for a minimum 6.7m long service vehicle. The loading space/s should be line marked and/or signposted as a designated loading area.

I) INSUFFICIENT INFORMATION

The application does not contain sufficient information and the following additional information is required:

1. Trees and Landscaping

The proposal has been assessed against Item 14: Trees and Landscaping of the SEARs compliance table. The submitted documentation does not satisfactorily respond to this requirement, for the following reasons:

- a) Inadequate Landscape Documentation:

- (i) Appendix 8: Landscape Plan lacks essential information, including the location, species, and quantity of proposed plantings across the site area.
- (ii) The submitted plans only sufficiently detail tree plantings.
- (iii) The plant schedule is inconsistent with the plan set as shrub/accent and groundcover planting numbers/densities have not been detailed or quantified.
- (iv) Where landscaping is proposed over structures raised planters / or planted areas the appropriate soil depths and volumes (as per ADG Table 5 of Part 4P) shall be provided for the following purposes:
 - All Communal Open Spaces: To improve amenity, air quality, and stormwater management, include tree species known to perform well above structures.
 - The planting design shall include species suited to wind, drought, and varying solar conditions and consider seasonal changes.

b) Failure to Integrate Significant Existing Trees:

- (i) The design does not demonstrate meaningful consideration or integration of tree 9 *Syncarpia glomulifera* / Turpentine. The tree is identified as having high significance and high retention value and is a mapped canopy remnant representative of a critically endangered plant community.
- (ii) The removal of tree 9 is not justified and is inconsistent with the intent of the SEARs to retain and incorporate significant trees into the design.

The proposal does not comply with the requirements of Item 14 of the SEARs. It fails to demonstrate how the development incorporates existing significant vegetation, and it lacks adequate landscape documentation to enable a full and proper assessment.

2. BDAR

A revised BDAR is required to address the issues raised in Section F 'Biodiversity' of this letter.

3. BASIX Certificate

The landscape BASIX commitments indicated in the submitted BASIX certificate is inconsistent with the submitted plans for the following landscape items:

- (i) The certificate indicates a common lawn area of 621sqm, which is not reflected in the plans.
- (ii) The certificate indicates a common garden area of 200sqm, which is not reflected in the plans. The area of common gardens proposed is significantly larger and exceeds 1000sqm.
- (iii) Units: 801, 802, 803, 804, 805, 806 and 807 all have areas of private garden proposed which has not been included within the certificate.
- (iv) The additional landscape area is likely to alter the proposals water score requiring supplementary water saving measures across the development.

To enable assessment of compliance with BASIX commitments, it is requested the application include BASIX compliance plans that highlight the areas included within the BASIX committed areas and the area calculations for clarity.

4. Detailed Site Investigation

Item 13 'Contamination and Remediation' of the SEARs states:

In accordance with Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021, assess and quantify any soil and groundwater contamination and demonstrate that the site is suitable (or will be suitable, after remediation) for the development.

The SEARs require a Preliminary Site Investigation Report to be submitted, and if required a Detailed Site Investigation and Remediation Action Plan is to be submitted.

The submitted Preliminary Site Investigation Report has identified a potential risk for contaminated groundwater to be encountered and recommends that a Detailed Site Investigation (DSI) to be carried out. A DSI has not been submitted and therefore the application therefore fails to satisfy the SEARs.

In order for the consent authority to be satisfied that the provisions of State Environmental Planning Policy (Resilience and Hazards) 2021 are met, a DSI, and Remediation Action Plan (if recommended by the DSI), must be submitted prior to a determination being made.

5. Acoustic report

The submitted acoustic report assesses potential noise emissions from mechanical plant equipment, including cooling towers, heating pump units, and air-conditioning condenser units. The assessment assumes these plant items are located primarily on the rooftop and concludes that, with appropriate equipment selection and acoustic treatment, operational noise levels will comply with the NSW EPA Noise Policy for Industry (2017) and Ku-ring-gai Council's DCP acoustic criteria.

However, the acoustic report predates the Rev B architectural plans (31 July 2025), which identify:

- A carpark exhaust fan area (38m²) located on Basement Level 1; and
- Air-conditioning outdoor units and a services plant area on the Level 9 Floor Plan, which may correspond to the cooling tower and heat pump units referenced in the acoustic report.

Given that the acoustic report does not reference a basement plant room, and the architectural plans do not clearly identify any cooling tower or heat pump location, it remains unclear whether the acoustic assessment accurately reflects the current design and plant layout.

Accordingly, clarification from the acoustic engineer should be sought to confirm:

1. That the acoustic modelling has been updated to reflect the current architectural layout and plant positioning (including rooftop and basement locations);
2. The final location and type of all mechanical plant and equipment proposed, including condenser units, heat pumps, and cooling towers; and
3. That all proposed plant installations will achieve compliance with the NSW EPA Noise Policy for Industry (2017) and Council's DCP acoustic criteria at the nearest residential receivers.

6. Geotechnical Report

A geotechnical report based on boreholes drilled to below basement level is to be submitted with the DA. The report is to contain recommendations for excavation methods and support, vibration monitoring, dilapidation survey etc. Groundwater levels are to be recorded to determine if permanent dewatering will be required, in which case the DA may require referral to NSW Office of Water for licensing conditions (Integrated).

END OF SUBMISSION