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 NSW Department of Planning, Housing and Infrastructure
 and the Independent Planning Commission of New South Wales
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SUBMISSION VIA THE NSW PLANNING PORTAL

22 June 2026

Dear Joe

RE: COMPREHENSIVE STATUTORY OBJECTION TO STATE SIGNIFICANT DEVELOPMENT (SSD-88948458)

Application Number: SSD-88948458

Location: 5–9 Cowan Road, St Ives NSW 2075

Zoning: R3 Medium Density Residential

Proposal: Amended 9-Storey Residential Flat Building (77 Dwellings incorporating In-fill Affordable Housing)

Applicable Frameworks: Section 4.15 of the *Environmental Planning and Assessment Act 1979*, Chapter 4 & Schedule 9 of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP), the Transport Oriented Development (TOD) SEPP rules, the *NSW Apartment Design Guide* (ADG), the *National Construction Code* (NCC), and the *Ku-ring-gai Development Control Plan* (KDCP) Part 7A & St Ives Urban Centre Plan 14A.

To the Independent Planning Commission Panel and Department Assessment Team,

FOKE submits this comprehensive, and highly critical formal **OBJECTION** to the second round of amended architectural, landscape, and traffic plans submitted for **5–9 Cowan Road, St Ives (SSD-88948458)**.

While the applicant attempts to utilize the State Significant Development (SSD) assessment pathway to override localized planning controls, Section 4.15 of the *Environmental Planning and Assessment Act 1979* mandates that any determining authority must strictly evaluate the project's compliance with state planning policies, environmental constraints, and localized public domain interfaces. The applicant's amended Response to Submissions (RtS) does not offer design compliance. Instead, it relies on artificial spatial definitions, a deficient Section 4.6 variation request, localized boundary encroachments, and a highly inequitable internal layout that actively disadvantages affordable housing occupants.

The application must be refused on the following seven formal planning and statutory grounds:

1. Invalidation of the Section 4.6 Height Justification & Clause Manipulations

The applicant's Section 4.6 Variation request to justify a maximum physical building height of 29.38 roof height to 30.6 metres including the lift overrun (9 storeys) on land zoned R3 Medium Density is structurally and legally deficient.

- **Abuse of the "Floor Slab Loophole":** A 30% affordable housing height bonus applied to a standard 6-storey baseline mathematically permits a maximum building envelope of approximately 8 storeys. The applicant has forced 9 physical storeys into this envelope by systematically compressing internal, floor-slab-to-floor-slab heights. Squeezing an excessive number of window lines, balconies, and internal lights vertically creates a highly oppressive visual wall profile.
- **Deceptive Submerged Level Loophole:** To mask this vertical overdevelopment at the street frontage, the developer has incorporated "underground" residential units at the front of the site, positioned approximately 1 metre below the established road and footpath level of Cowan Road. This

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layout trick seeks to technically manipulate the building's overall height measurements while creating a substandard streetscape interface where ground-floor tenants sit in an excavated subterranean ditch minimising solar, and ventilation standards. This completely fails the merit test required for a Clause 4.6 height variation.

- Height and bulk impacts have deceptively been understated. In particular, the proponent has assumed that the R3 zoned properties across the street will redevelop as infill development with a 30% bonus. In addition, the impacts of the building when viewed from the public domain views—William Cowan Oval and the ST Ives Village Green—have not been considered.

2. Failure of Affordable Housing Standards & Internal Equity (Breach of SEPP & ADG Principles)

The proposal fails to meet the core liveability and equity standards required by the NSW Housing SEPP and Schedule 9 of the Housing SEPP (Design Quality Principles). The allocation of affordable housing demonstrates a discriminatory segregation of lower-income residents into the most compromised, unliveable pockets of the development:

- **Substandard Living Amenity:** Many of the affordable dwellings are situated in the most unliveable parts of the buildings due to a critical lack of solar access and a lack of crossflow ventilation. The lack of cross ventilation is exceptionally high, while solar access equates to only the absolute bare minimum of 2 hours, with only one single apartment achieving more than the minimum 2 hours.

Statistical Distribution of Affordable Housing Failures:

- **No Solar for Minimum 2 Hours:** 15% (2 / 13 units)
- **No Crossflow Ventilation:** 46% (6 / 13 units)
- **Located Exclusively on Levels Ground & 1:** 61% (8 / 13 units)
- **Total Affordable Units in Building Scheme:** 13 units (100%)

As demonstrated by the data above, the majority of the affordable units are located on levels Ground and 1 across the three buildings and sit predominately in the west-facing areas of the development with minimal solar access and cross ventilation. This concentrated positioning is entirely inconsistent with the TOD SEPP rules and Housing SEPP guidelines, which explicitly require the equitable spread and indistinguishable integration of affordable units throughout the entire height, aspect, and profile of the development. Clustering affordable apartments in dark, single-aspect, unventilated subterranean and lower-level zones to reserve premium upper floor plates for market-rate sales violates Schedule 9 Principle 6 (Amenity) and invalidates the social baseline of the state's affordable housing incentives.

3. Setback Controls Non-Compliance

(i) NON-COMPLIANCE SETBACKS APARTMENT DESIGN GUIDE

In NSW, the ADG generally requires basements to be set back at least **6 m from the front and rear boundaries, and 3 m from the side boundaries**. These setback areas must function as deep soil zones to support tree planting and landscaping.

Side setback: on both sides are less than 4.5m and estimated to be less than 3m in the NE and NW corners.

Non-compliant Building:

Front setbacks: 4.5m to the Private Open Space that is paved.

9m to building line with encroachment of unit on NW corner.

Back setback: 4.5m to 6.0m from NE corner to NW corner

Side setbacks: 9m to 4.5m from NW corner to NE corner

Encroachments into the setbacks:

Extensive paved areas, terraces which exceed the 1.2m wide accepted standard.

Objection: The 4.5meter setbacks which are intended to serve as deep soil landscaping are in fact encroached by paved terraces and also fenced off from adjacent properties therefore preventing sustainable connected deep soil planting.

(ii) Gross Non-Compliance with KDCP Part 7A & St Ives Urban Centre Plan 14A Setback Controls

The development proposal is completely out of accordance with the street setback controls outlined in Part 7A.3 of the Ku-ring-gai DCP (KDCP) and the St Ives Urban Centre Plan 14A. The proposed street front and side setbacks are inconsistent with the existing surrounding developments and will result in a visually bulky, dominant development that severely detracts from the streetscape character and amenity of surrounding properties.

The project fails to meet the following clear metrics under Ku-ring-gai Council Development Control Plan (KDCP) 7A:

- **Street Frontage Setback Deficit:** KDCP mandates a strict 10-metre setback from the building to the street frontage, without encroachments such as balconies and other structures. Currently, this has been compressed to only 4.5m to the private open space area which is entirely paved. **[NOT MET]**
- **Articulation Zone Failure:** Residential flat buildings must provide a 2.0m articulation zone behind the street setback, which is not encroached by balconies or other structures. The developer has included 3 paths from private open space, a paved bicycle parking space. **[NOT MET]**
- **Side Setback Baseline Thresholds for Landscaping:** Residential flat buildings must meet specific side and rear setbacks to ensure deep soil, landscaping, and tall trees are accommodated to all sides of the building. The current layout completely fails these metrics:
 - *Up to the Fourth Storey:* Requires a minimum of 6m from the side boundary. Currently only 4.5m. **[NOT MET]**
 - *Fifth Storey and Above:* Requires a minimum of 9m. The developer's stepped façade does not occur until the seventh storey, leaving floors 5 and 6 aggressively looming close to the fence. **[NOT MET]**
- **Encroachment via Driveway Placement:** KDCP controls explicitly dictate that side setback areas behind the building line are not to be used for driveways or for vehicular access into the building. The applicant's current 4.5m side setback ends up crossing the primary driveway, essentially halving the usable setback zone. This completely strips away the physical ability to plant tall screening and privacy trees for the neighbouring dwelling. **[NOT MET]**
- **Site Tapering Violations:** The site naturally widens to the rear of the property on both sides. The setback must be calculated as 6m from the front side boundary, not shifted or squeezed using the rear of the property boundary. Currently, it remains a non-compliant 4.5m. **[NOT MET]**
- **Rear Setback Deficit:** The rear setback is restricted to an absolute minimum of only 4.5 metres, rendering it completely non-compliant. **[NOT MET]**
- **Disregard for Uniform Street Patterns:** Where there is a uniform building setback within streets, new buildings are to respect the established pattern and not be located forward of adjacent buildings. Where variations in setback exist, the larger setback applies. The proposed 4.5m positioning aggressively shifts the building line forward. **[NOT MET]**
- The current 4.5m side and rear setback arrangements completely fail to ensure that deep soil, landscaping, and tall canopy trees are accommodated on all sides of the building. **[NOT MET]**

4. Destruction of Landscape Integrity via Oversized Private Terraces and outdoor space

The ground floor design further exploits the site's boundaries, turning required environmental relief zones into market-yield private assets, directly violating ADG Part 3D (Communal and Public Open Space) and Schedule 9 Principle 5 (Landscape):

- **Oversized Hardstand Widths:** The ground-floor apartments along the side boundaries feature expansive private concrete terraces that exceed the 1.2-metre allowed width thresholds.
- **Destructive Boundary Fencing:** To establish these oversized private courtyards, the developer has introduced physical dividing fences extending directly from the unit glass to the absolute boundary line. Erecting physical fencing entirely fragments the perimeter landscape zone and cuts off contiguous soil beds. This layout choice directly threatens the long-term survival of mature tree plantings, eliminating the deep soil tree canopies necessary to screen a 9-storey concrete tower from existing low-density neighbours.

5. Environmental Deprivation Validated by Shadow Diagrams

The compounding effect of a compressed 9-storey profile, a direct boundary encroachment, and an un-stepped vertical height of 30.6m generates major solar impacts on surrounding properties, completely failing ADG Part 4A-1:

- **Prolonged Solar Blockage:** The applicant's updated winter solstice shadow diagrams confirm that this massive building completely blocks natural solar access to neighbouring private open courtyards, living room windows, and domestic solar arrays during the key statutory calculation hours of 9:00 AM to 3:00 PM on 21st June.
- **Yield-Driven Open Space Reduction:** While the developer has cut communal open space inside the development down from 1,228 m² to 971 m² to accommodate extra market-rate units, their shadow profile simultaneously degrades the environmental liveability and thermal performance of the surrounding established community.

6. Fabricated Traffic Capacity via Deficient SIDRA Modelling & Parking Cuts

The revised Traffic Impact Assessment relies on a SIDRA intersections model that fails to reflect the lived reality of the local road network.

- **Gross Underrepresentation of Queues:** The developer's SIDRA report fundamentally underrepresents the actual vehicle queues that consistently paralyse the intersections of Cowan Road, and Mona Vale Road during peak commute hours. It ignores weekend traffic which is significant due to the shopping centre and sporting activities on weekends. It fails to execute representative survey periods as mandated under the TfNSW Guide to Transport Impact Assessment.
- **The Parking Deficit Multiplier:** Despite pushing the total unit yield up from 74 to 77 apartments, the developer has simultaneously slashed secure on-site basement parking spaces from 150 down to 125. This artificial vehicle overflow will inevitably put demand on the on street parking in Cowan Road, restricting the road geometry and choking traffic flow for adjacent seniors' independent living units, the Pymble Golf Club and the St Ives Shopping Village network—directly breaching Schedule 9 Principle 4 regarding integrated traffic and transport sustainability solutions.

7. Effective Height Fire Safety Triggers (National Construction Code)

The physical layout changes confirmed in the amended submission the step up to a 29.38metres and 30.6-metre with lift overrun peak and 9 floor levels) verify that the building's Effective Height is well over 25 metres.

- **Mandatory Type A Safety Infrastructure:** Under the National Construction Code (NCC), any residential flat building with an effective height surpassing 25m cannot utilize basic low-rise fire safety exemptions. Even though the lift overrun structure at the top of the roof is excluded from the effective height calculation, the floor slab of the 9th storey sits high enough to mandate Type A fire-resisting construction frameworks, mandatory automatic fire sprinkler networks, localized hydrants, and dual pressurised exit stairways on every single level. Attempting to fit high-rise safety specifications into a heavily compressed floor-slab grid introduces severe, unresolved construction complexities.

Conclusion & Requested Remedy

Under the statutory guidelines of Chapter 4 of the Housing SEPP, a development cannot use affordable housing provisions to justify a total collapse of localized residential amenity, structural boundaries, deep soil landscape integrity, and public traffic safety.

Because this design relies on an unconscionable layout that breaches multiple *NSW Apartment Design Guide* performance criteria, NCC safety thresholds, Ku-ring-gai DCP 7A controls, and Schedule 9 Design Quality Principles, we strongly urge the Independent Planning Commission to protect the integrity of the St Ives community and **refuse application SSD-88948458** in its entirety.

Yours sincerely

Kathy Cowley

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PRESIDENT

cc Ku-ring-gai Mayor and Councillors

cc Matt Cross MP Member for Davidson

cc The Hon Alister Henskens SC MP Member for Wahroonga

cc The Hon Chris Rath MLC Shadow Minister for Planning

cc Ms Nicolette Boele MP Member for Bradfield