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Department of Planning, Housing and Infrastructure
Submitted via NSW Major Projects Planning Portal

14 October 2026

Dear Joe

RE SSD-85974227 9-17 Balfour Street Lindfield amended proposal
Residential flat building with in-fill affordable housing, amended to 10 storeys, 117 apartments (24
affordable), maximum height 33.2 m, FSR 3.25:1

Friends of Ku-ring-gai Environment (FOKE) is a community organisation that advocates for the protection of Ku-ring-gai's neighbourhood character, environment, heritage and liveability since 1994.

Thank you for the opportunity to provide a submission on the amended proposal for SSD- 85974227 at 9-17 Balfour Street Lindfield proposed by Tryon Road Development Pty Ltd.

The amended proposal comprises:

- Demolition of existing structures and site preparation / earthworks;
- Construction of 3 basement levels with vehicular access via Balfour Street;
- Construction of a 10 storey residential flat building, including a mix of 1, 2, 3 and 4 bedroom apartments and 24 affordable units;
- Communal open space on the ground floor and the Level 9 rooftop (Tower C); and
- Landscape works including tree replacement.

Gyde describes the key proposed project amendments as:

- Revised building layout, including amended apartment layouts and unit mix, improved solar access, increased side and rear setbacks and new rooftop communal open space;
- Refined basement parking and relocation of bulky waste collection area; and
- Revised landscaping and deep soil areas.

Summary

FOKE **objects** to the amended application. Some changes are welcome, including the extra 3 m rear setback next to the heritage item at 6 Highfield Road, removal of private terraces from the front setback, and the improvement in sunlight to affordable apartments from 28.6% to 54.2%. However, the main concerns raised by DPHI and [Ku-ring-gai Council](#) have not been resolved, and the amended documents contradict each other on matters the consent authority needs to rely on.

The key concerns are:

- The legal basis for applying the former TOD controls is described in different ways, and the documents disagree on which neighbouring land has a 29 m height limit and in which direction it lies.
- The design does not respond to the local garden and heritage context. The recent Lorne Avenue, Killara decision shows that this can justify refusal under the Housing SEPP even where height and FSR comply, and this proposal does not comply with the height limit.

- The amendment adds height in places ([DPHI's own letter](#) confirms this), the maximum 4.6 m (16.1%) exceedance is unchanged, and the Clause 4.6 request contains factual errors about solar access, cross-ventilation and deep soil.
- Affordable housing still gets clearly worse amenity: 25% of affordable apartments receive no winter sun, compared with about 3% of market apartments. None of the three permanent (in-perpetuity) affordable apartments receives two hours of winter sun.
- All four apartments removed by the amendment are affordable apartments. The number of market apartments is unchanged at 93.
- The 6 m front setback is kept even though DPHI recommended 8 m and the Ku-ring-gai DCP control is 10 m.
- The four trees DPHI asked about, including two mature Sydney Blue Gums, are still removed. The applicant's reports disagree on which trees cause the claimed 40% "sterilisation" of the site.
- The BDAR says the vegetation is "more likely" Blue Gum High Forest but assesses it as Sydney Turpentine-Ironbark Forest. There is no clear assessment under the Commonwealth EPBC Act.
- The basement will drain groundwater permanently (about 5.25 ML a year), but the mitigation measures go no further than inflow monitoring and dilapidation surveys, with no commitments on licensing, discharge or drawdown limits.
- Several reports describe superseded versions of the building (9 storeys, a four-level basement), which makes the impact assessment unreliable.

We ask DPHI to recommend refusal in the current form or, at minimum, require the further amendments and information listed in each section before the assessment report is finalised. Given Council's objection and the heritage and biodiversity issues, we also ask that the Minister consider delegating determination to the [Independent Planning Commission](#), which the Commission confirms remains possible case by case for in-fill affordable housing.

Documents reviewed

This submission relies on the documents exhibited for the amended application, the earlier agency and Council submissions, and the legislation, guidance and case law listed under Sources. Each reference links to its source; exhibited documents link to the NSW Major Projects portal. Calculations from the apartment schedule are based on the unit-by-unit schedule in the [Architectural Plans](#) (Revision B, 10 July 2026).

1. Planning controls and legal basis

1.1 The basis for "saved" TOD status is unclear

The [Clause 4.6 Request](#) says the site is "saved" under the TOD provisions "pursuant to Clause 1.8A (savings provision relating to development applications) within Schedule 1" of the Station Precincts SEPP. The [Amendment Report](#) instead says the site was saved under transitional provisions and is "mapped on the revised TOD Map".

The provision cited is clause 1.8A(2) of the [Ku-ring-gai LEP 2015](#), inserted by the [Station Precincts SEPP](#). It applies to "A development application made, but not finally determined, before the commencement" of that policy, which commenced on 14 November 2025, and requires such an application to be determined as if the policy had not commenced. The Amendment Report records that this SSDA was lodged on 20 January 2026, after that date. On its face, the clause does not apply to this application, and in any case it preserves the earlier KLEP controls rather than the Housing SEPP TOD controls.

The [Statutory Compliance Table](#) records non-compliance with the KLEP height standard of 18.5 m (cl 4.3) and FSR standard of 1.3:1 (cl 4.4), yet there is no Clause 4.6 request for FSR. The proposed height of 33.2 m is about 79% above the 18.5 m height adopted for this site in the Ku-ring-gai Station Precincts controls.

What we ask

- DPHI's assessment report should identify the exact provision that applies the Housing SEPP Chapter 5 controls to this site, and explain how the KLEP height and FSR standards are treated.

- If any KLEP development standard continues to apply, an adequate variation request should be required for each standard exceeded, including FSR.

1.2 Height of neighbouring land is described inconsistently

Three documents give three different descriptions of where the 29 m height limit applies:

Document	Statement
Amendment Report	Heights “of up to 29m on the adjacent site to the east”
Response to Submissions	“The land adjoining to the east and south has been identified with a building height of 29 m”
Clause 4.6 Request	“the land immediately adjoining the site to the north has a maximum permissible building height of 29m”

The land to the north is the heritage item at 6 Highfield Road, which the applicant’s own [arborist](#) treats as unlikely to be redeveloped. The Amendment Report also says the proposal is “stepping down in height towards the low density residential zone to the east”, which cannot be true if the land to the east allows 29 m. These statements are used to justify the height breach, so they matter. The NSW Planning Portal mapping shows that the land to the north and north-west, being the heritage item at 6 Highfield Road and 8, 10–12 and 14 Highfield Road, has a maximum building height of 18.5 m and an FSR of 1.3:1 under KLEP 2015 as amended by the Station Precincts SEPP. The 29 m height applies to the school site at 2–4 Highfield Road and to land across Balfour Street.

What we ask

- Require the applicant to provide an extract of the current Height of Buildings Map showing the site and every adjoining lot, with the applicable height, and correct all three documents.
- Assess the height against the actual mapped context, including the 18.5 m height on the site under the Station Precincts controls and Council’s intended transition role for the site.

1.3 Compatibility with local context and desired future character-incompatible

Section 20(3) of the [Housing SEPP](#) requires the consent authority to consider whether the design is compatible with the desirable elements of the character of the local area or, for a precinct undergoing transition, the desired future character of the precinct. The design quality principles in Schedule 9, including context and neighbourhood character, and landscape, also apply.

In [BWSLD Killara II Pty Ltd v Ku-ring-gai Council \[2026\] NSWLEC 1573](#), the Land and Environment Court (Walsh C, 3 September 2026) refused a saved-TOD in-fill affordable housing proposal at 23–25 Lorne Avenue, Killara, even though it complied with the height and FSR standards and complied or nearly complied with the ADG deep soil guidance. The Commissioner found that the design did not respond to the local garden setting, tall canopy trees and wide building spacing at its interface with a heritage conservation area, and that its adverse impacts outweighed its benefits. The decision also:

- gave weight to the lower controls under Council’s alternative TOD scheme (an FSR of 1.3:1, or 1.69:1 with the affordable housing bonus) in considering the character of the precinct;
- did not accept that the proposal should be evaluated against what the Commissioner saw as unrealistic redevelopment of the adjacent sites; and
- treated the scattering of affordable apartments around the complex as a positive design feature.

The Balfour Street proposal is a stronger case for the same concerns. Unlike Lorne Avenue, it exceeds the height standard by 4.6 m. It sits within the Heritage Conservation Area rather than beside it. The Station Precincts controls for the site are 18.5 m and 1.3:1. It clusters 21 of its 24 affordable apartments in one core. As set out in sections 1.2 and 9, it also relies on uncertain and unlikely future development of neighbouring land.

Under [section 2.10 of the Planning Systems SEPP](#), development control plans do not apply to State significant development, so the Ku-ring-gai DCP does not bind DPHI. However, its garden-setting, front setback, deep soil and tall tree provisions, together with Council’s adopted Station Precincts controls, remain

strong evidence of the local context and desired future character that section 20(3) and Schedule 9 require DPHI to consider.

What we ask

- DPHI's assessment report should address section 20(3) and the Schedule 9 principles expressly, with reference to the Lorne Avenue decision, the Heritage Conservation Area as it exists, and the site's 18.5 m and 1.3:1 controls.
- The assessment should not rely on the redevelopment of 6 Highfield Road, 8, 10–12 and 14 Highfield Road, the school site or 19–25 Balfour Street unless that redevelopment is realistic, having regard to the current controls, heritage listing and approval status of that land.

2. Increased Building height and the Clause 4.6 request

2.1 The amendment increases height but describes it as unchanged

[DPHI's amendment letter](#) records that the changes include "increased height to portions of the building, including lift core C and D, the front portion of Tower C and a new pergola". The Amendment Report confirms the new rooftop communal space "resulted in minor additional parts of the building exceeding the maximum permissible building height", but its summary table shows the proposed height as 33.2 m both before and after. The maximum exceedance remains 4.6 m (16.1%) above the 28.6 m limit.

2.2 The exceedance is not limited to rooftop structures

The Clause 4.6 Request says the exceedances are "limited to rooftop structures" and are not "additional habitable floor space". Its own Table 1 lists the "Roof of building" above the limit at Core A (+3.33 m), Core D (+2.17 m) and Core B (+1.9 m), and the "Roof of level 8 – Core C" (+1.68 m), which is the floor of the Level 9 rooftop communal space. Where the main roof is above the height plane, this indicates that part of the top storey is also above it. Table 1 also lists exceedances at the screening fences, including the maximum 4.6 m at the "Top of screening fence – Building B (front)", and at the Core C rooftop: the lift overrun balustrade (+4.45 m), balustrade (+4.04 m), pergola (+3.36 m) and parapet balustrade (+3.35 m). [Council](#) identified Level 8 and Level 9 apartments breaching the limit by between 1.67 m and 3.54 m.

2.3 Factual errors in the justification

Under KLEP cl 4.6(3), the applicant must demonstrate that compliance is unreasonable or unnecessary and that there are sufficient environmental planning grounds. The request relies on statements that the other exhibited documents contradict:

Clause 4.6 Request says	Other exhibited documents show
"100% of apartments meeting the ADG criteria for solar access and natural cross-ventilation"	Amendment Report: 92 of 117 (78.6%) receive 2 hours; 9 (7.7%) receive none. Apartment schedule in the Architectural Plans : 94 of 117 (80.3%) cross-ventilated.
"14.6% of the site area provided as deep soil area"	Amendment Report: 25.2% total, of which only 10.6% has the 6 m minimum dimension; 14.6% is the narrower portion.
The variation "maximises the number of residential units"	The amendment reduces apartments from 121 to 117.
The 10 m fall of the land is a "unique" site circumstance	The BDAR rejects Blue Gum High Forest partly because the site "is not located in a gully, ridgeline or slope".

The request also cites "Preston J in Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018". The correct citation, which the same document uses elsewhere, is Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 (Preston CJ). The request also relies on only the first Wehbe test, using objectives it incorrectly infers for the standard.

What we ask

- Do not accept the Clause 4.6 Request until it is corrected and the corrected version is made publicly available. A request that relies on incorrect facts cannot demonstrate sufficient environmental planning grounds.

- Require the height to substantially comply with 28.6 m, as DPHI’s request for information sought, including removing habitable floor space above the plane.
- Require the shadow comparison required by the [SEARs](#) with “a development with no bonuses applied”. The [Design Report](#) compares only a 28.6 m “compliant envelope”, which already includes the bonus.

3. Affordable housing

3.1 Affordable apartments still get much less sun or none

The [In-fill Affordable Housing Practice Note](#) says it is important that affordable dwellings are not “subject to a lower standard”, and that if 70% of dwellings meet the ADG solar criterion, “a similar percentage of the affordable dwellings should meet that standard”. DPHI asked the applicant to make the allocation “more equitable”. The apartment schedule in the [Architectural Plans](#) shows:

Mid-winter sun (9am–3pm)	Affordable (24)	Market (93)	ADG
2 hours or more	13 (54.2%)	79 (84.9%)	At least 70%
Less than 2 hours	5 (20.8%)	11 (11.8%)	–
No sun	6 (25.0%)	3 (3.2%)	No more than 15%

Affordable apartments make up 20.5% of the building but six of the nine apartments have no winter sun. Measured on its own, the affordable component would not meet either ADG solar criterion.

3.2 Permanent affordable housing gets the worst outcome

The only affordable apartments held in perpetuity are D001, D002 and D003, all on the ground floor of Core D. D001 and D002 get no winter sun and D003 gets less than 2 hours. In other words, the dwellings that remain affordable permanently are among the poorest-performing in the building.

3.3 Clustering and loss of affordable dwellings

21 of the 24 affordable apartments are in Core D. The other three are in Core A, and none are in Cores B or C. This sits uneasily with the [Design Report](#)’s claim that the allocation promotes inclusion and avoids segregation.

Total apartments fall from 121 to 117 and affordable apartments from 28 to 24 ([Amendment Report](#)). Market apartments stay at 93, so the whole reduction falls on affordable households. Affordable floor area is unchanged at 3,137.4 m², but four fewer households will be housed.

3.4 The CHP letter does not support the claims made for it

The [Response to Submissions](#) answers the equity concern by saying Cubic Real Estate “has confirmed that the allocation of affordable housing units is thoroughly incorporated into the overall building design”. The [CHP letter](#) (27 August 2026) confirms the unit mix and the provider’s registration, but says nothing about solar access, ventilation or comparative amenity. It refers to a registration copy that is “attached”, but this is not in the exhibited document. The [SEARs](#) require the provider’s name and ABN; no ABN is given.

What we ask

- Require the affordable apartments to be reallocated so that their solar and ventilation results are similar to the market apartments, and no worse than the ADG thresholds.
- Require all three in-perpetuity apartments to be allocated to apartments that receive at least 2 hours of mid-winter sun.
- Require affordable apartments to be spread across all four cores.
- Require the CHP’s ABN, registration evidence and the executed agreement referred to in its letter.

4. Apartment design and floor area

4.1 Four different positions on apartment depth

Document	Position on the 8 m ADG habitable room depth
Amendment Report	Layouts revised so that no apartment exceeds 8 m.
RTS, DPHI item 13	Acknowledges some apartments still exceed 8 m.
RTS, response to Council	States all apartments are compliant.
Design Report, ADG table	"Most of the maximum habitable room depth... does not exceed 8m... Variation sought."

4.2 Gross floor area sits exactly at the maximum

The permissible GFA is 18,455.45 m² (3.25 × 5,678.6 m²). The [Amendment Report](#) and plans state a GFA of 18,455.45 m², and the RTS states 18,455.43 m². The RTS says waste rooms are now counted as GFA, and many layouts have changed, yet the total is still exactly at the limit. Council raised concerns about walls, risers and chute rooms being left out.

What we ask

- Require a schedule of every apartment that exceeds 8 m, with justification, and correct the conflicting statements.
- Have DPHI check the GFA independently against the statutory definition, using dimensioned GFA plans.

5. Communal open space issues

DPHI said the nomination of the northern rear setback as the principal communal open space (COS) was not well justified, noting that the central courtyard is the largest and most usable open space, and asked for a genuine principal COS with adequate mid-winter sun. DPHI also said the side boundary strips were not of usable dimensions. Rather than improving the courtyard, the applicant now nominates a new 214 m² rooftop on Core C as the "principal" COS. The rooftop is reported as getting 87% sun in the [Amendment Report](#) and 86% in the [Clause 4.6 Request](#). That rooftop is about 3.8% of the site. It adds new exceedances of up to 4.45 m at its balustrades, lift overrun and pergola (section 2.2), on top of a floor that is already above the height plane. The maximum 4.6 m exceedance is elsewhere, at a screening fence, so removing the rooftop would not by itself bring the building within the height limit.

Total COS rises from 1,457.85 m² to 1,688.17 m², even though the RTS says the side strips have been removed from the calculation. The [Design Report](#) divides this into the 214 m² rooftop and two "non-principal" areas of 682 m² and 792 m², which its sun diagram shows as the central courtyard and the northern rear setback. No dimensions are given, and it is not clear whether any narrow strips are still counted.

The [Apartment Design Guide](#) (ADG) says communal open space should be co-located with deep soil, and should be placed on a podium or roof "where communal open space cannot be provided at ground level". The Design Report's mid-winter sun diagram shows almost no sun reaching the central courtyard, which DPHI identified as the largest and most usable open space. The courtyard is enclosed and shaded by the building's own 9 and 10-storey wings. The applicant's answer is a rooftop that itself breaches the height limit, rather than changes to the building form that shades the courtyard. A rooftop also cannot support deep soil or tall trees, so it adds nothing to the garden setting discussed in section 1.3.

The [Architectural Plans](#) show that the rooftop can be reached only by the two Core C lifts and stair. Core C is not connected to the other cores above ground level. Residents of Cores A, B and D, including the 21 affordable apartments in Core D, must go down to the courtyard or the basement car park and cross to Core C. The ADG asks for "direct, equitable access" to communal open space from common circulation areas, entries and lobbies. The Amendment Report says the lift cores and fire stairs were extended "to provide direct access" to the rooftop, but on the plans only Core C reaches it.

The rooftop sits on top of Tower C in the south-eastern corner, about 6 m from the boundary of the Holy Family Catholic Primary School playground, and more than 25 m above it. It looks down over the playground

and Balfour Street, but not over 6 Highfield Road. The [RTS](#) records that submitters were particularly concerned about overlooking into the playground. The applicant's response is planter boxes along the roof edges. Its sight-line diagram is a single section from an unidentified "eastern roof terrace". It does not show whether this is the communal rooftop, and it relies on people staying behind the planters. The Level 9 rooftop floor (the "Roof of level 8 – Core C") is itself 1.68 m above the 28.6 m height plane ([Clause 4.6 Request](#), Table 1). Adding planters and screens adds bulk to a part of the building that already breaches the height limit, and still leaves a communal space for 117 households looking down on a primary school playground. No document assesses overshadowing of the playground.

What we ask

- Require a COS schedule giving the dimensions and mid-winter sun of each area, excluding areas narrower than usable minimums.
- Assess whether a 214 m² rooftop (about 3.8% of the site), reached through one of four cores, is a genuine principal COS for 117 households. If the courtyard cannot receive adequate mid-winter sun, the building form around it should be revised, rather than accepting a rooftop that adds height.
- Delete the rooftop communal space and reduce Tower C to the 28.6 m height plane, rather than relying on planters and screens that add bulk, so the school playground is not overlooked from roof level. Require an assessment of overshadowing of the Holy Family school playground.

6. Setbacks and neighbours

6.1 Front setback delivers inconsistent front setbacks

On 23 July 2026, DPHI recommended an 8 m front setback for consistency with the amended 19–25 Balfour Street proposal ([Amendment Report](#)). The Ku-ring-gai DCP control is 10 m (as noted in [Council's submission](#)). The applicant keeps 6 m and describes it as a "gradual change in setback moving away from the Lindfield Local Centre". However, the neighbouring school building at 2–4 Highfield Road is set back about 7 m and 19–25 Balfour Street proposes 8 m. A 6 m setback between 7 m and 8 m creates a step forward, not a gradual change.

The front setback is where tall canopy trees can soften a building from the street. In the Lorne Avenue decision (see section 1.3), limited setback landscaping and capacity for tall trees were central to the finding that the design was incompatible with its streetscape. A 6 m setback containing a substation and fire booster limits that capacity on a street within a Heritage Conservation Area.

The Amendment Report says the 6 m setback is now "devoid of built form and other encroachments", but also says the substation and fire booster "remain at the boundary". The exhibited plans are Revision B dated 10 July 2026, which is before DPHI's 23 July advice. There is no evidence that an 8 m setback was tested.

The proposed development is both on the high side of the street and in a commanding Northern orientation to the dwellings across the road and the west. The [ADG Section 3B](#) re site orientation mandates that if a development is positioned on the northern side of a street overshadowing of properties to the south must be minimised during mid-winter. Recommendations include increased setbacks, reducing building depth and stepping down building heights. On south-facing slopes (where a northern building naturally sits higher and casts longer shadows), which is the case here, the ADG requires special care to minimise solar loss on lower properties.

6.2 Side setbacks

The RTS records DPHI as accepting the eastern Level 8 and 9 setback breach "due to the likely developability of that adjoining school site". Elsewhere, the RTS justifies apartments B804, C801 and C802 encroaching into the 12 m separation because the school site "is not likely to be redeveloped to an equivalent residential scale". These two positions rest on different assumptions about the school site. The land beside the eastern boundary is the Holy Family Catholic Primary School playground. It is reasonable to assume that the school would not redevelop its outdoor playground space for the children, which is consistent with the RTS statement that the site is not likely to be redeveloped to an equivalent residential scale. The documents also disagree on the western boundary. The Amendment Report says D703 was revised "to achieve a 12 m setback" and A804, D801 and D803 "to achieve ADG-compliant separation distances". The RTS says that "a

portion of the apartment” D703 still encroaches into the 12 m setback, as do “a portion of a bedroom in D803 and a portion of a bathroom in D801”, with opaque glazing and colour-backed glass relied on instead.

What we ask

- Require an 8 m minimum front setback without encroachments, clear of the substation and booster, or a tested 8 m option with a reasoned comparison.
- DPHI should state which assumption about the school site it relies on, and apply the ADG separation consistently. The applicant should correct the Amendment Report’s statement that D703, D801 and D803 comply.
- That, in addition to an 8m front setback, a stepped down height be investigated to improve solar access to neighbouring properties.

7. Trees and canopy

The [Arboricultural Impact Appraisal](#) (10 August 2026) removes 67 trees, including four it rates as high category (Trees 48, 68, 69 and 83). DPHI asked the applicant to justify in detail why Trees 50, 68, 69 and 75 could not be retained. The responses do not agree with each other:

- The [EziGrow statement](#) says that retaining all four trees (50, 68, 69 and 75) would make up to 40% of the site undevelopable. The [BDAR](#) attributes the same 40% to retaining Trees 50 and 75 alone.
- The EziGrow statement calls the four-tree outcome not “an appropriate and economical use of this significant site”. That is a yield argument, not evidence that impacts were avoided.
- The BDAR says retention would make “any high-density proposal conforming to height restrictions impractical”, but this proposal does not conform to the height restriction.
- The EziGrow statement describes Trees 50 and 75 as “Pillar species of the Blue Gum High Forest” and refers to the site’s other “high category BGHF species trees”. The BDAR assesses the vegetation as a different community (see section 8).
- No root investigation was done for Tree 56 at 6 Highfield Road, although root mapping had been requested, because a trench was considered “not possible”. Tree 51 has been added to the removal list because of the proposed retaining walls.
- The AIA states it was prepared for Tryon Road Development, but its running header says “for SJD Property Group”. It records a site visit on 4 July 2025 and describes a 9-storey building.

Council’s submission said the front setback planting relies on smaller trees and lacks tall canopy planting. The RTS responds only that front setback deep soil has been increased “to allow for more significant planting”, without identifying tall canopy trees. In the Lorne Avenue decision, near-compliance with the ADG deep soil guidance did not overcome a significant shortfall in tall canopy trees against Ku-ring-gai’s garden-setting context.

Canopy figures also conflict. The [Landscape Plans](#) show existing canopy of 1,880.3 m² (33.1%) reducing to 1,777.9 m² (31.31%). The [RTS](#) calls this a “minor 0.5% reduction” in one place and the “same percentage of tree canopy as existing – 31.31%” in another. The proposed figure also depends on new plantings reaching maturity.

What we ask

- Require retention of Trees 68 and 69, as DPHI requested, and a genuine design test for retaining Trees 50 and 75 that complies with the height limit.
- Require the Tree 56 root investigation, or a design change that removes the encroachment.
- Require a current, internally consistent arborist report and canopy calculation based on the amended plans.

8. Biodiversity

The [BDAR](#) states that the dominance of *Eucalyptus saligna* and the presence of *Brachychiton acerifolius* “would suggest that the more likely fit is PCT 3136 (Blue Gum High Forest)”, but enters PCT 3262 (Sydney Turpentine-Ironbark Forest) into the calculator. DCCEEW mapping cited in the BDAR also shows a small patch of Blue Gum High Forest in the north-eastern corner of No. 11, which the BDAR treats as the same community as the rest of the site. Both communities are listed as critically endangered under the NSW BC

Act and the Commonwealth EPBC Act; the BDAR acknowledges this for Sydney Turpentine-Ironbark Forest. The exhibited documents do not include any EPBC significance assessment or referral decision.

The BDAR presents changes around Trees 2, 3 and 4 as avoidance measures and says these trees are “not native”. The [AIA](#) identifies Trees 3 and 4 as *Alectryon coriaceus*, an Australian native species. All three are Council street trees, so protecting them does not avoid impacts on the on-site community. The Amendment Report records that clearing has increased from 0.09 ha to 0.1 ha; the BDAR calculates an offset liability of one ecosystem credit.

The [RTS](#) records that the Conservation Programs, Heritage and Regulation group asked for a commitment to implement the Vegetation Management Plan in perpetuity, naming who is responsible. The [Mitigation Measures](#) table only says a VMP “is to be prepared”. It does not commit to the BDAR’s recommendation for up to 80% locally native planting. The [Compliance Table](#) confirms the site includes land on the Terrestrial Biodiversity Map, but answers KLEP cl 6.3 only by saying impacts are minimised through building siting. Clause 6.3 requires the consent authority to be satisfied the development is designed, sited and managed to avoid adverse impacts or, where that is not possible, to minimise them.

What we ask

- Require the BDAR to be revised to assess PCT 3136, or justify why it was not used with evidence from plot data, and recalculate credits.
- Require an EPBC Act significant impact assessment and confirmation of whether the action has been referred.
- Condition a VMP in perpetuity, with a named responsible party, and 80% locally native planting.

9. Heritage Impacts

The site comprises four houses in the Balfour Street/Highfield Road Heritage Conservation Area (C29), and adjoins heritage item I39 at 6 Highfield Road. The applicant’s heritage consultant states that “There is no dispute these are contributory properties” but argues their contribution is “largely irrelevant” because the Station Precincts SEPP “anticipates higher density across all parts of the HCA” ([Asteria heritage advice](#)). This overstates the position for this site: the Station Precincts controls allow 18.5 m and 1.3:1, well below the 33.2 m proposed, and only the saved TOD status allows the bonus height.

The advice says Ku-ring-gai DCP heritage provisions are “of no effect and unnecessary”. Even if the DCP does not apply to SSD, KLEP cl 5.10 still requires the consent authority to consider the effect on the significance of the HCA and the adjoining item. Asteria’s separate 4 September 2026 letter also relies on the undetermined proposal at 19–25 Balfour Street ([SSD-82709458](#), still at Response to Submissions stage) to argue that, if that proposal is approved, the HCA “will be so completely compromised” that the four houses on this site would no longer warrant inclusion. The Court in the Lorne Avenue decision declined a similar approach of assessing a proposal against assumed redevelopment of adjoining sites (see section 1.3). The [Compliance Table](#) simply says cl 5.10 is met because the design will “maintain and respect” the HCA, without explaining how a 10-storey building and the demolition of four contributory houses achieve that. The exhibited heritage, design and visual impact documents also do not address views to or from local heritage item I38 at 1 Highfield Road, about 80 m north-west of the site across Highfield Road.

What we ask

- DPHI should assess heritage impacts under KLEP cl 5.10 against the HCA as it exists, without assuming approval of other undetermined applications.
- Seek independent heritage advice, or advice from Heritage NSW, on the loss of contributory items and the impact on 6 Highfield Road and on local heritage item I38 at 1 Highfield Road, including views to and from that item.

10. Groundwater and basement impacts

[DCCEEW Water Group](#) recommended, as a pre-determination matter, an assessment of groundwater impacts against the NSW Aquifer Interference Policy. The [Hydrogeological Report](#) finds:

- Construction dewatering of 5.25 ML over 365 days, followed by an ongoing 5.25 ML each year for the life of the building, because the basement will be drained, not tanked. A Water Access Licence will be required.
- Maximum drawdown of 9.6 m outside the shoring wall, with influence extending about 30 m. This is likely to extend beneath neighbouring land, including 6 Highfield Road, and the root zones of retained trees.
- Ongoing seepage will discharge to Council's stormwater system, subject to approval.

The report describes a "four-level drained basement" with excavation to 15.1 m, while the Amendment Report describes three basement levels. Its lowest level (RL 75.9) matches the plans, so the difference appears to be in how levels are counted, but the documents should agree. It also says stormwater drains "north-westwards", while the [Flood Study](#) and [Geotechnical Report](#) describe flow and fall towards Balfour Street, to the south and south-west. The RTS refers to the hydrogeological report and states "This condition is agreed upon", without proposing specific measures. Apart from dilapidation surveys and monitoring of inflows, the [Mitigation Measures](#) table includes no Dewatering Management Plan, licensing step, drawdown trigger levels or measures to protect retained trees.

The report estimates ground settlement of about 5.5 mm outside the basement wall and rates the risk as "negligible", but states that this estimate does not consider shoring wall deflection, surcharge loading or other construction-related influences. Land subsidence across the site boundary could therefore damage neighbouring structures, including the tennis court at the rear of 6 Highfield Road and boundary fencing. This needs to be assessed, not assumed.

The effect of removing this quantity of groundwater on the trees also needs to be assessed. The trees on and around the site form a moist-forest canopy dominated by Sydney Blue Gum, with rainforest species such as Illawarra flame tree, and have always lived with this groundwater. The BDAR does not consider groundwater drawdown or dewatering at all. With the adjoining 19–25 Balfour Street SSD (SSD-82709458) also proposing basement excavation, it is feasible that the combined loss of groundwater could adversely affect the Sydney Turpentine-Ironbark Forest and Blue Gum High Forest on and around both sites.

What we ask

- Require a tanked basement, or a clear justification for permanent groundwater take, with a corrected report matching the current basement design.
- Add specific mitigation measures: a Water Access Licence before works, a Dewatering Management Plan, drawdown triggers, monitoring of trees and neighbouring structures, and Council consent to discharge.
- Require a settlement assessment that includes shoring wall deflection and construction effects across the site boundary, and an assessment by a suitably qualified arborist and ecologist of the effect of drawdown on retained and neighbouring trees, including the combined effect with 19–25 Balfour Street.
- Assess the subsidence and increased overflow on neighbouring properties adjoining, and both upslope and downslope from the site.

11. Stormwater, flooding, traffic and waste issues

- The [Flood Study](#) states "The site is affected by overland flooding from the local upstream catchment" and adds drainage channels and retaining walls along the rear and side setbacks as a precaution. The arborist reports should confirm whether these works affect retained trees.
- [Council](#) asked for CCTV of downstream pipes, pipe capacity, invert levels, flood levels and freeboard. The responses are general. The [Hydrogeological Report](#) predicts 14.4 m³ of groundwater a day during construction and about the same every year afterwards (5.25 ML a year), discharged to Council's system. The [IWM Report](#) does not account for this, and it is not shown whether the on-site detention and Council system can take it permanently.
- The [Transport Impact Assessment](#) acknowledges that the Ku-ring-gai DCP rate (one per 90 dwellings or part) gives two car share spaces for 117 dwellings, but provides one, which it says is "consistent with the recommendation provided by DPHI" (DPHI key issue 21 asked for one space).
- Council's requests about the waste truck size and swept paths, sight lines, EV readiness and No Parking signage need specific answers ([Waste Management Plan](#)).

What we ask

- Require specific engineering answers to each Council item, and two car share spaces consistent with the DCP rate.

12. Cumulative traffic and social infrastructure issues

The application was lodged on 20 January 2026 ([Response to Submissions](#)), after the amended section 4.15 of the EP&A Act commenced on 15 December 2025 ([DPHI commencement information sheet](#)). Through section 4.40, the consent authority must therefore consider the “significant likely impacts” of the development under section 4.15(1)(b) ([EP&A Act](#)).

Section 65A of the [EP&A Regulation](#) excludes the impacts of “other development”, but defines this narrowly as development “required to be carried out as a result of” the proposal. [DPHI’s practice note](#) gives off-site enabling works as examples, such as a bridge, substation or detention basin that is not part of the application. Section 65A does not prevent this proposal’s own impacts being assessed in their setting, alongside the other SSDs proposed near Lindfield station. The practice note confirms that significance “varies with the context or setting” of a development. The applicant’s [Transport Impact Assessment](#) itself includes a cumulative assessment “as required under the [Cumulative Impact Assessment Guidelines](#)”. These matters are also relevant to site suitability (s 4.15(1)(c)) and the public interest (s 4.15(1)(e)).

12.1 The cumulative traffic assessment is too narrow

The [Transport Impact Assessment](#) (F04, 15 September 2026) estimates 22 AM and 18 PM peak-hour vehicle trips. Its cumulative assessment adds only two nearby SSDs: 12–16 Bent Street (111 dwellings) and 19–25 Balfour Street (120 dwellings). It excludes the “many SSD applications in progress throughout the broader Lindfield area” because they would make “through” movements on the Pacific Highway, which it says would be “absorbed by the day-to-day variance in traffic volumes”.

- That exclusion is not tested. Through traffic on the Pacific Highway uses the same signal time as turning traffic. In the PM peak, the report’s own model shows the Pacific Highway (south-east) approach at a degree of saturation of 0.90, the top of the “Fair” band in its own rating table, with 95th percentile queues of about 219 m. There is little spare capacity to absorb further through traffic.
- The report applies a bunching factor because the Highfield Road signals are close, but does not say whether a 219 m queue would reach them.
- The AM cumulative figure does not add up. The project (22 trips) and the two nearby SSDs (44 trips) total 66, but the report carries forward 62 (13 inbound, 49 outbound). The PM figure of 53 is consistent.
- Only post-development results are reported. Without a base case result for comparison, neither this proposal’s share nor the cumulative increase can be seen.
- The base counts were taken by others on 21 November 2024, while Coles Lindfield was under construction. Coles traffic was added from the Coles TIA for the PM peak only. In the AM peak, only the 70 Coles apartments were added.
- The report acknowledges existing queuing in Balfour Street during drop-off and pick-up at Holy Family Catholic Primary School, and a “minor overlap” with the AM peak. It relies on residents to “tailor their departure and arrival times” (repeated in the [Response to Submissions](#)). No survey or modelling of the Balfour Street queue, or of its interaction with the site driveway, is provided.
- The cumulative assessment covers operational traffic only. The RTS defers construction traffic to a full Construction Management Plan “during subsequent stages”, although construction of this project, 19–25 Balfour Street and 12–16 Bent Street may overlap next to the school.

12.2 Social infrastructure

The [Response to Submissions](#) records that seven public submissions raised the cumulative impact on transport infrastructure, local schools and sewer infrastructure “as a result of the proposed development and similar developments in the surrounding area”. The response refers to the Social Impact Scoping Study submitted with the original application, which concluded that demand “is unlikely to put strain on the capacity of existing social infrastructure”.

The response does not say whether the scoping study considered demand from the other SSDs proposed around Lindfield station, or whether it has been updated for the amended scheme. Item 18 of the [SEARs](#) requires a full Social Impact Assessment if significant social impacts are identified. The question for this site

is the combined demand on schools, childcare, open space and sewer capacity as the precinct redevelops. The limited communal open space on site (section 5) will add to residents' reliance on local parks.

What we ask

- Require a revised Transport Impact Assessment that lists every SSD and approved development in the Lindfield precinct that was considered, with reasons for any exclusion; tests the effect of their through traffic on the Pacific Highway / Balfour Street / Havilah Road intersection; reports base case, with-project and cumulative results side by side; corrects the AM cumulative total; and uses new counts taken with Coles Lindfield operating.
- Require a school-peak survey and queue assessment for Balfour Street, including whether queues block the site driveway, and confirm whether Pacific Highway queues reach the Highfield Road signals.
- Require a cumulative construction traffic assessment before determination. Conditions under s4.17(1)(a1) should restrict heavy vehicle movements during school drop-off and pick-up and require coordination with other construction sites in Balfour Street.
- Confirm whether the Social Impact Scoping Study assessed cumulative demand, and update it for the amended scheme. Seek capacity advice from School Infrastructure NSW and Sydney Water, and require a full Social Impact Assessment if cumulative demand is significant.
- DPHI's assessment report should state how it has applied s 4.15(1)(b) and s 65A to cumulative impacts.

13. Noise from plant issues

The [Amendment Report](#) says air-conditioning plant has been moved from the Core C roof to “dedicated spaces adjacent to the lift core on each level”. The [Acoustic Report](#) (5 August 2026) and the [Mitigation Measures](#) still place condensers in “rooftop plantrooms (level 9)”, and the acoustic report describes a 9-storey building. Council asked for the number and arrangement of condensers and cumulative noise, but this has not been provided. Plant next to apartments on every level has not been assessed.

What we ask

- Require an acoustic report based on the amended plant layout, including cumulative noise and noise inside apartments next to plant spaces, and any increase in plant noise to neighbouring residents, including the Holy Family School.

14. Quality and currency of the documents

Taken together, these inconsistencies mean the consent authority cannot rely on the documents as a single, current description of the project:

- Reports describe the building as “9-storey” ([AIA](#), [Acoustic Report](#) and [Hydrogeological Report](#)), but the amended building is 10 storeys. The Hydrogeological Report describes a “four-level” basement, while the [Amendment Report](#) describes three basement levels.
- The RTS reports 30 submissions in one sentence and 31 in the next.
- The [Mitigation Measures](#) table does not reflect the amended plant layout, groundwater findings or agency requests.
- Apart from meetings with DPHI, the documents record no further engagement with the community, Council or neighbours after exhibition.

What we ask

- Require a consolidated, corrected set of documents, and re-exhibit if material changes result.
- That the applicant meet with council to modify or mitigate these important issues for this complex site.

Conclusion

The amended application does not resolve the main issues identified by DPHI and Council: height, front setback, the equity of affordable housing, the principal communal open space, neighbour impacts, retention of significant trees and the identification of the vegetation community. It also introduces new inconsistencies. In its current form, the application should be refused. If DPHI considers it capable of approval, the

amendments and information requested above should be provided and assessed first, and the Minister should consider referring determination to the Independent Planning Commission.

Yours faithfully

Kathy Cowley

Kathy Cowley

PRESIDENT

Cc Mayor and Councillors Ku-ring-gai Council

cc Matt Cross MP Member for Davidson

cc Nicolette Boele MP Member for Bradfield

cc The Hon Chris Rath MLC Shadow Minister for Planning