FOKE • P.O. BOX 584 • GORDON 2072 • TEL (02) 9416 9007
www.foke.org.au **www.facebook.com/ friendsof kuringgai** Est. in 1994
2024 - Celebrating 30 years of Caring for Ku-ring-gai

FRIENDS OF KU-RING-GAI ENVIRONMENT INC.

Department of Planning, Housing and Infrastructure
Locked Bag 5022
PARRAMATTA NSW 2124
Attention: Mr Joe Somerville, Affordable Housing Assessments

By email: joe.somerville@dphi.nsw.gov.au

24 October 2026

Dear Joe

Re: Objection – SSD-82709458, residential flat building with in-fill affordable housing, 19–25 Balfour Street, Lindfield (amended proposal and October 2026 Response to Submissions)

Friends of Ku-ring-gai Environment Inc (FOKE) **objects** to the amended proposal for 120 apartments (90 market and 30 affordable) in two towers of seven to ten storeys over a two-level basement at 19–25 Balfour Street, Lindfield. The site is within the Balfour Street/Highfield Road Heritage Conservation Area (C29) and contains remnant Sydney Turpentine-Ironbark Forest (STIF), a critically endangered ecological community.

In our view the application, as now amended, is not ready for determination.

The exhibition of the amended application ended on 8 July 2026 (DPHI letter, 9 July 2026). The applicant's October 2026 Response to Submissions, a further Clause 4.6 request and further amended architectural plans were lodged after that date and have not been exhibited. We ask the Department to accept this submission and consider it in its assessment.

Summary of FOKE's position

Groundwater impacts have not been assessed under the NSW Aquifer Interference Policy. The State's water adviser recommends that this happens before determination. The applicant asks that it be deferred to a condition of consent instead.

The Biodiversity Development Assessment Report (BDAR) contradicts itself and the applicant's own tree evidence. It reports zero ecosystem credits for critically endangered STIF, using a single degraded plot that Council says does not reflect the site's pre-clearing condition.

The Clause 4.6 height variation request describes the 4.0 m exceedance as mainly non-habitable rooftop elements. Its own list of exceeding elements includes parts of a habitable tenth storey and the primary communal open space.

The heritage assessment accepts that an adverse impact on the C29 conservation area is "inevitable". The traffic, noise and visual impact reports rely on borrowed traffic data, deferred plant design and a visual assessment that predates the current plans and contradicts itself. None assesses the combined effect of neighbouring developments under construction at the same time.

Ku-ring-gai Council objects on most issues and lists its matters as not resolved. Council considers the flood letter unreliable. Several of the amenity figures relied on are at the minimum or internally inconsistent.

1. Groundwater: the assessment must come before determination

The Groundwater Assessment is based on excavation of up to about 13.8 m below existing ground level and a drained (not tanked) basement. It estimates groundwater take of about 4.5 ML/year during construction and 4.0 ML/year permanently once the building is occupied. The report says its results "should generally be considered accurate to within approximately one order of magnitude". The permanent take could therefore be well above or well below 4 ML/year.

The NSW DCCEEW Water Group (DCA Water Advisory) advised on 8 July 2026 that take will exceed 3 ML/year. It recommended, **prior to determination**, that aquifer interference impacts be assessed under the NSW Aquifer Interference Policy, together with a dewatering management plan and confirmation of licensing (published under Agency Advice on the Major Projects Portal). This is **the second time** the issue has been raised. On 9 September 2025 (ref. OUT25/10464), responding to the EIS, the Water Group found that the applicant had provided no volumetric estimate of groundwater take and no assessment of impacts from construction or operation. It recommended, again before determination, that both be provided, with an aquifer interference assessment if take exceeds 3 ML/year (also on the Major Projects Portal). The applicant has now provided the estimate, which exceeds 3 ML/year, but still not the assessment.

In the October 2026 Response to Submissions (p. 21), the applicant asks that this assessment be "secured by a condition of consent, to be completed prior to the relevant Construction Certificate". FOKE does not support this. Once consent is granted, the extent of groundwater take and its effects on neighbouring trees, structures and the downstream Lane Cove River catchment could no longer shape the design. A permanently drained basement is a design choice, and any decision to tank the basement instead must be made before consent.

FOKE also notes that the Groundwater Assessment considers settlement but does not assess how lowering the water table would affect retained STIF trees on or next to the site. With excavation covering 65.8% of the site, this gap needs to be closed before determination.

Request: that the Department obtain the aquifer interference assessment, dewatering management plan and licensing advice, and DCA Water's review of them, before any recommendation is made. The assessment should include tanked and drained options and the effect of drawdown on retained and neighbouring trees.

2. Biodiversity: the BDAR cannot be relied on

The BDAR (ACS Environmental, 1 April 2026) assigns PCT 3262 (STIF) a vegetation integrity score of 3.0 over 0.01 ha. On that basis its BAM Credit Summary reports **zero** ecosystem credits, while also marking the community as a potential serious and irreversible impact (SAII) entity. FOKE has identified the following inconsistencies:

The BDAR says the site "is no longer representative of PCT 3262" and that "no threatened entities will be impacted" (p. 55). Yet it assesses STIF for credits and for SAII.

In its response to Council (Appendix 5) the BDAR says "no live canopy trees are being impacted". The applicant's October 2026 Response to Submissions confirms that three STIF trees will be removed: T6 (dead), T41 and T58 (dead). According to Arboricultural Impact Assessment Revision D, Tree 41 is a living Eucalyptus punctata (Grey Gum), about 14 m tall with 50% foliage and a recorded cavity. E. punctata appears in the BDAR's own STIF species list (Appendix 4).

The BDAR reports that no tree hollows were seen. The arborist records a cavity in Tree 41, so the BDAR should state whether that cavity has habitat value.

The BDAR records a dead Turpentine stag (about 24 m tall, 1,400 mm diameter) and accepts that STIF trees "more than likely died within the last 5 years". Council's 8 July 2026 submission says that, under Section 3.4 of the Biodiversity Assessment Method (BAM), this requires assessment against the pre-clearing condition, not the current degraded condition. Council also says the single plot omits native canopy Trees 41, 43 and 44, the field data and calculator outputs needed for independent review are missing, and avoidance has not been shown. Council records each of these matters as "Not Resolved".

The October 2026 Response to Submissions answers these points by referring back to the same BDAR, and treats 12 large STIF replacement trees and 39 sub-storey plants as offsetting the removals. Replacement planting is welcome, but it is not a substitute for a BAM-compliant assessment and any credit obligation. The Department's assessment needs a reliable baseline. In its advice of 1 October 2025, DCCEEW's

Conservation Programs, Heritage and Regulation (CPHR) Group also asked for mitigation measures for STIF to be conditioned (Major Projects Portal).

Request: that the applicant provide a revised BDAR before determination. It should assess vegetation integrity against the pre-clearing condition, use representative plots that include the native canopy, include full plot data and BAM Calculator outputs, correct the statement about live canopy trees, and complete the SAII assessment on that basis. The Department should seek CPHR's review of the revised BDAR.

3. Trees on and next to the site

The alleged unlawful suspected poisoning and removal of mature trees has been ignored by the BDAR and the developer. Offsets must include those trees removed prior to the BDAR being produced. Arial photographs from 2023 clearly show the state of the land prior to development being considered, and that clearly shows how much green cover it had prior to the decision of the owner to lodge the State Significant Development.

The following matters were reported to Ku-ring-gai Council by neighbours in October 2024:

1. RMTR24/04400 - Suspected poisoning of protected Turpentine tree (No.25)
2. RMTR24/04393 - Suspected poisoning of Sydney Red Gum (No.23)
3. RMTR24/04399 - Suspected poisoning of Melaleuca (No.21)
4. RMTR25/01479 - Suspected poisoning of Blue Gum with potential groundwater contamination (No.19)
5. RMTR24/04459 - Suspected poisoning and illegal removal of mature oak tree (No.19)

We attach a copy of an objection to this SSD by a Senior Counsel in September 2025 and draw your attention to the following excerpt from the submission received by the DPHI:

"The Doctrine Against Benefit from Wrongdoing
Fundamental legal principle dictates that parties should not benefit from their own wrongful conduct (*ex turpi causa non oritur actio*). Permitting this development in its current form would:

- Reward apparent unlawful environmental destruction
- Create perverse incentives for similar conduct by other developers
- Undermine the integrity of environmental protection frameworks"…….

"The Department has an opportunity to send a clear message that environmental destruction will not be tolerated or rewarded in the planning system."

According to Arboricultural Impact Assessment Revision D, 20 Category A and AA trees could be harmed by disturbance within their root zones, one high-value tree (Tree 39) is to be transplanted, and a large number of lower-category trees are to be removed. The proposal has a 13.8 m deep drained basement and excavation over 65.8% of the site (Architectural Plans, October 2026). Before determination, FOKE asks for a combined arborist and hydrogeological assessment of the retained Category A and AA trees, including trees on adjoining land, and specific protection and monitoring conditions. FOKE also asks the Department to check that replacement planting required for earlier tree removal on the site has been carried out, as raised in public submissions.

4. Height: the Clause 4.6 request is internally inconsistent

The proposal is 32.6 m high, against a maximum of 28.6 m (22 m plus the 30% in-fill affordable housing bonus). That is an exceedance of 4.0 m, or 13.99%. The October 2026 Clause 4.6 request (p. 12) lists the exceeding elements as including "portions of the tenth storey of the western tower element due to natural slope". The plans place the primary communal open space on Levels 8 and 9. The same request then says the additional height is "predominantly associated with non-habitable rooftop elements and does not result in additional opportunities for overlooking" (p. 28).

Those statements cannot all be correct. Council's July 2026 submission found that over 50% of the upper levels exceed the height limit, and that the breach also arises from habitable spaces within the roof form of Units 801, 802, 902 and 904. FOKE asks the Department to require an accurate breakdown of the habitable floor area and communal space above 28.6 m, and to assess the variation on that basis. Council has also said the gross floor area calculation does not comply and that no Clause 4.6 request has been made for floor space ratio. This should be resolved before the height variation is considered.

5. Heritage: the conservation area

The Heritage Impact Statement confirms the site is within the Balfour Street/Highfield Road Conservation Area (C29). It acknowledges that an adverse impact on the area's heritage values "is inevitable". Council's submission lists the setting of the conservation area and nearby heritage items among its main reasons for objecting. A ten-storey building that exceeds the height limit, inside the conservation area, increases that impact. FOKE asks that the height and the upper-level massing be reduced to lessen the impact on C29.

7 to 10 stories with a height breach of 4.0m within an HCA, right across a fence from single storey Heritage houses in a Heritage Conservation Area is not compatible. Even whilst these have been re-zoned to R4, because of the marginal feasibility of development, these residences are highly likely not to develop, and thus 10 stories next to these in an HCA is not compatible. Given the extent of the CEEC on both 14 Highfield Road (50% approximately) and 10-12 Highfield Road (40% approximately), the building envelope is so small that development there will not be feasible.

Given these issues, the sites in Highfield Road will not develop and thus for both reasons above, should not be approved.

6. Flooding and stormwater

The flood letter is dated 10 February 2026 but includes a Council flood map extract labelled "dated June 2026". Council's July 2026 submission says the letter still contains incorrect catchment information and incorrect assumptions about the drainage system. The letter itself relies on approximate pit data. The proposal will also discharge pumped groundwater indefinitely. FOKE asks that a corrected flood and stormwater assessment, including that discharge, be provided and reviewed by Council before determination.

7. Traffic, noise and visual impact

Traffic

The Transport Impact Assessment (TRAFFIX, v11, 16 September 2026) estimates that 120 apartments with 184 car spaces will generate only 23 morning and 18 evening peak-hour trips, using TfNSW rates for high-density housing near a railway station (0.19 and 0.15 trips per dwelling). It concludes that no road improvements are needed. FOKE has three concerns.

The report collected no traffic data of its own. Its cumulative assessment uses existing volumes and a "LoS B" result for the Pacific Highway and Balfour Street intersection taken from the traffic report for a different application, 12–16 Bent Street (SSD-78156462). The report does not say when those counts were taken or whether that modelling included this proposal.

The cumulative assessment adds trips from four nearby proposals, including 9–17 Balfour Street (SSD-85974227), which also takes access from Balfour Street. It considers only the Pacific Highway intersection. It does not assess Balfour Street itself, the Bent Street and Highfield Road junctions, or on-street parking and pedestrian safety within the conservation area.

The trip rates are not tested against the proposed parking supply of about 1.5 spaces per apartment. A sensitivity test using rates that reflect the parking provided would show whether the conclusion still holds.

The applicant's Preliminary Construction Traffic Management Plan (TRAFFIX, v07, 13 March 2026, Appendix 21 to the June 2026 amendment, on the Major Projects Portal) leaves most of the detail to a later stage:

- It proposes 19.6 m truck-and-dog trailers for demolition and bulk excavation, entering and leaving only by Balfour Street through the C29 conservation area, but says truck volumes "are yet to be finalised". It still describes the impact as "minor".
- The traffic guidance scheme, the site establishment plan, the construction methodology and the detailed pedestrian controls are all deferred to a later detailed plan.

It says all construction workers "will be permitted to park on-site during all stages of construction". It does not explain how that is possible during demolition and the excavation of a 13.8 m basement over 65.8% of the site.

It does not consider other developments that may be under construction at the same time on Balfour Street and Bent Street.

Request: traffic counts specific to this proposal and updated SIDRA modelling of the Pacific Highway, Balfour Street and Bent Street intersections, including all known proposals, together with a trip-rate sensitivity test. Before determination, the Construction Traffic Management Plan should be finalised. It should include estimated daily truck numbers for each stage, realistic arrangements for worker parking and pedestrian safety, and coordination with neighbouring sites under construction at the same time.

Construction noise and vibration
The Geotechnical Investigation (22 May 2026) found sandstone bedrock about 3.8–6.6 m below ground and says hydraulic breakers "will be required to break up the majority of the rock". The basement is up to about 13.8 m deep, so rock breaking is likely to be extensive and prolonged. The Noise and Vibration Impact Assessment (Revision 4, 22 September 2026) predicts hydraulic hammer noise of up to 86 dB(A) at houses to the west, 82 dB(A) at 8–14 Highfield Road and 88 dB(A) at 15–17 Balfour Street. The noise management level is 53 dB(A), and 75 dB(A) is the "highly noise affected" level.

The assessment does not consider construction noise from neighbouring developments that may be built at the same time. It leaves detailed controls to a later construction noise and vibration management plan.

The heritage item at 6 Highfield Road (I39) and the dwellings in conservation area C29 are close to the excavation. The noise report includes the more stringent DIN 4150 criteria for sensitive structures but does not say which neighbouring buildings they apply to. The geotechnical report cites only the general residential vibration guide values. Its safe working distances are indicative and still to be validated.

The construction traffic noise conclusion reads "it is concluded that noise impacts from construction traffic is required". The sentence is incomplete and its meaning is unclear.

Operational noise
Revision 4 states there are 121 air-conditioning condensers, including 35 on Level 9 and the Tower A roof and 25 on the Tower B roof. It gives only a manufacturer's noise curve for a "typical" unit, with no predicted noise levels at neighbouring homes or within the development. Compliance is stated "in our experience", and plant details are deferred to the Construction Certificate. Council had earlier counted about 185 condensers on the plans and asked for the acoustic report to be updated to match them. The figures should be reconciled with the October 2026 plans. Compliance should be demonstrated now, particularly at the raised communal open space and the houses on Highfield Road.

Request: a revised noise and vibration assessment that:
- quantifies condenser noise at named receivers;
- applies the DIN 4150 sensitive-structure criteria to I39 and the C29 dwellings;
- assesses cumulative construction noise; and
- sets enforceable conditions for respite periods, vibration monitoring and dilapidation surveys of neighbouring properties before and after the works.

Visual impact
The Visual Impact Assessment (2 June 2026) predates the October 2026 plans. Its photomontages were prepared by the applicant, Balfour Group, and are described only as "indicative". No camera, lens or survey method is given. It uses four viewpoints, between about 50 m and 100 m from the site. None is taken from Balfour Street in front of the site or from the adjoining rear gardens on Highfield Road.

It accepts that development of the site will be "highly visible" from Viewpoints 1, 3 and 4, yet rates every impact as no more than moderate. It relies mainly on the expected future TOD character, although the site is within the C29 conservation area.

Viewpoint 3 is described as 18 Balfour Street in the heading and as 9–15 Balfour Street in the tables. Its finding states, "Given the proposed development is not visible, it is considered there is moderate", which contradicts its own analysis.

Viewpoint 4 represents views from the edge of C29 and the heritage items at 1 Highfield Road (I38) and 6 Highfield Road (I39). The assessment describes the change there as "minor" and the proposal as "highly compatible", while the Heritage Impact Statement accepts an inevitable adverse impact on the conservation area.

Request: an updated, independent visual impact assessment based on the October 2026 plans. It should use verified photomontages with a documented method and include views from Balfour Street at the site

frontage, from within C29 and from the adjoining Highfield Road properties. It should be reconciled with the heritage findings.

8. Amenity and design figures

Solar access is 84 of 120 apartments (70%), exactly the Apartment Design Guide minimum (Architectural Plans, October 2026). Any small error leaves the proposal non-compliant. The June 2026 Amendment Report's solar table does not add up: its 3 pm row totals 90%, not 100%.
The June 2026 Submissions Report says the upper levels "now comply" with the 12 m building separation. The Amendment Report says the design "largely achieves" separation, with screening where it does not. The Department should confirm which is correct, particularly for the raised communal open space.

The Amendment Report gives two different end dates for the 2025 exhibition (11 September and 11 October 2025).

Council records unresolved matters on character, bulk and scale, setbacks, overshadowing, privacy, landscaped area and solar access. FOKE supports Council's position on each.

9. Affordable housing

The amended scheme increases the affordable component from 27 to 30 dwellings: 27 for 15 years under the in-fill bonus and 3 in perpetuity under the TOD provisions (Cubic Real Estate letter, 12 March 2026). The total affordable floor area falls slightly, from 2,685.4 m² to 2,669.6 m². The perpetual TOD component of 315.8 m² exceeds the required 310.1 m² by only 5.7 m². FOKE asks the Department to confirm the floor-area calculations, which units are affordable, and that those units receive equivalent solar access and amenity. Because the 30% height bonus depends on this calculation, any shortfall would affect the permissible height.

Conclusion

FOKE asks the Department not to recommend approval in the current form. At a minimum, the following should be required before determination:

- the aquifer interference assessment, dewatering management plan and DCA Water review;
- a revised, BAM-compliant BDAR reviewed by CPHR;
- a combined arborist and hydrogeological assessment of retained and neighbouring trees;
- a corrected Clause 4.6 request, based on an accurate breakdown of what exceeds the height limit, and resolution of the floor space ratio issue;
- a corrected flood and stormwater assessment;
- updated traffic modelling, a revised noise and vibration assessment with heritage-sensitive vibration criteria, and an independent, verified visual impact assessment of the current plans;
- reduced height and upper-level massing to lessen the impact on the C29 conservation area; and
- the opportunity for Council and the community to comment on the October 2026 material.

We understand that Ku-ring-gai Council has not been asked to provide comments on the 19-25 Balfour Road latest amendments dated September 2026, which is very concerning considering there were so many unresolved issues in council's letter to the DPHI on 8 July 2026.

Thank you for considering this submission. Please read this submission along with our earlier objection to SSD-82709458.

Yours sincerely
Kathy Cowley
Kathy Cowley
President
cc Mayor and Councillors
cc Michael Miocic Director of Development and Regulation
cc Matt Cross MP Member for Davidson
cc Nicolette Boele MP Member for Bradfield