



CLAUSE 4.6 VARIATION REQUEST

Kellyville Station Precinct Concept SSD Application

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Prepared for

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1 Introduction

This written submission requests an exemption to a development standard pursuant to clause 4.6 of *The Hills Local Environmental Plan 2019* (**THLEP 2019**).

This clause 4.6 variation request seeks to vary the 5m minimum building setback development standard set out in subclause 8.4(a) of THLEP 2019 for development within the R1 General Residential Zone and R4 High Density Residential Zone.

This clause 4.6 variation request has been prepared to support State significant development (**SSD**) application SSD 10343 seeking consent for the Kellyville Station Precinct Concept SSD Application (**concept SSDA**), as amended following the public exhibition of the concept SSDA and consideration of submissions received. While the SSD application does not involve the construction of any building, it is unclear whether this variation request is required at this stage or at subsequent DA stages for built form. Notwithstanding, this clause 4.6 variation request has been prepared for abundant caution as the application seeks approval for design guidelines that will inform future development across the Kellyville Station Precinct SSD site.

The amended concept SSDA for the Kellyville Station Precinct is further detailed in the Response to Submissions Report.

1.1 Overview of justification for setback variation request

Landcom (the **Applicant**), on behalf of Sydney Metro, has lodged a SSD application with the Department of Planning, Industry and Environment (**DPIE**) seeking approval of a concept SSDA that sets out the Kellyville Station Precinct concept proposal and establishes the framework and design guidelines for future development. The concept SSDA also seeks consent for principal subdivision for public domain areas as the first stage of development.

Reduced building setbacks from 5m to 2m are proposed for development in the R1 zone. Reduced setbacks of 3m are proposed in the R4 zone. In conjunction with the proposed expansion to the pre-existing road network and associated street typologies, the proposed reduced building setbacks will help to facilitate legible and highly active urban interfaces with the station precinct.

The proposed variation to the 5m minimum building setback development standard for development within the R1 and R4 zones results from the characteristic of the site and the vision and objectives for the Kellyville Station Precinct that seeks to create a vibrant community within a compact town centre, whose outdoor living room is Elizabeth Macarthur Creek. It will be a place that is connected and dynamic – offering the convenience and amenities of inner city living amongst the riparian bushland setting of north-west Sydney with spectacular views of the Blue Mountains and Hill Shire.

Proposed variation to the setback standard in subclause 8.4(a) is justified for the following reasons:

- the underlying objectives of the setback development standard are achieved notwithstanding the proposed variation
- existing environmental and site constraints limit the ability for the concept SSDA to achieve the vision for the Kellyville Station Precinct

- the proposed flexible application of the development standard will create a better planning outcome than that which would be achieved by ensuring strict compliance with the 5m minimum building setback
- it is in the public interest as the concept SSDA is consistent with the objectives of the R1 General Residential and R4 High Density Residential land use zones under *The Hills Local Environmental Plan 2019* (**THLEP 2019**)
- the concept SSDA proposes robust urban design guidelines that will satisfactorily guide future development within the station precinct to ensure a vibrant and active community, with access to high levels of amenity is achieved
- the non-compliance with the 5m minimum building setback development standard is site specific and does not raise any matters of State and regional planning significance
- there would be no unacceptable impacts arising as a consequence of the variation to the development standard outlined in clause 8.4(a) of THLEP 2019.

Given the above circumstances, the proposed variations to the 5m minimum building setback to varying setbacks between 2m and 5m is considered reasonable, and satisfies the 'tests' (established by NSW Case law) when considering a variation to development standards. This is further discussed in Section 3 of this application.

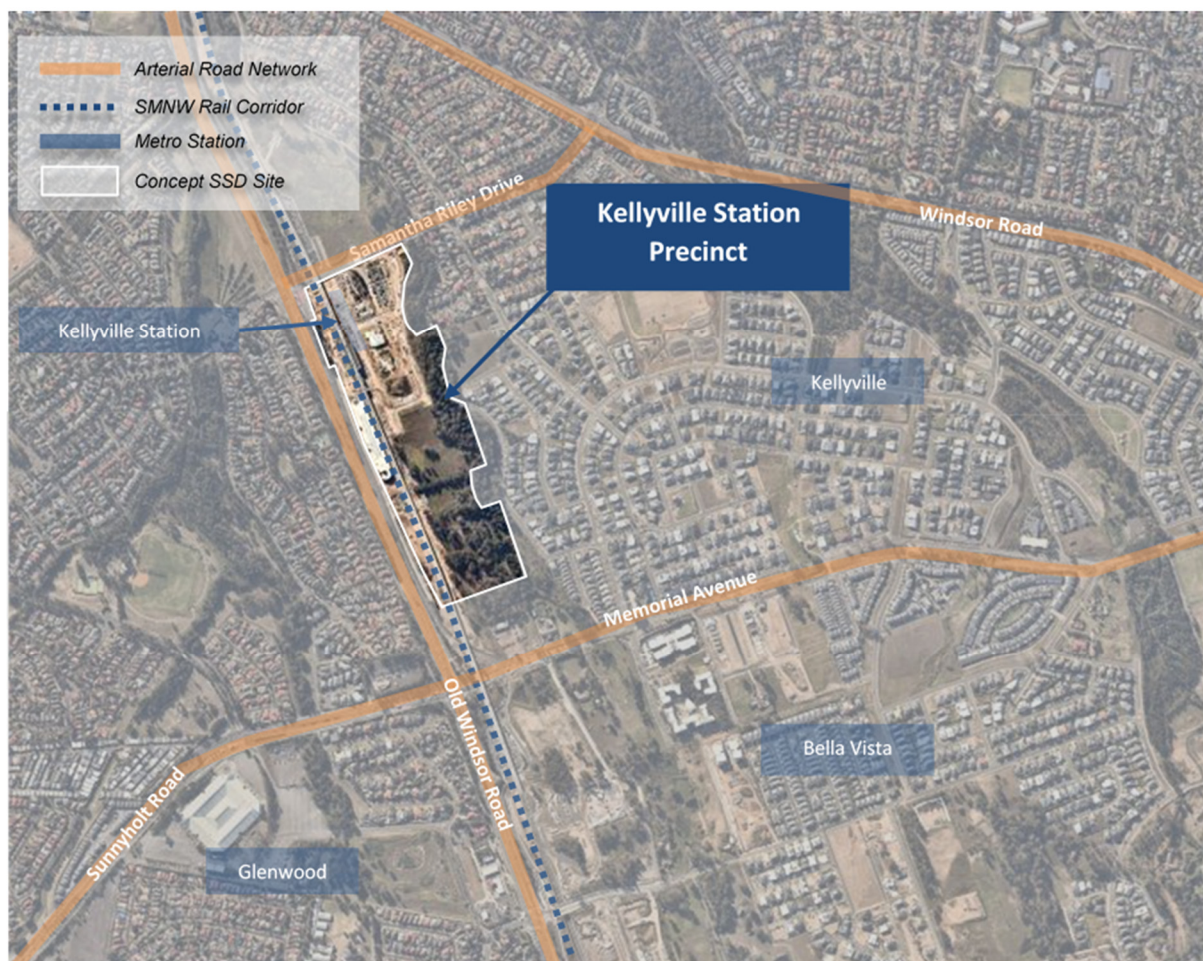
Furthermore, following additional consultation with the SDRP dated 5 May 2020, it has been advised the SDRP support the reduced 2m and 3m setbacks in the Kellyville Station Precinct where the benefit to the public domain and /or increased private communal open space can be demonstrated. Additional details of the benefit to communal open space from the proposed setbacks are provided in the Response to Submissions report prepared by SJB.

1.2 Project background

Sydney Metro is Australia's biggest public transport project. As a new standalone railway, this 21st century network will revolutionise the way Sydney travels.

NSW Government owned land surrounding the Kellyville Station and other Metro Northwest Line (**MNWL**) Stations, is no longer required to support metro construction and operations. This land will be made available for development that supports NSW Government priorities of housing affordability, local infrastructure delivery and economic development.

The Kellyville Station Precinct (**the site**) is located in North West Sydney in The Hills Shire local government area (**LGA**). The site is comprised of land owned by, or under the control of, Sydney Metro within the boundary of Kellyville Station Precinct as defined by the *State Environmental Planning Policy (State and Regional Development) 2011* (**SRD SEPP**) (see **Figure 1**).



Source: www.nearmap.com (adapted by GLN Planning)

Figure 1: Context of the Kellyville Station Precinct Site

Under the South West Metro Places (**SMNWP**) program, Landcom and Sydney Metro are working collaboratively with the DPIE, local councils, including The Hills Shire Council (**Council**), and other government organisations and key stakeholders, to develop the long-term vision and delivery program to guide the transformation of approximately 65 hectares (**ha**) of government owned or controlled land around new MNWL station precincts.

This delivery program will be undertaken over the next 10 to 15 years and will facilitate:

- early activation around new stations to provide safe and vibrant spaces for metro customers and local communities to use when the metro services commence
- mixed use areas that are active and walkable, and that capitalises on the fast and frequent connections provided by the new metro system
- attractive and well-designed public spaces and buildings
- creative, affordable and diverse housing solutions
- infrastructure to support the long-term growth of the corridor

- strong local economies by attracting long-term investment and a diverse range of jobs.

SMNWP Program will deliver a vibrant and integrated precinct around the new stations, including Kellyville Station.

The proposed transformation of the Kellyville Station Precinct will be facilitated by the proposed concept SSDA lodged by Landcom under section 4.38(1) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) that seeks consent for the Kellyville Station Precinct concept SSDA and the principal subdivision of public domain areas as the first stage of development pursuant to section 4.22(2) of the EP&A Act.

1.3 Authority to vary a development standard

Clause 4.6 of THLEP recognises that in particular circumstances, strict application of development standards may be unreasonable or unnecessary. The clause provides objectives and a means by which a variation to the standard can be achieved as outlined below.

"4.6 Exceptions to development standards"

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4*
 - (ca) *clause 6.2 or 6.3*
 - (cb) *clause 7.11.*
 - (cc) *clause 7.15"*

Clause 4.6 establishes the framework for varying development standards applying under an Environmental Planning Instrument. Subclauses 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the Applicant that seeks to justify the contravention of the standard by demonstrating that:

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

In addition to the parameters set out in clause 4.6, a number of key decisions of the NSW Land and Environment Court provide guidance in justifying a variation to a development standard. These include:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009
- *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386
- *Moskovich v Waverley Council* [2016] NSWLEC 1015

Consistent with the statutory requirements set out in clause 4.6, and as guided by the above case law, this request to vary a development standard:

- identifies the development standard to be varied
- identifies the extent of the variation sought
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances
- demonstrates that there are sufficient environmental planning grounds to justify the proposed variation
- demonstrates that the consent authority can be satisfied that the proposal is in the public interest because it is consistent with the objectives of the standard and the objectives of the R1 General Residential and R4 High Density Residential land use zones.

Pursuant to subclause 4.6(4)(a) and in granting development consent for the proposed development, the consent authority can be satisfied that:

- this written request adequately addresses the matters required to be demonstrated by subclause 4.6(3)
- the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zones.

This written submission should be read in conjunction with the Environmental Impact Statement (**EIS**) and Response to Submissions (**RtS**) prepared by GLN Planning for the Kellyville Station Precinct concept SSDA and Response to Submissions Report.

2 Development standard to be varied

2.1 Clause 8.4 Minimum building setbacks of THLEP 2019

A variation is requested to clause 8.4(a) of THLEP 2019 which specifies the minimum building setbacks for development on land within the Kellyville Station Precinct in the R1 General Residential zone and R4 High Density Residential zone.

This is a development standard as defined by section 1.4 of the EP&A Act.

Clause 8.4 requires:

Development consent must not be granted to development on land within the Bella Vista Station Precinct or the Kellyville Station Precinct unless the front building setback of any building resulting from the development is equal to, or greater than, the following:

- (a) *for a building in Zone R1 General Residential or Zone R4 High Density Residential – 5 metres, (emphasis added)*
- (b) *for a residential flat building in Zone B2 Local Centre – 5 metres,*
- (c) *for a building in Zone B7 Business Park with a street frontage to Old Windsor Road, Kellyville, north of Celebration Drive, Kellyville – 10 metres from the eastern edge of the Old Windsor Road road reserve.*

Clause 8.4 of THLEP 2019 does not contain any specific objectives. Notwithstanding, the underlying objective of a setback control is considered to be:

- Providing an appropriate streetscape and character that fits with the vision of the town centre;
- Creating an attractive and convenient local centre around the station; and
- Providing separation between potential residencies and the road as a means of achieving expected levels of amenity at ground level.

Council's submission made during the public exhibition of the concept SSDA stated that the minimum setbacks as outlined in clause 8.4 of THLEP 2019 were the result of detailed precinct planning completed by the NSW Government, but did not allow for the provision of appropriate landscaped setbacks and deep soil zones, and substantially varied from Council's standard 10m front setback requirement for residential apartment buildings.

The Kellyville Station Precinct envisages the creation of a vibrant and new high density transit oriented development community whose outdoor living room is Elizabeth Macarthur Creek. It will be connected and dynamic – offering the convenience and amenities of inner city living amongst the riparian bushland setting of north-west Sydney with spectacular views of the Blue Mountains and Hill Shire LGA.

To ensure this vision is met, the concept SSDA is supported by a comprehensive suite of development design guidelines and objectives that will direct the future design and construction of

buildings and infrastructure within the Kellyville Station Precinct. This includes 'built form' principles that:

- focus density and building heights towards the station and that step down towards the riparian corridor
- encourages future built form that carefully considers sunlight access into public spaces, communal areas, streets and residential buildings through its siting, form and orientation
- creates active street frontages with weather protection along primary pedestrian routes.

The proposed variation to the setback development standards will allow for the establishment of a vibrant and active station precinct, and provide for an improved planning outcome for the Kellyville Station Precinct SSD site. This is discussed in further detail in Section 3.1 of this application.

2.2 The land subject to this proposed variation

This clause 4.6 variation request seeks to vary clause 8.4(a) of THLEP 2019 that applies to land zoned R1 General Residential and R4 High Density Residential under THLEP 2019 within the Kellyville Station Precinct SSD site as shown in Figure 2.

2.3 Site context

The site is irregular in shape and contained within an area bound by Old Windsor Road and the MNWL skytrain to the west and Elizabeth Macarthur Creek to the east. The site is bound along its northern boundary by Samantha Riley Drive and extends to the south, approximately 200m north of Memorial Avenue. The site is made up of 16 allotments and has a total area of approximately 18.5ha.

The site encompasses existing infrastructure previously delivered during the construction and delivery of MNWL under SSI 5414. This comprises Kellyville Station and ancillary station infrastructure and public domain, 1,200 space multi-level commuter car park and partial new local street network and associated road and intersection upgrades leading off Samantha Riley Drive.

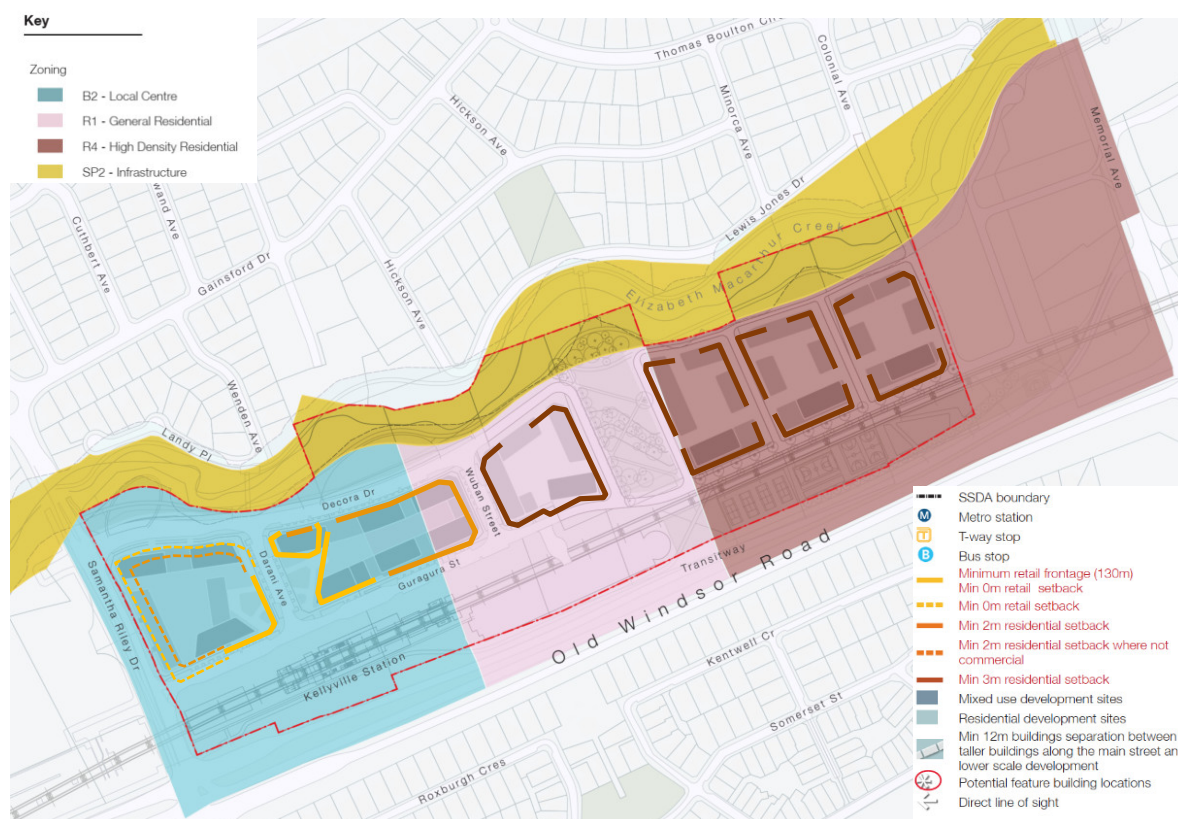
The northern half of the site is clear of any substantial vegetation due to previous land clearing works associated with the delivery of MNWL. The southern, undeveloped portion of the site (i.e. south of Wuban Avenue) contains remnant mature vegetation.

Future built form will be subject to separate Development Applications and include a range of mixed use and residential buildings that will provide a range of interface opportunities by:

- (1) establishing active street frontages along key roads
- (2) drawing residents and workers closer to Elizabeth Macarthur Creek and enshrine the green character of the site
- (3) providing vibrant interfaces between footpaths, roads, public open space and building entrances and lobbies.

The locality is undergoing substantial change from its predominantly rural residential land use to a high density urbanised transit oriented precinct, and has been rezoned to cater for future mixed use and residential development within the Kellyville Station Precinct.

The site is zoned part B2 Local Centre, R1 General Residential, R4 High Density Residential and SP2 Infrastructure under THLEP 2019. The site's zoning is illustrated in **Figure 2**.



Source: SJB

Figure 2: Kellyville Station Precinct Land Use Zoning (and setback areas to be varied)

Land to the north and south of the Kellyville Station Precinct is zoned R1 General Residential. Land to the west is zoned SP2 Infrastructure (consisting of Old Windsor Road), with R2 Low Density Residential land further to the west in the Blacktown LGA. Land zoned to the east includes a mixture of R2 Low Density Residential and R3 Medium Density Residential land.

2.4 Extent of variation

The proposed concept SSDA sets out the concept proposal for the Kellyville Station Precinct to guide the future urban renewal of the station precinct. Site-specific urban design controls have been prepared to ensure optimal design and amenity outcomes are achieved across the site, including detailed public domain, street interface and street setback controls.

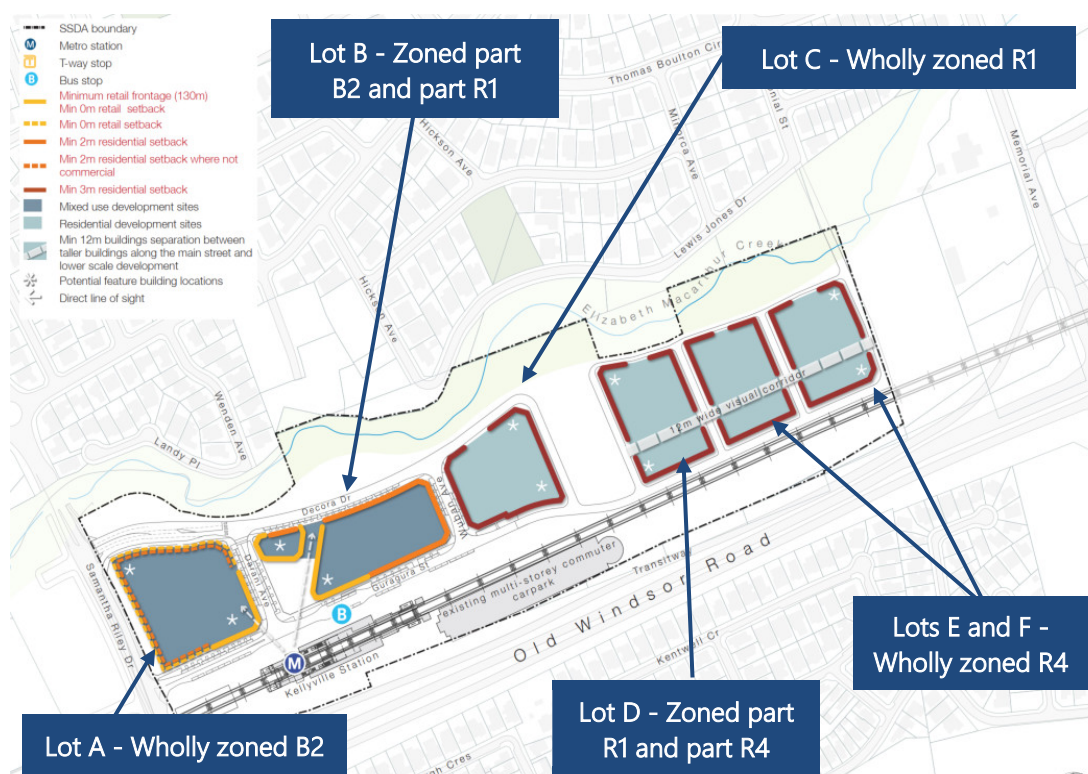
A comparison between the minimum building setback requirements under clause 8.4(a) of THLEP 2019 to the variations proposed by the concept SSDA is detailed in **Table 1** below. The requested variation has been revised to reduce the minimum setbacks in the R1 and R4 land use zones.

This variation request supersedes the clause 4.6 variation request submitted with the EIS. Following further consultation with THSC regarding building setbacks, a revised setback scheme that prescribes specific setback distances rather than numerical ranges is now proposed.

Locations of all proposed setbacks under the concept SSDA are provided in **Figure 3**. A section plan of the ground and upper floor setbacks in the residential core are provided in **Figure 4** and **Figure 5**.

Table 1 Kellyville Station Precinct Setback Variations

Land Use Zone	Setbacks	
	THLEP 2019 Standard (m)	Kellyville Station Precinct Proposal (m)
R1 General Residential (any building) (Clause 8.4(a))	5m	<ul style="list-style-type: none"> 2m for the southern end of lot B. 3m for lot C and the northern street frontage of development block D in the R1 zone.
R4 High Density Residential (any building) (Clause 8.4(a))	5m	<ul style="list-style-type: none"> Minimum 3m for the eastern, southern and western street frontages of lot D for buildings between 4-6 storeys high and over 8 storeys high Minimum 3m for all street frontages for lots E and F for buildings between 4-6 storeys high and greater than 8 storeys high.



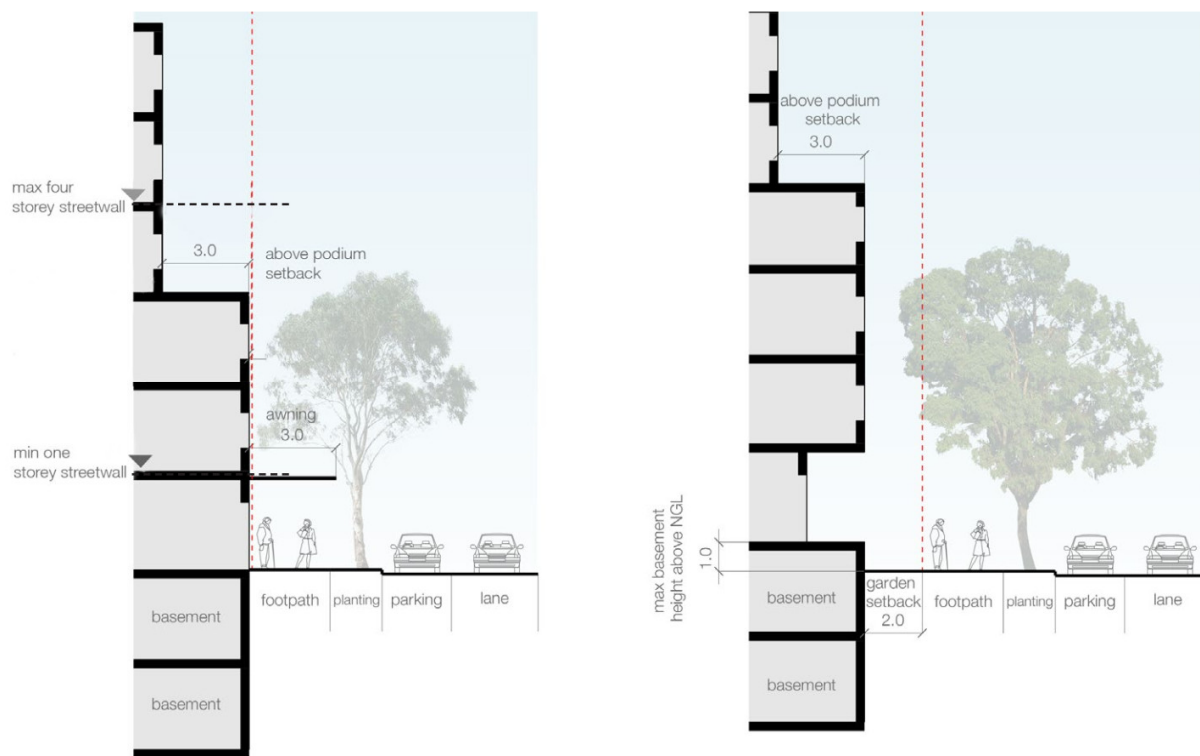
Source: SJB

Figure 3: Location of Proposed Setback Controls



Source: SJB

Figure 4: Proposed Setback Section in the Residential Core



Source: SJB

Figure 5: Town Centre (Left) and Residential (Right) Interface Conditions

3 Justification for development standard contravention

3.1 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (Clause 4.6(3)(a))

Clause 4.6(3)(a) requires the Applicant to provide justification that strict compliance with the density requirement is unreasonable or unnecessary in the circumstances of the case.

In *Wehbe v Pittwater Council (2007) NSWLEC 827*, Preston CJ established five potential ways for determining whether a development standard could be considered to be unreasonable or unnecessary. Regard is also had to the Court's decision in *Four2Five Pty Limited v Ashfield Council [2015] NSWLEC 90* and *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7*, which elaborated on how these five ways ought to be applied, requiring justification beyond compliance with the objectives of the development standard and the zone.

In addition to the above, Preston CJ further clarified the appropriate tests for a consideration of a request to vary a development standard in accordance with clause 4.6 in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. This decision clarifies a number of matters including that:

- the five ways to be satisfied about whether to invoke clause 4.6 as outlined in *Wehbe* are not exhaustive (merely the most commonly invoked ways)
- it may be sufficient to establish only one way;
- the written request must be "sufficient" to justify contravening the development standard, and
- it is not necessary for a non-compliant development to have a neutral or beneficial effect relative to a compliant development.

It is our opinion that the concept SSDA satisfies a number of the five ways established in *Wehbe* that demonstrate that the development standard is unreasonable and unnecessary in this instance, for the reasons set out below.

3.1.1 1st Way – The objectives of the standard are achieved notwithstanding non-compliance with the standard

As outlined above, clause 8.4 of THLEP 2019 does not contain any specific objectives that express the purpose of the development standard.

Notwithstanding, the underlying objectives of the minimum building setback control is considered to be ones that:

- Provide an appropriate streetscape and character that fits with the vision of the town centre;
- Create an attractive and convenient local centre around the station; and
- Provide separation between potential residencies and the road as a means of achieving expected levels of amenity at ground level.

The above objectives need to be understood in the context of the vision for the Kellyville Station Precinct to be a new high density transit orientated development, with a variety of housing typologies and local retail services supported by strong connectivity to the MNWL skytrain.

The ways in which the proposed setbacks are considered to achieve these objectives are detailed below, and should be read in conjunction with Figure 4 and Figure 5.

Provide an appropriate streetscape and character that fits with the vision of the town centre

- Despite the non-compliance, the proposed setbacks achieve the first implicit objective of the development standard because it fits the envisaged streetscape and urban character outcome, while still providing a uniform and coherent streetscape aligned with a compact town centre character detailed in the Kellyville Finalisation Report.
- The setbacks contained in THLEP 2019 do not align with the proposed urban character of the Kellyville Station Precinct, designed street level and urban design outcomes of a vibrant and well-connected transit orientated precinct. Increased setbacks, particularly at the ground level, are likely to create a disconnection between future buildings and surrounding public domain and streets.

Create an attractive and convenient local centre around the station

- The proposed setbacks will achieve the second objective by enabling non-residential ground floor uses, stepping back upper storeys as part of a detailed design approach to the interface between buildings and the street.
- The setbacks will also establish a connected landscaped streetscape character. The station precinct road hierarchy has been designed to allow a strong green character to be established that will be interspersed with street trees on both sides of the carriageway. This includes a range of public verges between 900mm and 2m wide with structural soil systems to ensure tree canopy growth.
- Several future building sites within the Kellyville Station Precinct front open space or the MNRL skytrain. Reduced setbacks between 2m and 3m at these locations will provide a more direct connection to these open and green spaces. They will also limit the potential for perceived bulk and scale impacts as future built form would not be prominently read from vantage points provided by wider footpaths and interface areas.

Provide separation between potential residencies and the road as a means of achieving expected levels of amenity at ground level.

- Reduced setbacks will provide improved passive and formal surveillance of thoroughfares and promote active street frontages by bringing windows and doorways closer to the street, consistent with the finalisation report for the precincts rezoning.
- Setbacks between 2m and 3m across the Kellyville Station Precinct will provide a more efficient use of space, while still allowing a transition between private and public space and an urban form transition to a residential character.

- With respect to the combination of a zero metre retail setback and a 2m residential setback for lot B, the length of this part of the site will serve as a transition that provides an appropriate separation between residencies and the road.

3.1.2 2nd Way - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

As discussed above, clause 8.4 does not specify any objectives for the setback development standards. Therefore, this way to consider the variation is not relevant in this case.

3.1.3 3rd Way - The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required.

Clause 8.4 of THLEP 2019 does not provide any specific objectives for the setback development standards. The following sections detail how the proposed setbacks for the Kellyville SSDA site achieve the implicit objectives of the building setback development standard under THLEP 2019.

Provide an appropriate streetscape and character that fits with the vision of the town centre

The masterplan framework for the Kellyville Station Precinct has been developed to ensure that specific urban outcomes are achieved consistent with the land use zoning objectives and vision for the station precinct. Distinct character areas are proposed to be established throughout that provide a transition between the station precinct town centre and residential core.

In order to achieve this, specific setback controls for future development within the R1 and R4 land use zones have been developed to support the creation of a high density, transit oriented community with a compact town centre. It considered that compliance with the specified uniform 5m setback control under THLEP 2019 would not meet the underlying objectives of the development standard. The underlying objective would therefore be thwarted if compliance was required.

Create an attractive and convenient local centre around the station

The effect of the specified 5m setback control pushes built form away from the public domain and would not be achieved as the outcome would be too suburban in nature, in contrast to the establishment of a high density transit oriented urban environment that is active and vibrant at the street level. The application of the reduced setbacks allows for a more efficient use of space and provides for a transition between the private and public space.

Provide separation between potential residencies and the road as a means of achieving expected levels of amenity at ground level.

The proposed setbacks would still achieve a separation between future buildings and the range of pedestrian and shared paths across the site while still providing space to develop a strong landscape character for ground level amenity and privacy.

3.1.4 4th Way - The development standard has been virtually abandoned or destroyed by the Council's own decisions

As this concept SSDA will facilitate the first urban development within the station precinct, beyond the MNWL infrastructure previously delivered, and does not involve any built form, this way of considering the variation is unlikely to be relevant to this concept SSDA.

3.1.5 5th Way – The zoning of the site is unreasonable or inappropriate and consequently so is the development standard.

This way to consider the variation is not relevant in this case.

3.2 Are there sufficient environmental planning grounds to justify contravening the development standard? (Clause 4.6(3)(b))

It is considered there are sufficient environmental planning grounds that justify contravening the development standard. These relate to:

- pre-existing environmental and site constraints restrict the concept SSDA's ability to achieving the project vision for the Kellyville Station Precinct. These constraints consist of:
 - a pre-existing local road network that is physically constrained by the existing MNWL skytrain corridor along its western edge and Elizabeth Macarthur Creek riparian corridor, along its eastern edge.
 - the aim to focus higher density residential, mixed use and employment land uses close to highly connected public transport infrastructure consistent with the principle of transit oriented development to foster higher patronage of sustainable transportation modes.
 - environmental constraints from the presence of Elizabeth Macarthur Creek
 - topographical constraints that impact practical and logical built form outcomes in the pursuit of providing a transit oriented development and compact town centre that caters to residents, workers, pedestrians, public transport and vehicles.
- the size and constraints of the site would not allow the legislated dwelling cap to be properly utilised and should be maximised as far as possible to realise the vision for the centre stemming from the rezoning process progressed in collaboration between local and state government levels.
- the sites strong connection and alignment with Elizabeth Macarthur Creek and proposed road hierarchy provides significant levels of open space, landscaping opportunities and pedestrian and cyclist connectivity that offsets the reduced front setbacks.
- providing vibrant and active street frontages near Kellyville Station.

Given no built form is proposed by this concept SSDA, there are no material negative amenity impacts resulting from the proposed setback controls as a direct result of this concept SSDA. The assessment undertaken as part of the Urban Design Report demonstrates the design approach does not result in adverse amenity impacts, including the proposed building setbacks. Notwithstanding, built form impacts from the reduced setbacks under future applications would be assessed on their merits when applying the proposed Design Guidelines.

The concept SSDA will support a high density transit orientated development that creates active street frontages and provides direct connections to pedestrian, cyclist and open space connections. The proposed setbacks will assist in using the land within the site efficiently alongside Design

Guidelines to ensure a high level of local amenity is provided through street and communal landscaping, building separation and a variety of connected pedestrian and shared paths across the six lots on the site.

The proposed urban design guidelines are supported by detailed objectives that mandate specific urban outcomes within the Kellyville Station Precinct. Furthermore, the proposed setback controls would not be consistent with the intent of the Kellyville Station Precinct Finalisation Report to “create more active and safer streets with less vacant spaces and more passive surveillance”.

Lot B, located in the B2 Local Centre and R1 General Residential zone proposes a reduced residential setback of 2m, which aligns with the desired urbanised built form and compact town centre under the Finalisation Report for the Kellyville Station Precinct. The setback also accommodates an improved built form transition between future mixed use development in the B2 Local Centre zone and residential development in the adjoining R1 General Residential zone, which provides a 3m setback on lot C, also in the R1 zone.

The proposed setback range of 3m for residential development on lots C through to F will support a predominantly residential character further to the south of the Kellyville Station, while still providing connections to the future street and leveraging strong and direct connections with future open space and Elizabeth Macarthur Creek. This proposed setback is noted as being generally consistent with Council’s suggested 3m setback control, which has been supported in other MNWL station precincts.

Relief to future built form would be accommodated within the setbacks proposed and the varied verge widths proposed as part of the new local street network. Landscaped verge widths are proposed to range between 900mm to 2m, excluding footpaths and will afford landscape embellishment opportunities within the street edges on top of street tree planting that will further assist in softening any potential future built form and provide local level amenity through shade and soft screening.

Compliance with the 5m minimum building setback development standard in a locality that is constrained by existing environmental and site conditions would unreasonably impact on the establishment of a high density urban environment and limit the ability for the concept SSDA to deliver a vibrant and activated community within the Kellyville Station Precinct.

3.3 Is the proposed development in the public interest? (Clause 4.6(4)(a)(ii))

Initial Action v Woollahra provides that the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the zone in which the development is to be carried out.

The proposed development is in the public interest because it facilitates a development that is consistent with the objectives of the standard and the objectives of the R1 and R4 zoning under THLEP 2019 despite the non-compliance with the development standard.

The manner by which the proposed development achieves the objectives of the standard is discussed above, and it therefore follows that the development is consistent with those objectives. The proposed setbacks are also considered to be consistent with the objectives of the underlying R1 and R4 land use zones.

In regard to the objectives of the R1 General Residential and R4 High Density Residential zones, which are:

R1 General Residential

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To enable other land uses that support the adjoining or nearby commercial centres and protect the amenity of the adjoining or nearby residential areas.*

R4 High Density Residential

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage high density residential development in locations that are close to population centres and public transport routes.*

The concept SSDA is consistent with the objectives of both zones for the following reasons:

R1 General Residential

- Regarding the first objective, the proposed setback controls do not constrain the delivery of more housing.
- Regarding the second objective, the proposed setbacks would provide increased opportunities for varied housing types and forms, however this would be a matter for future DAs. The setbacks would not adversely impact the 5% Affordable Housing target proposed within the site.
- Regarding the third objective, the proposed setbacks would allow increased opportunities for support facilities and services across the station precinct, however this would be a matter for future DAs. The proposed setbacks seek to encourage active public domain interfaces that in turn contribute to the creation of a vibrant, transit oriented community.
- Regarding the fourth objective, the proposed setback controls are consistent throughout the proposed lots that would not result in any adverse amenity impacts for nearby residential areas and would allow larger floor plates for buildings near Kellyville Station while still providing a high degree of visual and solar amenity.

R4 High Density Residential

- Regarding the first objective, the proposed setback controls would allow more housing to be provided and achieves the intent of a “high density residential environment”
- Regarding the second objective, the proposed setbacks would provide increased opportunities for varied housing types and forms in a high density residential zone, however this would be a matter for future DAs
- Regarding the third objective, the proposed setbacks would allow increased opportunities for support facilities and services across the station precinct, however this would be a matter for future DAs. The proposed setbacks seek to encourage active public domain interfaces that in turn contribute to the creation of a vibrant, transit oriented community.
- Regarding the fourth objective, the proposed setback controls support the establishment of high density residential outcomes as they:
 - will encourage the establishment of active street frontages in the Kellyville Station Precinct which has been identified as a high density residential transit oriented urban environment
 - maximise active frontages within the Kellyville Station Precinct which is highly accessible by virtue of the existing local road network, bus and metro connections
 - help establish a safe and active public domain environments that support the creation of an active and well connected precinct that supports walking and cycling.

The proposal is therefore considered to be consistent with the objectives of the R1 and R4 land use zones and are in the public interest as they will:

- Facilitates the coordinated urban renewal of Government owned land in line with the urban planning outcomes identified in the North West Rail Link Corridor Strategy prepared by the then Department of Planning and Transport for NSW
- Provide a high density transit oriented development outcome that will provide additional residential dwellings in a location which reinforces the 30-minute city proposed by the Greater Sydney Commission.
- The site’s location between Old Windsor Road, Kellyville Station/MNWL and Elizabeth Macarthur Creek affords the opportunity to establish a unique planning framework that minimised adverse environmental impacts. The site has been planned for and can accommodate increased built form densities and land use activities that will be appropriately controlled through the Design Guidelines and Design Excellence Strategy.
- Encourage varied urban form outcomes at the street level along existing and future local roads with additional residential capacity, including Affordable Housing, near Kellyville Station, ensuring that jobs and dwellings are collocated in a manner which reduces commute times and improves the level of access to facilities, services, transport options and public open space.

- Facilitate the delivery of future built form that can achieve high amenity outcomes for future occupants whilst not detrimentally impacting on identified public domain and open space areas.
- Provide a framework that will ensure future development exhibits design excellence, working alongside the Kellyville Station to deliver a very high design quality built form outcomes.

3.4 Consideration of concurrence by Secretary (Clause 4.6(4)(b)&(5))

Pursuant to the exclusion provided for State Significant Development by section 4.13(2A) of the EP&A Act, the concurrence of the Secretary of DPIE is not required prior to the consent authority granting development consent.

Despite this and for the reasons set out above in this written request, the Secretary of DPIE can be satisfied that the proposed variation to the building setback controls is not considered to be detrimental to any matters of significance for State or Regional environmental planning.

4 Conclusion

Compliance with the setback development standard stipulated in subclause 8.4(a) of THLEP 2019 is unreasonable in the circumstances of this application, and the justification to vary the development standard of merit. The proposed variation to the setback development standard and introduction of reduced setbacks for development in the R1 and R4 zones will allow for the establishment of a vibrant and active station precinct and provide for an improved planning outcome for the Kellyville Station Precinct SSD site.

This values 4.6 variation request is considered to have demonstrated that:

- the underlying objectives of the setback development standard are achieved notwithstanding the proposed variation
- pre-existing environmental and site constraints restrict the concept SSDA's ability to achieving the project vision for the Kellyville Station Precinct
- the proposed flexible application of the development standard will create a better planning outcome than that which would be achieved by ensuring strict compliance with the 5m minimum building setback
- it is in the public interest as the concept SSDA achieves the underlying objectives of the standard and is consistent with the objectives of the R1 General Residential and R4 High Density Residential land use zones under THLEP 2019
- the concept SSDA proposes robust urban design guidelines that will satisfactorily guide future development within the station precinct to ensure a vibrant and active community and compact town centre is achieved
- the non-compliance with the 5m minimum building setback development standard is site specific and does not raise any matters of State and regional planning significance
- there is no public benefit that could otherwise be satisfied by ensuring compliance with the development standard outlined in clause 8.4(a) of THLEP 2019.

This variation request outlines the justification for the proposed contravention to the minimum building setback development standard and demonstrates that it is in the public interest. While the SSD application does not involve the construction of any built form, this clause 4.6 variation request has been prepared for abundant caution as the application seeks approval for design guidelines that will inform future development across the Kellyville Station Precinct SSD site.