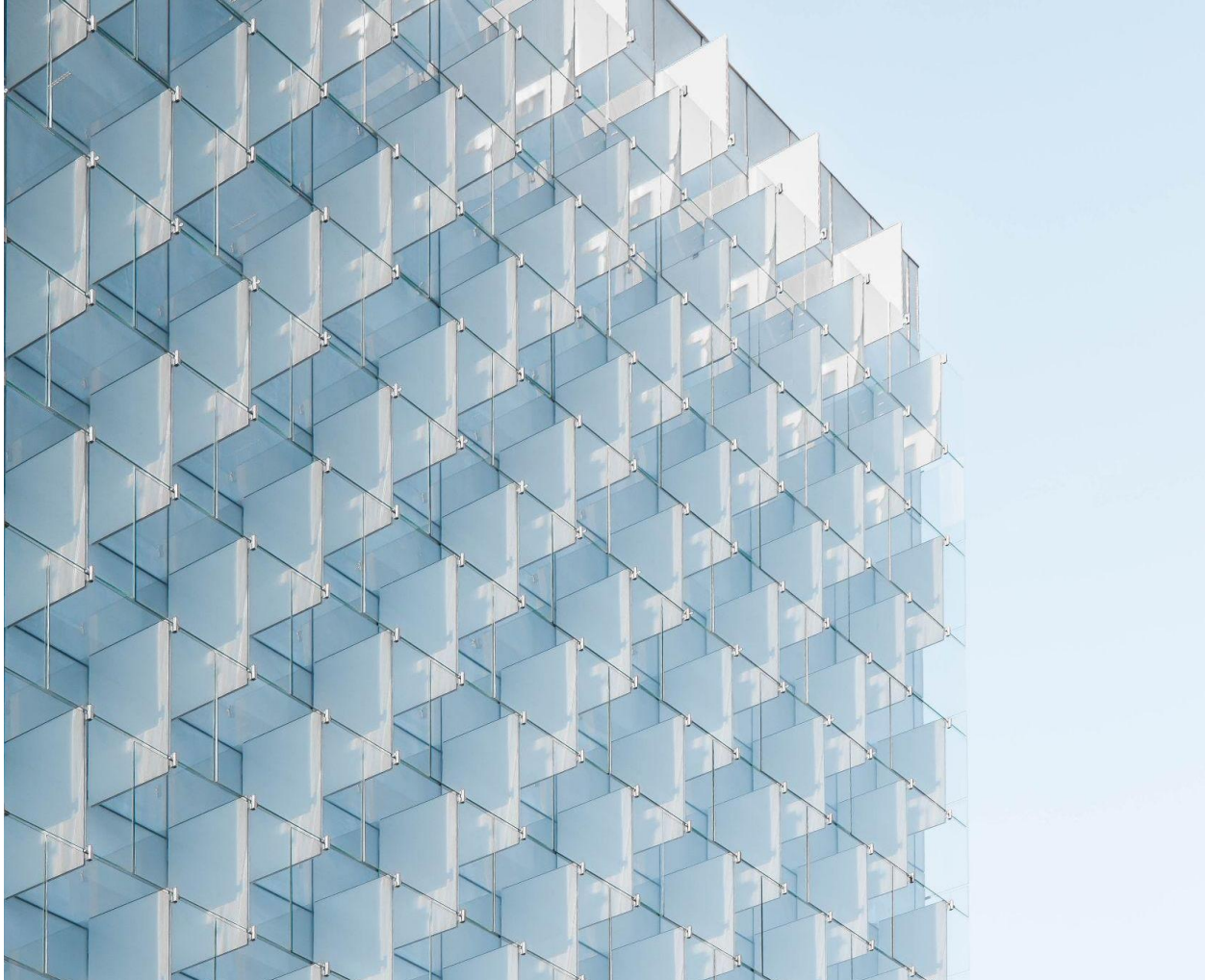


WILLOWTREE PLANNING



13 October 2025

Ref: WTJ24-278
Contact: Cameron Gray



CLAUSE 4.6 VARIATION REQUEST HEIGHT OF BUILDINGS



PROPOSED RESIDENTIAL FLAT BUILDING INCLUDING IN-FILL AFFORDABLE HOUSING

12-16 Bent Street, Lindfield
Lot 3 DP1226294, Lot 1 DP935936, Lot 1 DP960015, Lot 1 DP318518 & Lot 1
DP960014

—

Prepared by Willowtree Planning Pty Ltd
on behalf of Sundale Northland Development Pty Ltd

Clause 4.6 Variation - Height of Buildings

Proposed Residential Flat Building including In-fill Affordable Housing

12-16 Bent Street, Lindfield NSW 2070

(Lot 3 DP1226294, Lot 1 DP935936, Lot 1 DP960015, Lot 1 DP318518 & Lot 1 DP960014)



In the spirit of reconciliation and recognition, Willowtree Planning acknowledges the Traditional Owners of this Country throughout Australia and their continuing and ongoing connections to land, waters and community. We show our respect to Elders - past and present. We acknowledge that we stand on this Country which was and always will be recognised as Aboriginal Land. We acknowledge the Traditional Owners of the Lands in this Local Government Area, belonging to the local Aboriginal People, where this proposal is located upon.

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Version No. 1 - 08/08/2025	Marcus Butler Senior Planner	Cameron Gray Director	Cameron Gray Director
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Clause 4.6 Variation – Height of Buildings

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PART A PRELIMINARY

1.1 INTRODUCTION

This Clause 4.6 variation request (Variation Request) has been prepared in support of a State Significant Development Application (SSDA) on behalf Sundale Northland Development Pty Ltd (the Applicant) for the proposed development at 12-16 Bent Street, Lindfield (the Site), which captures the following land parcels:

- Lot 3 DP 1226294
- Lot 1 DP 935936
- Lot 1 DP 960015
- Lot 1 DP 318518
- Lot 1 DP 960014

The Site is zoned R4 High Density Residential zone, pursuant to the *Ku-Ring-Gai Local Environmental Plan 2015* (KLEP 2015) and is located within the Ku-Ring-Gai Local Government Area (LGA). The proposed development is permissible with consent via the provisions of *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) and having regard for the recent changes in planning controls surrounding the Site, is considered contextually appropriate. The proposed development is generally consistent with the objectives and provisions of the KLEP 2015 and Housing SEPP, with the exception of the maximum building height provision prescribed by Section 16 (3) of the Housing SEPP, for which this Variation Request is sought.

This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 of the KLEP 2015 and the relevant development standards prescribed under the Housing SEPP. It considers various planning controls, strategic planning objectives and existing characteristics of the Site and concludes that the proposed non-compliance is the best means of achieving the objectives of encouraging orderly and economic use and development under the Environmental Planning and Assessment Act 1979 (EP&A Act).

1.2 RATIONALE OF VARIATION FROM DEVELOPMENT STANDARDS

This Variation Request has been submitted to assess the proposed non-compliance with Section 16 (3) of the Housing SEPP and has been prepared in accordance with the requirements of Clause 4.6 of KLEP2015 which includes the following objectives:

- (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.



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Housing SEPP Height Provisions

Section 16(3) of the Housing SEPP applies with respect to affordable housing requirements for additional height. The Housing SEPP affords an additional 30% of the maximum permissible FSR and height when the development incorporates at least 10% of affordable housing under Section 15C(1)(b) of the Housing SEPP.

The FSR reduction voluntarily foregoes approximately 252m² of the maximum GFA (of FSR 3.25:1) whilst maintaining affordable housing provision of a minimum 17% of the maximum GFA (inclusive of the 30% uplift). Refer to the Development Data and GFA Plan in the amended Architectural Plans in **Appendix C1**. The calculated area of the required affordable housing at a minimum 17% of the maximum GFA equates to 26 units, comprising of 1-, 2- and 3-bedroom arrangements. The corresponding height development standard of 28.6m, with the sought height variation enables, strategic redistribution of this reduced bulk towards the Lindfield Village Hub and away from sensitive residential interfaces, demonstrating design constraint rather than siter oversaturation. The development achieves superior planning outcomes: reduced overall building mass combined with optimal bulk positioning through strategic height placement and delivery of affordable housing in accordance with the Housing SEPP.

Site-Specific Planning Challenges

The Site presents a convergence of unique planning challenges including:

- Its strategic position within 400m of Lindfield Railway Station benefiting from TOD density;
- Complex topographical variations with natural cross-fall that create uneven ground planes;
- Its role as a critical interface between distinct urban contexts:
 - Lindfield Village Hub to the north;
 - Drovers Way transport corridor;
 - Low-density Bent Street Residential;
 - Transitional medium-density areas; and
- Its designation for affordable housing delivery under the Housing SEPP provisions which requires strategic bulk redistribution that uniform height application would otherwise compromise.

This is addressed with the amended response to submissions (RTS) package addressing all the concerns raised.

Proposed Development Parameters

The proposed development reflects an FSR of 3.19 (reduced from 3.25:1). The proposed development does exceed the height control due to repositioned bulk to the east to alleviate environmental impacts. The height will be 31.8m, being a 3.2m (11.18%) variation. The height breach occurs predominantly toward Lindfield Village Hub, where topographical variation is less pronounced, representing strategic urban design response to the site's E1/R4 interface rather than topographical accommodation.



Clause 4.6 Variation – Height of Buildings

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This has been addressed through amendments to the proposal in response to the State Design Review Panel's (SDRP) recommendation for increased height on the eastern portion and transitional height on the south-west, ensuring no full floor breach above 28.6m occurs. Refer to **Figure 1** and **2**.

Solar Access Analysis

The amended architectural plans in **Appendix C1** provide comprehensive and clear shadow analysis addressing all identified solar access issues:

- Updated diagrams clearly delineate the nominated principal communal open space areas and demonstrate compliance with the requirement for two (2) hours of solar access to at least 50% of these areas during midwinter;
- Shadow diagrams for neighbouring properties have been revised to accurately reflect that at least 70% of apartments to the south and west receive the required two (2) hours of midwinter solar access, meeting ADG criteria;
- The analysis differentiates between existing conditions and post-development impacts, clarifying that compliance is achieved through the proposed development design rather than existing site conditions; and
- The solar access assessment now incorporates potential future overshadowing from the planned Lindfield Village Hub development, providing a comprehensive cumulative impact analysis for east-facing apartments as requested by the SDRP.

These amended diagrams demonstrate full compliance with solar access requirements while maintaining the design benefits achieved through the strategic height variation.

Clause 4.6 Justification

As per Clause 4.6 Variation, the height control is unreasonable and unnecessary in these circumstances, and sufficient environmental planning grounds are available to justify the variation. Refer to the amended solar access study within the architectural drawings within **Appendix C1**. The diagrams demonstrate that a minimum of two (2) hours of solar access between 9am – 3pm is achieved when natural site levels and cross-fall create unique conditions that standard controls don't adequately address.

Environmental Impact Assessment

Shadow analysis in the amended Architectural Plans at **Appendix C1** demonstrates midwinter solar access compliance for neighbouring properties. Updated diagrams differentiate between compliant and non-compliant height impacts, showing minimal additional overshadowing across multiple development scenarios with no adverse environmental impacts.

The proposed bulk and scale respond to Lindfield Local Centre's desired future character under Chapter 5 of the Housing SEPP. The building design incorporates articulation and setback variations to minimise perceived bulk whilst delivering housing diversity in a transit-accessible location.



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The maximum height of the proposed residential flat building is 31.8m which would exceed the maximum height by 3.2m or 11.18%.

This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards prescribed by Housing SEPP.

1.3 DEVELOPMENT STANDARD VARIATION

Under the provisions of Section 16 (3) of the Housing SEPP, the Site is subject to a maximum height development standard of 22m. This is increased to 28.6m due to the affordable housing provisions of the Housing SEPP. The proposed development will result in a height of 31.8m. **TABLE 1** below provides a summary of the variation.

TABLE 1: SECTION 16 (3) HOUSING SEPP VARIATION SUMMARY					
Housing SEPP	Housing SEPP Development Standard	Maximum Proposed	Proposed	Development	Non-Compliance
Section 16(3) of the Housing SEPP	28.6m	31.8m	3.2m or 11.18% variation from the development standard.		Note: The height exceedance is positioned towards the Lindfield Village Hub, facilitating a transition of building bulk away from the low-density development along Bent Street. The positioning aligns with the SDRP's recommendations.

While the Site is constrained by natural topographical variations, the proposed height exceedance results from multiple factors:

- Strategic bulk redistribution towards the Lindfield Village Hub to reflect the transitional nature of the Lindfield Railway Station TOD area.
- Rather than stepping the building with the topography (which would create irregular, inefficient floor plates), the design maintains consistent floor levels across the building. This results in some areas protruding above the height plane while others remain well below it. Refer to **Figure 1** and **2**.
- The site's unique interface with distinct urban contexts; and
- Accommodation of affordable housing requirements under the Housing SEPP.



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This response to site constraints results in the eastern upper elements of the building protruding through the height plane (**Figure 1 and 2**), with approximately 90% of the built form remaining below the 28.6m height limit.

The amended proposal directly addresses all identified concerns through design modifications and justification:

- The FSR has been reduced from 3.25:1 to 3.19:1, demonstrating site suitability for the proposed density.

The FSR reduction voluntarily foregoes approximately 252m² of the maximum GFA (of FSR 3.25:1) whilst maintaining affordable housing provision of a minimum 17% of the maximum GFA (inclusive of the 30% uplift). Refer to the Development Data and GFA Plan in the amended Architectural Plans in **Appendix C1**. The calculated area of the required affordable housing at a minimum 17% of the maximum GFA equates to 26 units, comprising of 1-, 2- and 3-bedroom arrangements. The corresponding height development standard of 28.6m, with the sought height variation enables, strategic redistribution of this reduced bulk towards the Lindfield Village Hub and away from sensitive residential interfaces, demonstrating design constraint rather than siter oversaturation. The development achieves superior planning outcomes: reduced overall building mass combined with optimal bulk positioning through strategic height placement and delivery of affordable housing in accordance with the Housing SEPP.

Height Positioning

- The design now ensures no full floor breach occurs above the 28.6m height plane;
- Amendments position height exceedances towards Lindfield Village Hub as recommended by the SDRP; and
- This facilitates appropriate bulk transition away from low-density Bent Street development.

The height variation is justified not merely by topography but by the site's unique convergence of planning challenges:

- Its strategic TOD location within 400m of Lindfield Station.
- Its role as interface between distinct urban contexts; and
- Its function in delivering affordable housing under Housing SEPP provisions.

Setback encroachments have been addressed through design refinements, and shadow analysis in the amended architectural plans demonstrates full two (2) hour midwinter solar access compliance for neighbouring properties.

The variation enables superior urban design outcomes through strategic bulk redistribution that height compliance would prevent, supporting the Housing SEPP's TOD objectives while maintaining neighbourhood amenity, demonstrably better outcomes than strict compliance would achieve.



Clause 4.6 Variation - Height of Buildings

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Compliance with the Height of Building would be detrimental to the proposed development and not represent the most efficient use of the Site. The proposed development responds to the existing and future desired characteristics of the area, relocating bulk and scale to be consistent with the adjoining height limits of the E1 Local Centre zone, resulting in no additional impact on the locality.

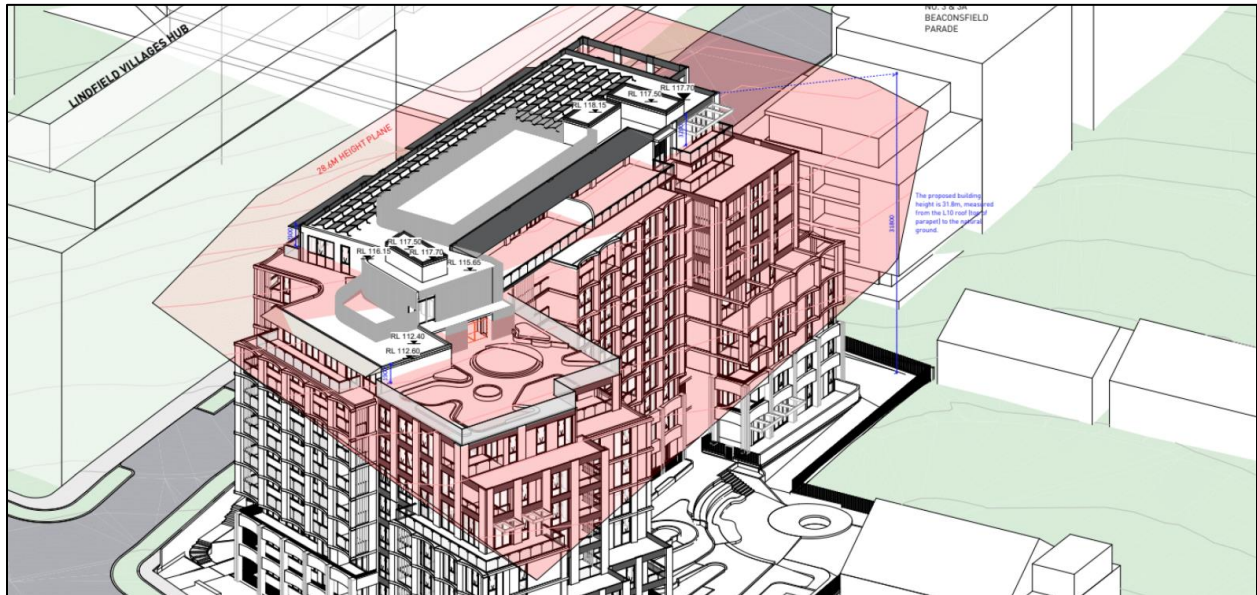


Figure 1: Redistribution of Bulk and Height Plane (Source: PTW, 2025).



Clause 4.6 Variation - Height of Buildings

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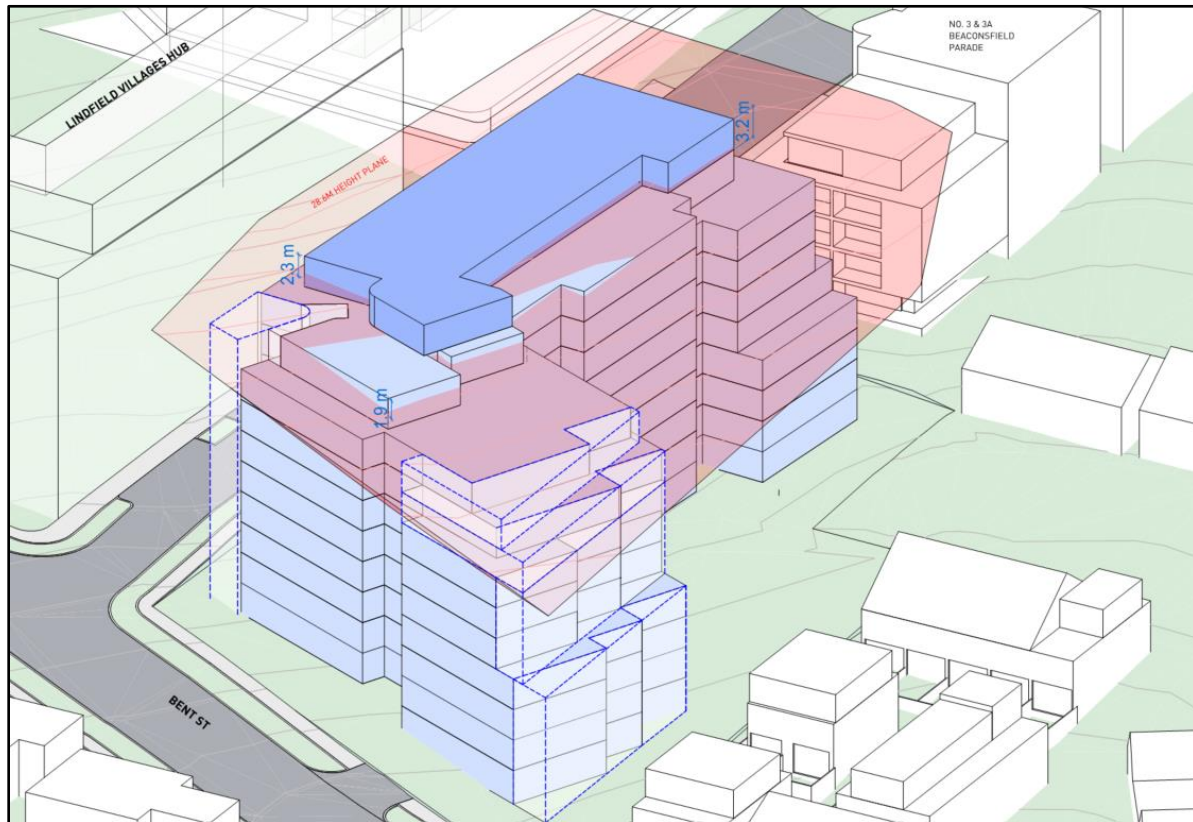


Figure 2: Height draped across the roof form demonstrating elements of the built form that protrude through the height plane (Source: PTW, 2025).

Habitable floors extend above the 28.6m height limit, particularly in the eastern section of the building, representing a deliberate design response to multiple strategic planning objectives rather than a compromised solution. This height variation is strategically positioned to facilitate bulk redistribution toward the Lindfield Village Hub, aligning with the site's unique role as interface between distinct urban contexts and its designation as a critical TOD location within 400m of Lindfield Railway Station.

The breach enables demonstrably superior urban design outcomes by directing building mass away from low-density residential interfaces while maximising housing delivery (111 units across diverse typologies: 14 x 1BR, 37 x 2BR, 49 x 3BR, 11 x 4BR) and substantial affordable housing provision (26 units). The height positioning maintains efficient floor plates across 10 levels, enabling cross-subsidisation viability for affordable housing delivery that stepped building forms would compromise.

Strict height compliance would compromise the efficient utilisation of this strategically important transit-accessible site, reducing housing yield by an estimated 15-20% and undermining affordable housing viability. This would directly contradict the Housing SEPP's primary objectives for increased density within 400m of railway stations and affordable housing delivery within TOD zones. The variation enables the



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development to achieve an FSR of 3.19:1 on the 4,324m² site while maintaining demonstrated amenity compliance (78 units receiving greater than two (2) hours solar access, 1,174m² communal open space and 30.8% deep soil provision).

Technical analysis in the amended architectural plans demonstrates that the proposed design achieves measurably better planning outcomes comparatively to a compliant proposal. The height variation supports strategic planning objectives under both the Housing SEPP and EP&A Act by maximising public benefits (housing supply, affordable housing, efficient infrastructure utilisation) while maintaining full amenity compliance, establishing clear environmental planning grounds that height compliance would prevent.



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PART B THRESHOLDS THAT MUST BE MET

2.1 INTERPRETING CLAUSE 4.6

Clause 4.6 of KLEP2015 facilitates exceptions to strict compliance with development standards in certain circumstances. Clause 4.6(3) states (our emphasis added):

Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

*(a) **compliance with the development standard is unreasonable or unnecessary** in the circumstances, and*

*(b) there are **sufficient environmental planning grounds to justify the contravention** of the development standard.*

*Note— The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be **accompanied by a document setting out the grounds** on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b)*

Accordingly, a successful Clause 4.6 variation must satisfy the below:

First Limb – cl 4.6(3)

Clause 4.6(3) states that the consent authority must be satisfied that the applicant’s written request seeking to justify the contravention of the development standard has adequately addressed the following

- a. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Cl 4.6(3)(a)); and
- b. that there are sufficient environmental planning grounds to justify contravening the development standard (Cl 4.6(3)(b)). To this end the environmental planning grounds advanced in the written request must justify the contravention, not simply promote the benefits of carrying out the development as a whole: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

In the decision of *Rebel MH v North Sydney Council* [2019] NSWCA 130 (**Rebel**) Payne JA held (our emphasis added):

*“Although it was unnecessary finally to decide the correct construction of cl 4.6(4) in *Al Maha*, I agree with the construction advanced in that case by Basten JA, with whom Leeming JA agreed,*



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at [21]-[24]. **Properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).** Clause 4.6(3) requires the consent authority to have "considered" the written request and identifies the necessary evaluative elements to be satisfied. To comply with subcl (3), the request must demonstrate that compliance with the development standard is "unreasonable or unnecessary" and that "there are sufficient environmental planning grounds to justify" the contravention. It would give no work to subcl 4.6(4) simply to require the consent authority to be satisfied that an argument addressing the matters required to be addressed under subcl (3) has been advanced."

Accordingly, a consent authority must be satisfied:

- a) that the Clause 4.6 variation application addresses the matters in Clause 4.6(3); and
- b) of those matters itself which means that there is greater scope for a consent authority to refuse a Clause 4.6 variation.

These matters are addressed in **Sections 4.3** and **4.4** of this Variation Request.

This written request has been prepared under Clause 4.6 to request a variation to the "maximum building height" development standard at Section 16 (3) of the Housing SEPP.



Clause 4.6 Variation - Height of Buildings

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PART C STANDARDS BEING OBJECTED TO

3.1 OVERVIEW

The Site is subject to the underling objectives of the varied standard as well as the R4 High Density Residential zone under KLEP2015.

3.2 CHAPTER 5 TRANSPORT ORIENTED DEVELOPMENT UNDER THE HOUSING SEPP

Chapter 5 of the Housing SEPP identifies the following aims:

The aims of this chapter are as follows—

- (a) To increase housing density within 400m of existing and planned public transport,*
- (b) To deliver mid-rise residential flat buildings, seniors housing in the form of independent living units and shop top housing around rail and metro stations that—*
 - (i) are well designed, and*
 - (ii) are of appropriate bulk and scale, and*
 - (iii) provide amenity and liveability,*
- (c) to encourage the development of affordable housing to meet the needs of essential workers and vulnerable members of the community.*

Pursuant to Clause 4.6, the proposed development seeks exception to the maximum building height of 28.6m.

3.3 PROPOSED VARIATION TO DEVELOPMENT STANDARDS

The SSDA seeks approval for the purpose of a residential flat building with infill affordable housing. The Site is subject to a maximum building height of 28.6m. The development proposes a maximum height of 31.8m. The proposed development would exceed the building height applicable to the Site by a maximum of 3.2m, which represents a 11.18% variation.

The proposed height exceedance is largely due to the topography of the Site resulting in the upper elements of the building protruding through the height plane (see **Figure 1**). The majority of the built form remains below the height limit.



Clause 4.6 Variation - Height of Buildings

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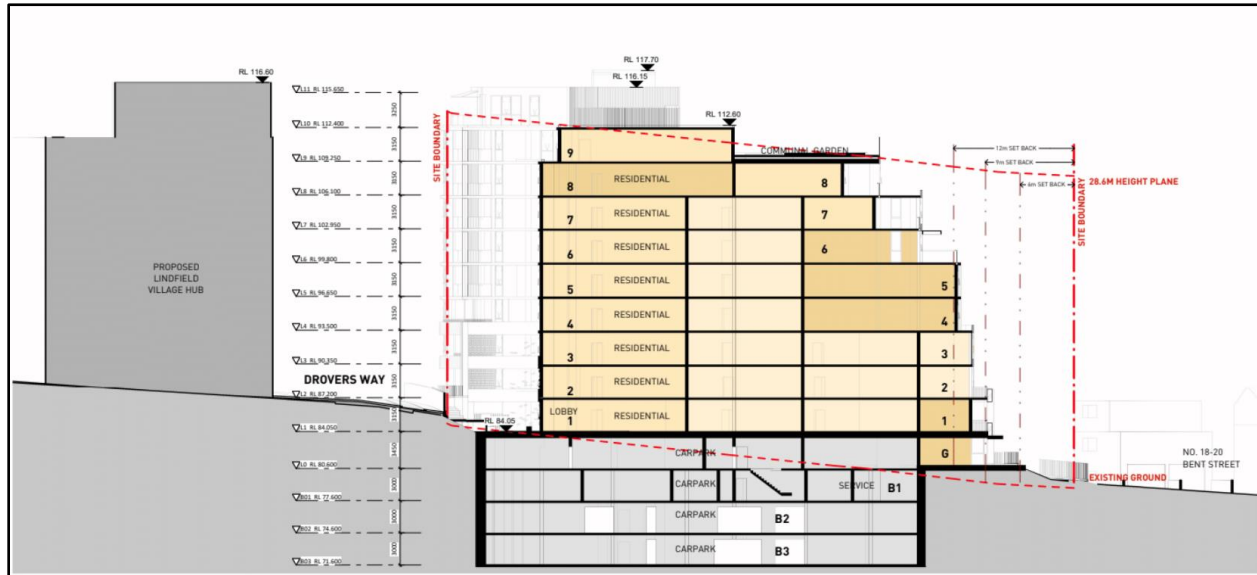


Figure 3. Built Form, Scale and Redistribution of Bulk (Source: PTW, 2025)

In its current form, the proposed development represents an orderly and efficient use of the Site which responds to the strategic TOD requirements, affordable housing delivery objectives, and complex interface between distinct urban contexts. The development delivers 111 units across diverse typologies (14 x 1BR, 37 x 2BR, 49 x 3BR, 11 x 4BR) with substantial affordable housing provision (26 units) at an FSR of 3.19:1 on the 4,324m² site.

As demonstrated in **Figure 1, 2 and 3**, the height variation represents a strategic response to multiple planning objectives rather than merely topographical constraints. The departure to Height of Buildings enables strategic bulk redistribution toward Lindfield Village Hub while maintaining efficient floor plates across 10 levels. This positioning facilitates appropriate urban transitions and maximises housing delivery within the critical 400m TOD catchment, achieving demonstrably superior planning outcomes compared to strict height compliance which would reduce unit yield by an estimated 15-20% and compromise affordable housing viability.

Shadow analysis in the amended Architectural Plans at **Appendix C1** demonstrates full midwinter solar access compliance for 78 units (70.3%) and neighboring properties. The development maintains 1,174m² communal open space (27% site coverage) and 30.8% deep soil provision while achieving density objectives. Updated diagrams show minimal additional overshadowing beyond compliant scenarios, with no adverse environmental impacts. The height variation enables superior urban design outcomes through strategic bulk positioning that height compliance would prevent.

This Variation Request demonstrates measurable public benefits including strategic TOD development, substantial affordable housing delivery, and efficient infrastructure utilisation. The proposal fully supports



Clause 4.6 Variation - Height of Buildings

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Chapter 5 Housing SEPP objectives and R4 High Density Residential zone aims while establishing clear environmental planning grounds that justify the variation under Clause 4.6 of KLEP 2015.



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PART D PROPOSED VARIATION TO STANDARDS IN CLAUSE 4.3 OF KLEP 2015

Pursuant to Clause 4.6 of KLEP2015 exception is sought from the height of buildings standard applicable to the Site pursuant to Section 16 (3) of the Housing SEPP.

4.1 OBJECTIVES OF THE STANDARD

There are no objectives of the standard. Notwithstanding, consideration of the proposal's consistency with the aims of Chapter 5 of the Housing SEPP is provided in **Table 2** below:

TABLE 2: CONSISTENCY WITH THE AIMS OF CHAPTER 5 OF THE HOUSING SEPP	
Aim	Response
<i>(a) To increase housing density within 400m of existing and planned public transport,</i>	The proposed development delivers 111 units within 400m of Lindfield Railway Station at an FSR of 3.19:1 on a 4,324m ² site, directly supporting TOD objectives. The height variation is essential to achieving this density target with a diverse unit mix (14 x 1BR, 37 x 2BR, 49 x 3BR, 11 x 4BR units), as strict height compliance would significantly reduce unit yield and undermine the Housing SEPP's transit-oriented development goals. The strategic positioning of building mass across 10 levels maximises housing delivery within the critical TOD catchment while maintaining efficient floor plate design.
<i>(b) To deliver mid-rise residential flat buildings, seniors housing in the form of independent living units and shop top housing around rail and metro stations that—</i> <i>(i) are well designed, and</i> <i>(ii) are of appropriate bulk and scale, and</i> <i>(iii) provide amenity and liveability,</i>	<p>The proposed development represents superior urban design outcomes compared to strict height compliance. The height variation enables strategic bulk redistribution toward the Lindfield Village Hub and away from low-density residential interfaces, creating appropriate transitions between zoning contexts.</p> <p>The design delivers 1,174m² of communal open space (27% of site area) and maintains 30.8% deep soil zones, demonstrating commitment to amenity. Solar access analysis shows 78 units (70.3%) receive greater than two (2) hours solar access, with comprehensive provision across the diverse unit typologies. The variation facilitates better amenity outcomes than a compliant scheme would achieve,</p>



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TABLE 2: CONSISTENCY WITH THE AIMS OF CHAPTER 5 OF THE HOUSING SEPP	
Aim	Response
	supporting the Housing SEPP's design excellence objectives.
<i>(c) to encourage the development of affordable housing to meet the needs of essential workers and vulnerable members of the community.</i>	The proposed development provides 26 affordable units (23.4% of total units) comprising both infill affordable housing and SEPP affordable housing across multiple levels and unit types. The affordable housing component includes a diverse mix of 1BR, 2BR and 3BR units to accommodate different household compositions. The height variation is integral to delivering this substantial affordable housing component efficiently across the 10-level building, as strict compliance would compromise the spatial planning and cross-subsidisation viability required for this level of affordable housing provision within the TOD zone.

4.2 OBJECTIVES OF THE ZONE

The Site is zoned R4 High Density Residential pursuant to KLEP2015. Therefore, consideration has been given to the R4 zone objectives in **Table 3** below:

TABLE 3: CONSISTENCY WITH THE R4 ZONE OBJECTIVES	
Objective	Response
<i>To provide for the housing needs of the community within a high density residential environment.</i>	The proposed development provides 111 units within the R4 High Density Residential zone, delivering diverse housing typologies (14 x 1BR, 37 x 2BR, 49 x 3BR, 11 x 4BR) to meet varied household needs. The height variation is essential to achieving this housing yield at an FSR of 3.19:1 on the 4,324m ² site, maximising housing supply within the high-density zone while maintaining amenity standards through 1,177m ² of communal open space and 30.8% deep soil provision.
<i>To provide a variety of housing types within a high density residential environment.</i>	The proposed development delivers significant housing diversity with 111 units across four dwelling types, ranging from compact 1-bedroom units for



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	singles and couples to larger 4-bedroom units for families. This variety is distributed across 10 levels, with the height variation enabling efficient provision of larger family units that would be compromised under strict height compliance. The development provides suitable high-density housing options that contrast with the lower density residential zones to the west of the site.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The proposed development incorporates 1,474m ² of circulation and amenity spaces to serve the 111 units, including communal facilities distributed across the building levels. The height variation enables efficient vertical circulation and communal space provision that would be compromised by strict height compliance requiring building stepping or reduced floor plates.
<i>To provide for high density residential housing close to public transport, services and employment opportunities.</i>	The proposed development delivers 111 high-density units within 400m of Lindfield Railway Station and adjacent to Lindfield Village Hub services and employment. The height variation is integral to maximising housing delivery in this strategic TOD location, with efficient building design enabling optimal unit yield while maintaining solar access compliance (78 units receiving greater than (2) hours solar access). Strict height compliance would reduce housing supply in this prime transit-accessible location, undermining the zone's strategic objectives.

4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

Subclause 4.6(3)(a) (refer to **Section 2.1**) emphasises the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances.

The ways in which compliance with a development standard may be held to be “unreasonable or unnecessary” are well established. In *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), Preston CJ provided a non-exhaustive list through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), in *Initial Action Pty Limited v Woollahra Municipal Council* [2018]



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NSWLEC 118 (*Initial Action*) the Court held that the common ways of demonstrating that compliance with a development standard is unreasonable or unnecessary as outlined in *Wehbe* are equally applicable to clause 4.6.

The five methods outlined in *Wehbe* include:

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).*
- *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).*
- *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).*
- *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Method).*
- *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method).*

It is sufficient to demonstrate only one of these methods to satisfy clause 4.6(3)(a) of LCLEP 2009 (*Wehbe*, *Initial Action* at [22], *Rebel* at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

In this case, it is demonstrated below that the First Method has been satisfied, and the aims of Chapter 5 of the Housing SEPP are achieved notwithstanding the non-compliance with the numerical standard (see also **Section 4.1** above).

When considering whether a development standard is appropriate and/or necessary, one must consider:

- the nature of the proposed variation;
- the Site context; and
- the design of the proposed development.

Following the decision in *Initial Action*, it was established that Clause 4.6 does not require an applicant to demonstrate that a development which contravenes a development standard have a better (or neutral) environment planning outcome than a development that complies with the development standard.

The standard is unreasonable and unnecessary in the circumstances of the case on the following basis:



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- The height variation results from the Site's unique convergence of planning challenges: its strategic TOD location within 400m of Lindfield Station requiring maximum housing yield (111 units at 3.19:1 FSR), its role as interface between distinct urban contexts, and its function delivering substantial affordable housing (26 units). Natural topography alone does not justify the variation, rather, the design responds to multiple strategic planning objectives that uniform height application would compromise.
- The variation enables urban design outcomes through strategic bulk redistribution toward Lindfield Village Hub and away from low-density residential interfaces. Maintaining consistent floor plates across 10 levels delivers housing diversity (14 x 1BR, 37 x 2BR, 49 x 3BR, 11 x 4BR) efficiently, whereas strict height compliance would require building stepping that reduces viable unit yield and affordable housing and apartment mix delivery.
- Shadow analysis in amended Architectural Plans in **Appendix C1** demonstrates full 2-hour midwinter solar access compliance for 78 units (70.3%) and neighboring properties. The development maintains 1,174m² communal open space (27% site coverage) and 30.8% deep soil provision while achieving density objectives. Updated diagrams show minimal additional overshadowing beyond compliant scenarios.
- The building design incorporates articulation and setback variations to minimise perceived bulk while delivering housing diversity in this transit-accessible location. The height variation supports Chapter 5 Housing SEPP objectives by maximising housing supply within the critical 400m TOD catchment, with the design achieving demonstrably better planning outcomes than strict compliance would deliver.
- The height positioning facilitates appropriate urban transitions between the E1 Local Centre zone and surrounding residential areas. The variation enables the development to relate appropriately to Lindfield Village Hub while stepping down toward sensitive residential interfaces, supporting strategic planning objectives that rigid height compliance would prevent.
- The variation delivers measurable public benefits: 111 units of housing supply, 26 affordable housing units, efficient infrastructure utilisation, and strategic TOD development. These benefits significantly outweigh any theoretical impacts, demonstrating that the proposed design achieves superior environmental planning outcomes compared to a height-compliant alternative.

The abovementioned justifications are considered valid, and in this instance the proposed Clause 4.6 Variation is acceptable. The proposed development represents a more efficient use of the Site and reduces bulk and scale impacts through the implementation of the height variation.

The FSR reduction from 3.25:1 to 3.19:1, foregoing approximately 252m² of GFA whilst maintaining maximum affordable housing delivery of 26 affordable housing units. The height variation facilitates strategic redistribution of this reduced bulk toward appropriate interfaces. The design responds through refinement rather than maximisation



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The aims of Chapter 5 of the Housing SEPP and the R4 zone are considered upheld as a result of the proposed development. As such, the application of the height of building development standard is considered unreasonable and unnecessary for the proposed development.

4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

In *Initial Action*, Preston CJ observed that in order for there to be “sufficient” environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

The environmental planning grounds to justify the departure of the development building height development standard are as follows:

- The Amended Architectural Plans in **Appendix C1** demonstrate how the height variation enables strategic building mass positioning toward Lindfield Village Hub and away from sensitive low-density residential interfaces. This redistribution creates appropriate urban transitions while maintaining efficient floor plates across 10 levels, delivering housing diversity (14 x 1BR, 37 x 2BR, 49 x 3BR, 11 x 4BR) that stepped building forms would compromise.
- The height variation delivers demonstrably superior planning outcomes by maximising housing supply (111 units) and affordable housing delivery (26 units) within the critical 400m TOD catchment of Lindfield Station. Strict height compliance would significantly reduce housing yield and undermine the Housing SEPP's strategic objectives for transit-oriented development, representing a net loss of public benefit.
- The variation facilitates orderly and economic land use by enabling consistent floor plates that optimise spatial efficiency for both market and affordable housing components. Strict compliance requiring building stepping would create irregular floor configurations that reduce unit viability, compromise affordable housing cross-subsidisation, and result in inefficient infrastructure provision across the 4,324m² site.
- Shadow analysis demonstrates full midwinter solar access compliance for 78 units (70.3%) and neighboring properties, with the development maintaining 1,174m² communal open space (27% site coverage) and 30.8% deep soil provision. The variation enables these amenity outcomes while achieving density objectives, demonstrating no measurable environmental detriment.
- The development fully achieves Chapter 5 Housing SEPP objectives by delivering mid-rise residential development with appropriate bulk and scale within the TOD zone. The height positioning supports affordable housing delivery requirements while maintaining design



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excellence, directly furthering the Housing SEPP's strategic aims that rigid height compliance would frustrate.

- The variation responds to the Site's unique interface between distinct urban contexts, enabling appropriate height transitions from the E1 Local Centre zone toward residential areas. This contextual response delivers better urban design outcomes than uniform height application, supporting strategic planning objectives under the *EP&A Act*.
- The environmental planning grounds are substantiated by measurable outcomes: 111 units of housing supply in a transit-accessible location, substantial affordable housing provision, efficient infrastructure utilisation, and demonstrated amenity compliance. These quantified benefits significantly outweigh impacts from the height variation, establishing clear environmental planning justification under *Initial Action* principles.

For the reasons outlined above, it is considered that the proposed variation to the building height under Section 16 (3) is appropriate and can be clearly justified having regard to the matters listed within clause 4.6(3)(b) under KLEP2015.

4.5 OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

All planning determinations made under the EP&A Act are required to be made with regard to the objects of the Act in accordance with section 1.3 of the EP&A Act. **Table 4** below assesses the proposed development against the objects of the EP&A Act.

TABLE 4: EP&A ACT OBJECTIVES	
Objective	Response
<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</i>	The proposed development delivers substantial social and economic benefits through strategic housing supply (111 units) and affordable housing provision (26 units, 23.4% of total) within 400m of Lindfield Railway Station. The height variation enables superior resource utilisation by maximising housing delivery on transit-accessible land while maintaining demonstrated amenity compliance (78 units receiving greater than two (2) hours solar access, 1,174m ² communal open space, 30.92% deep soil provision). This represents optimal land management that strict height compliance would prevent.
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic,</i>	The development integrates economic sustainability through efficient TOD development,



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TABLE 4: EP&A ACT OBJECTIVES	
Objective	Response
<i>environmental and social considerations in decision-making about environmental planning and assessment,</i>	environmental sustainability through comprehensive shadow analysis demonstrating no adverse impacts, and social sustainability through substantial affordable housing delivery. The height variation facilitates this integration by enabling strategic bulk positioning that maintains neighborhood amenity while maximising public benefit. Strict compliance would compromise this sustainable balance by reducing housing yield and affordable housing viability.
<i>(c) to promote the orderly and economic use and development of land,</i>	The height variation directly promotes orderly and economic land use by enabling efficient floor plates across 10 levels that optimise spatial delivery for both market and affordable housing components. The strategic positioning toward Lindfield Village Hub creates appropriate urban transitions while maximising housing yield within the critical TOD catchment. Strict height compliance would require inefficient building stepping, reducing unit viability and representing suboptimal land utilisation contrary to this objective.
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	The proposed development delivers 26 affordable housing units (23.4% of total) comprising both infill affordable housing and SEPP affordable housing across multiple dwelling types. The height variation is integral to this delivery by enabling the cross-subsidisation viability and spatial efficiency required for substantial affordable housing provision. Strict height compliance would fundamentally compromise affordable housing delivery by reducing overall unit yield and development viability.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	Comprehensive environmental assessment in the Biodiversity Development Assessment Report at Appendix 28 demonstrates environmental protection. The height variation enables superior environmental outcomes by concentrating development intensity within the TOD zone while



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TABLE 4: EP&A ACT OBJECTIVES

Objective	Response
	maintaining 30.92% deep soil provision and comprehensive tree protection measures. The strategic bulk positioning minimizes environmental impact compared to alternative development scenarios.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	The Site is not subject to heritage constraints under the <i>Heritage Act 1977</i> or KLEP 2015 heritage provisions. The development incorporates appropriate acknowledgment of Traditional Owners and responds contextually to the existing and planned character of Lindfield Village Hub and surrounding residential areas through strategic height positioning and urban design excellence.
<i>(g) to promote good design and amenity of the built environment,</i>	The Urban Design report at Appendix C10 demonstrates design excellence through strategic bulk redistribution, articulated building forms, and comprehensive amenity provision. The height variation enables superior design outcomes by facilitating appropriate urban transitions, efficient floor plate delivery, and strategic positioning away from sensitive residential interfaces. Technical analysis demonstrates measurably better planning outcomes compared to strict height compliance.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposed development will be constructed to meet all relevant building standards and codes, ensuring occupant health and safety. The height variation does not compromise construction standards but rather enables efficient building design that supports proper construction methodology and ongoing maintenance access across the 10-level structure.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	As a State Significant Development Application, the proposal appropriately engages state-level assessment through the Department of Planning, Housing and Infrastructure while considering local planning context through KLEP 2015 and community consultation processes. The height



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TABLE 4: EP&A ACT OBJECTIVES

Objective	Response
	variation supports strategic state planning objectives for TOD development and affordable housing delivery.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The SSDA process includes comprehensive community consultation requirements, enabling appropriate community participation in the assessment process. The development responds to community concerns through design modifications while maintaining strategic planning objectives that deliver broader community benefits through housing supply and affordable housing provision within the TOD catchment.

4.6 MATTERS OF STATE AND REGIONAL SIGNIFICANCE

The proposed non-compliance with Section 16 (3) of the Housing SEPP will not give rise to any matters of significance for State or regional environmental planning. They will also not conflict with any State Environmental Planning Policy or Ministerial Directives under section 9.1 of the EP&A Act.

Planning Circular PS 08-014, issued by the former NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by full Council rather than under delegation. It is noted that this variation does exceed 10% and will be determined by the Department of Planning, Housing and Infrastructure (DPHI) as a SSDA.

4.7 SUMMARY

For the reasons outlined above, it is considered that the variation to Section 16 (3) of the Housing SEPP is well-founded in this instance and is appropriate in the circumstances. Furthermore, the Variation Request is considered to be well-founded for the following reasons as outlined in Clause 4.6 of KLEP2015, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*:

- The development is consistent with the objectives of the particular standard (refer to **Section 4.1**);
- The development is consistent with the objectives for development within the zone and long term strategic intentions to maintain and preserve employment land (refer to **Section 4.2**);
- Compliance with the development standard is unreasonable and unnecessary in the circumstances. The building design incorporates articulation and setback variations to minimise perceived bulk whilst delivering housing diversity in a transit-accessible location (refer to **Section**



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4.3);

- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4**); and
- The development does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 4.5**);

Overall, it is considered that the proposed variation to the maximum building height control is entirely appropriate and can be clearly justified having regard to the matters listed within Clause 4.6 of KLEP2015.



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PART E CONCLUSION

For the reasons outlined above, it is requested that Council support the Variation Request, which seeks approval for non-compliance with Section 16 (3) of the Housing SEPP for the following reasons:

- The development is consistent with the objectives of the particular standard (refer to **Section 4.1**);
- The development is consistent with the objectives for development within the zone and long term strategic intentions to maintain and preserve employment land (refer to **Section 4.2**);
- Compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 4.3** as part of the First Limb satisfied);
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4** as part of the First Limb satisfied);
- The Proposed development is consistent with the objectives of the EP&A Act (refer to **Section 4.5**); and
- The development does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 4.6**);

The Variation Request demonstrates that the height variation delivers measurably superior planning outcomes through strategic bulk redistribution enabling 111 diverse housing units with substantial affordable housing provision (26 units, 23.4%) within the critical TOD catchment, while maintaining demonstrated amenity compliance and environmental protection. The variation responds to the Site's unique convergence of planning challenges, it's strategic TOD location, interface between urban contexts, and affordable housing delivery requirements, that uniform height application would compromise.

The FSR reduction voluntarily foregoes approximately 252m² of the maximum GFA (of FSR 3.25:1) whilst maintaining affordable housing provision of a minimum 17% of the maximum GFA (inclusive of the 30% uplift). Refer to the Development Data and GFA Plan in the amended Architectural Plans in **Appendix C1**. The calculated area of the required affordable housing at a minimum 17% of the maximum GFA equates to 26 units, comprising of 1-, 2- and 3-bedroom arrangements. The corresponding height development standard of 28.6m, with the sought height variation enables, strategic redistribution of this reduced bulk towards the Lindfield Village Hub and away from sensitive residential interfaces, demonstrating design constraint rather than siter oversaturation. The development achieves superior planning outcomes: reduced overall building mass combined with optimal bulk positioning through strategic height placement and delivery of affordable housing in accordance with the Housing SEPP.

Technical analysis establishes clear environmental planning grounds under Clause 4.6, showing that strict compliance would reduce housing yield by 15-20%, undermine affordable housing viability, and represent suboptimal utilisation of transit-accessible land contrary to Housing SEPP objectives and EP&A Act principles. The proposal satisfies all statutory requirements while delivering quantified public benefits that justify favorable consideration by the Department of Planning, Housing and Infrastructure.



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Given the justification provided above, the Variation Request is well founded and should be favourably considered by the Department of Planning, Housing and Infrastructure.

