

Attachment C

Clause 4.6 written request - Variation to Building Height Standard

1-3 Reid and 2-4 Woodside Ave,
Lindfield

PREPARED FOR

CPDM Pty Ltd

April 2026

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Mecone acknowledges the Traditional Custodians of the land on where this project is undertaken and across the Mecone offices that this report is prepared, paying respect to the Elders past and present. We recognise the ongoing connection of Aboriginal and Torres Strait Islander peoples to land, waters, and culture.

Project director

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Revision	Revision date	Status	Authorised: Name & Signature	
A	11 April 2025	Draft	Amanda Harvey	
B	16 April 2025	Final	Amanda Harvey	
C	December 2025	TOA - Response to Submissions	Chris Shannon	
D	7 April 2026	RFI -TOA	Chris Shannon	

* This document is for discussion purposes only unless signed and dated by the persons identified. This document has been reviewed by the Project Director.

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1 Introduction

The State Significant Development Application (SSDA) for 1-3 Reid Street and 2-4 Woodside Avenue, Lindfield (the site) seeks approval for the demolition of existing structures, and the construction of a residential flat building comprising of 89 residential apartments, civil works (including basement car parking), landscaping and tree removal. The application has been lodged pursuant to the provisions of Part 2, Division 1 (In-fill affordable housing (**AH**)) and Chapter 5 Transport orientated development (**TOD**) of *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

The SSDA proposes an exceedance of the 28.6 metre building height development standard that applies to the site pursuant to section 16(3) of the Housing SEPP. The maximum building height standard is established due:

- to the 22 metre building height development standard pursuant to Section 155(2) of the Housing SEPP
- a further 30% (i.e. 6.6 metre) building height bonus pursuant to Section 16(3) of the Housing SEPP, due to more than 15% of the development's gross floor area (**GFA**) comprising of in-fill affordable housing.

This written variation request has been prepared pursuant to Clause 4.6 of the *Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015)* and forms a written request that justifies the contravention of the building height development standard based upon specific circumstances of this proposal. It is submitted that permitting the proposed variation to Sections 16(3) and 155(2) of the Housing SEPP will allow for improved planning outcomes at the site.

Further, this request has been revised in response to letters provided by the Department of Planning, Housing and Infrastructure (**DPHI**)¹, which sought amendments to the proposal including associated modifications to this written variation request.

It is noted that the applicable height development standard has changed following the formalisation and current enforcement of Ku-ring-gai Council's TOD alternative controls. Consequently, the proposed building height now exceeds the height provisions permitted under the Housing SEPP.

As part of the RFI package, DPHI requested that the Clause 4.6 variation be updated. It is noted that as the application was lodged pursuant to Chapters 2 and 5 of the Housing SEPP, the site will still be a variation to the 28.6 m height stipulated in the Housing SEPP.

¹ DPHI Ref. SSD-78493518, dated 17 July 2025.



2 Site description

The site consists of four allotments: Lots 98, 99, 104 in Deposited Plan 6608, Lot 10 in Deposited Plan 794252, Lot X in Deposited Plan 377076, and Lot A in Deposited Plan 354389, located at 1-3 Reid Street and 2-4 Woodside Avenue, Lindfield. It is within the Ku-ring-gai LGA, R2 Low Density Residential zone, 260 metres north of Lindfield Transport Interchange and 13.6 km northwest of Sydney CBD. The site has access to Lindfield Town Centre via a walkway and cycleway along the eastern side of the North Shore Railway Line.

The site fronts Lindfield Avenue (south-west), Woodside Avenue (south-east), and Reid Street (north-west). It is generally rectangular in shape and spans an area of approximately 3,852.8 square metres. The topography of the site is varied, with ground levels ranging from RL 91.75m AHD at the north-eastern corner, sloping down to RL 87.80m AHD along the Woodside Avenue frontage. The existing development on the site comprises detached low-density residential dwellings, and the eastern boundary is immediately adjacent to four other residential properties.

Opposite the site, across Woodside Avenue, the land is zoned R4 High Density Residential, allowing for residential flat buildings and shop top housing developments with permitted building heights generally ranging between six and eight storeys.

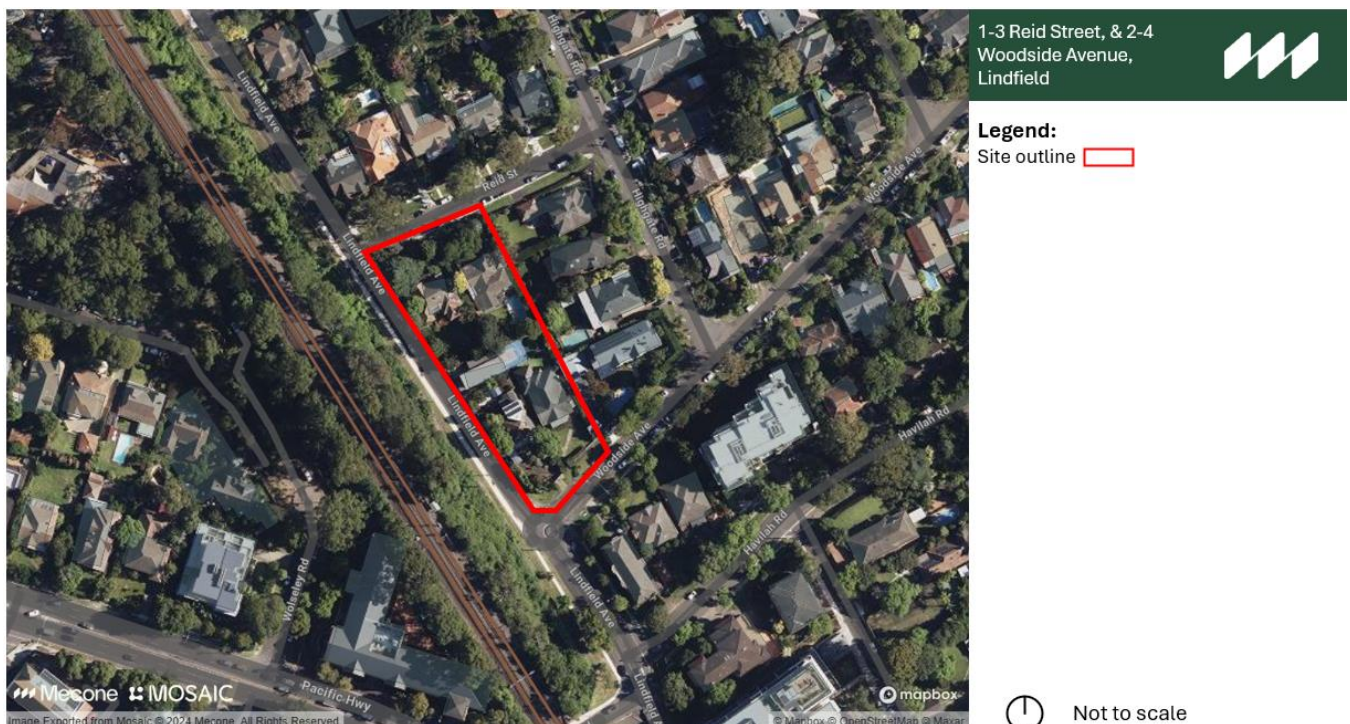


Figure 1: Aerial Image – Site is denoted by the red border

Source: Mecone Mosaic, 2024

3 Proposed development

Pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), consent is sought for the demolition of all existing structures and the construction of a eight storey (plus basement) residential flat building. The proposal has been lodged as a State Significant Development Application (SSDA) pursuant to Chapters 2 and 5 of the Housing SEPP.

An overview of the works being proposed is as follows:

- site preparation works, including the demolition of existing site structures, tree removal, basement excavation and preparatory earthworks
- the construction of a nine-storey residential flat building, which is to contain:
 - 89 residential apartments (including 14 IAH apartments and 3 TOD apartments), including:
 - six one-bedroom apartments
 - 31 two-bedroom apartments
 - 50 three-bedroom apartments
 - two four-bedroom apartments
 - two basement levels containing 118 parking spaces, residential storage, car wash bay, loading bay, bicycle parking areas, plant areas, an Onsite Stormwater Detention (OSD) tank and waste storage and collection facilities
- civil works (including stormwater and services)
- landscape works (including the removal of 26 trees and planting for 41 new trees)
- the provision of new onsite utilities and connections.



Figure 2: West Elevation Plan – Lindfield Avenue

Source: PBD Architects, 2026



Figure 3: South Elevation Plan – Woodside Ave

Source: PBD Architects, 2026

4 Relevant planning instrument, development standard and proposed variations

4.1 Environmental planning instrument to be varied

The environmental planning instrument (EPI) is the Housing SEPP.

At the time this SSDA was lodged, Chapter 5 (Transport oriented development) of the Housing SEPP applied to the site. More specifically under Section 152(1)(i)² of the SEPP the site is located within a TOD area³ and an LGA where this chapter is applicable.



Figure 4: An extract of the TOD site and area mapping, which denotes areas that are subject to Chapter 5 of the Housing SEPP. The subject site is denoted by the red border, the TOD area is denoted by the light green circle and TOD sites are denoted by blue shading.

Source: NSW Government, 2025

Additionally, Chapter 2, Part 2, Division 1 (In-fill affordable housing) of the Housing SEPP also applies pursuant to Section 15C of the Housing SEPP.

² Since the time that this SSDA was submitted, on 5 June 2025, Ku-ring-gai Council (**Council**) formally adopted an alternative plan to replace the TOD Program, being the Ku-ring-gai LGA (Alternative Plan), which has since been submitted to the NSW Government for review. On 13 June 2025, the NSW Government published a revised TOD Sites Map, which turns off the TOD Program in the Ku-ring-gai LGA except for sites that were already the subject of SSDAs or where Secretary's Environmental Assessment Requirements (SEARs) relying on the TOD Program had been issued.

³ Under the Housing SEPP Transport Oriented Development Area means land identified as a 'Transport Oriented Development Area' on the Transport Oriented Development Sites Map.



4.2 Site zoning

The site is zoned as an R2 Low Density Residential zone; refer to **Figure 3** below for an extract of the LEP land zoning map.

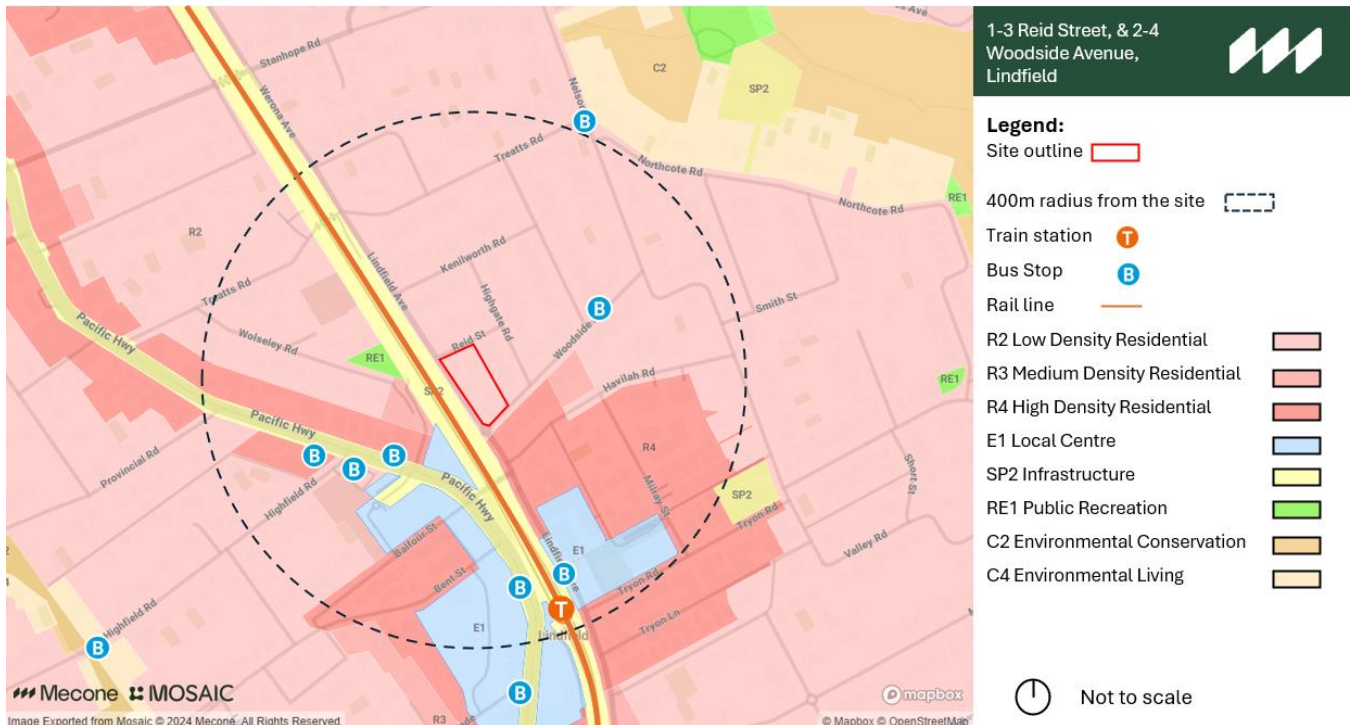


Figure 4: Extract of KLEP 2015 Land Zoning Map - Site is denoted by the red border

Source: Mecone Mosaic, 2024



4.3 Development standard to be varied

4.3.1 Application of Section 16(3) of SEPP (Housing) 2021

The development standard to be varied is 16(3)⁴ of the Housing SEPP. For reference, Section 16 provides the following: (underline and bold for emphasis has been added)

16 Affordable housing requirements for additional floor space ratio

- (1) *The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the development on the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).*
- (2) *The minimum affordable housing component, which must be at least 10%, is calculated as follows—*
$$\text{affordable housing component} = \frac{\text{additional floor space ratio (as a percentage)}}{2}$$
- (3) **If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the development on the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).**

Example—

Development that is eligible for 20% additional floor space ratio because the development includes a 10% affordable housing component, as calculated under subsection (2), is also eligible for 20% additional building height if the development involves residential flat buildings or shop top housing.

- (4) *This section does not apply to development on land for which there is no maximum permissible floor space ratio.*

⁴ Section 18 of the Housing SEPP does not apply, as with regard to Section 18(1)(b), the site is the subject of an FSR development standard.



4.3.2 Details of the development standard

The prescribed building height development standard that applies to the site pursuant to clause 4.3(2) of the KLEP 2015 is 29 metres.

Despite the KLEP 2015 permitting a maximum 29 m building height, at the time this SSDA was submitted the site was also identified as a TOD site. Section 155(2) of the Housing SEPP provides a 22 metre building height development standard to the site. For reference, Section 155 provides the following: (bold and underline added for emphasis)

155 Maximum building height and maximum floor space ratio

- (1) *This section identifies development standards for development under this chapter that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

Note—

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

- (2) **The maximum building height for a residential flat building in a Transport Oriented Development Area is 22m.**
- (3) *The maximum building height for a building containing shop top housing in a Transport Oriented Development Area is 24m.*
- (4) *The maximum floor space ratio for a residential flat building or a building containing shop top housing in a relevant residential zone or relevant employment zone in a Transport Oriented Development Area is 2.5:1.*
- (5) *This section does not apply to the extent a provision of another chapter of this policy or another environmental planning instrument permits a greater maximum building height or floor space ratio for a residential flat building or building containing shop top housing on the land.*

In addition, as the SSDA will provide 17% affordable housing, the development qualifies for floor space ratio (**FSR**) and building height bonuses of 30%, pursuant to Sections 16(1) and 16(3) of the Housing SEPP respectively. Based on 22 metre building standard provided by Section 155(2) of the Housing SEPP and the 30% (i.e. 6.6 metre) bonus height, the maximum permitted building height standard is 28.6 metres.

When the prescribed development standards under Sections 155(2) and 16(3) of the Housing SEPP are applied, the site is afforded a maximum HOB of 28.6 metres.

The proposed development achieves a HOB of 30.15 metres. This is an exceedance of 5.42% (1.55m) from the Housing SEPP.

4.4 Details of proposed building height development standard variation

Areas of the development that are subject to exceedance in the maximum permitted 28.6m building height under the Housing SEPP relates to the north-western end of Level 9 and the southwest portions of Level 9 of the proposal (see **Figures 7** and **8**).

Elements that are proposed to breach the 28.6 metre building height standard and degree of variation to the building height is as follows:

- The uppermost section of the lift overrun on the top of Building A (950mm variation), the screen around the rooftop plant area (1,550mm variation), and a minor section of the parapet (750mm variation)
- The uppermost section of the lift overrun on the top of Building B (440mm variation), the screen around the rooftop plant area (800mm variation), and a minor section of the parapet.

Due to the site's sloped topography, the size of variations associated with the above elements varies, with the most sizable variations relate to the lift overruns and screening (310mm variation).

As demonstrated by **Figures 6** and **7** below, the greatest point of non-compliance when measured from existing ground level is the lift overruns, with a maximum height of 30.15 metres.

The upper most height for only small parts of the building constitutes an exceedance of 5.42% (1.5D5m) variation to the 28.6 metre building height development standard permitted by Sections 155(2) and 16(3) of the Housing SEPP.

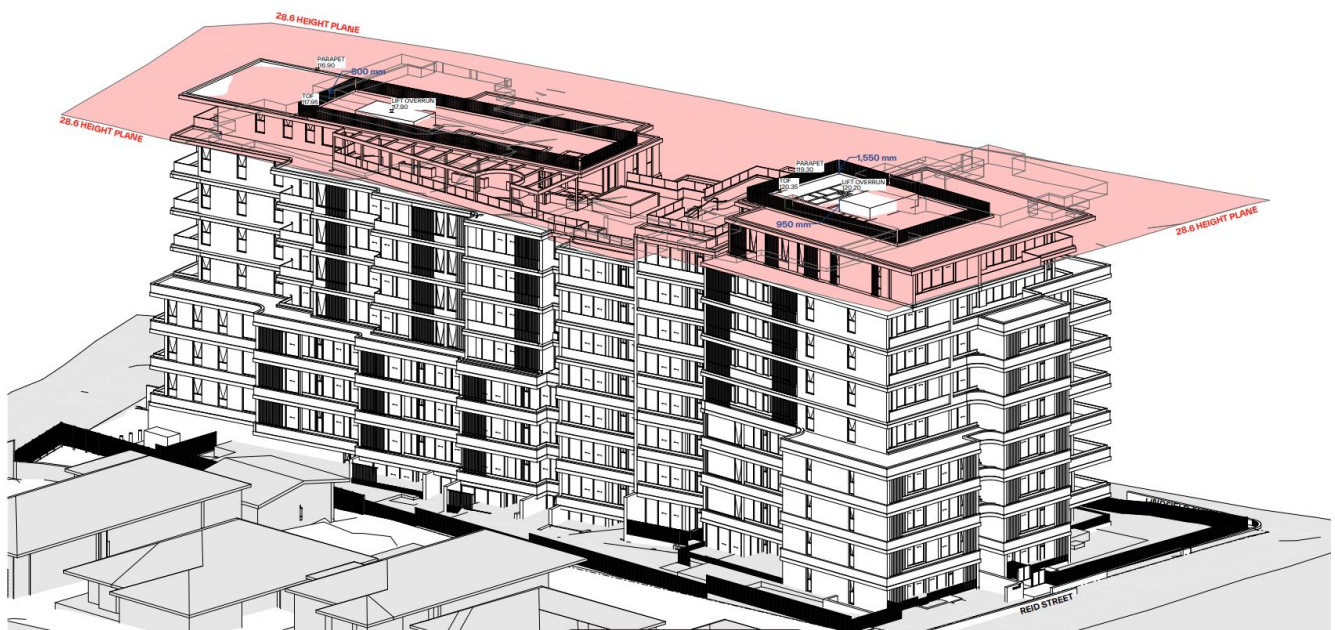


Figure 5: A 3D model of the development as viewed from the east, showing proposed elements that do not comply with the 28.6 metre building height overlay (denoted by the pink overlay)

Source: PBD Architects, 2026

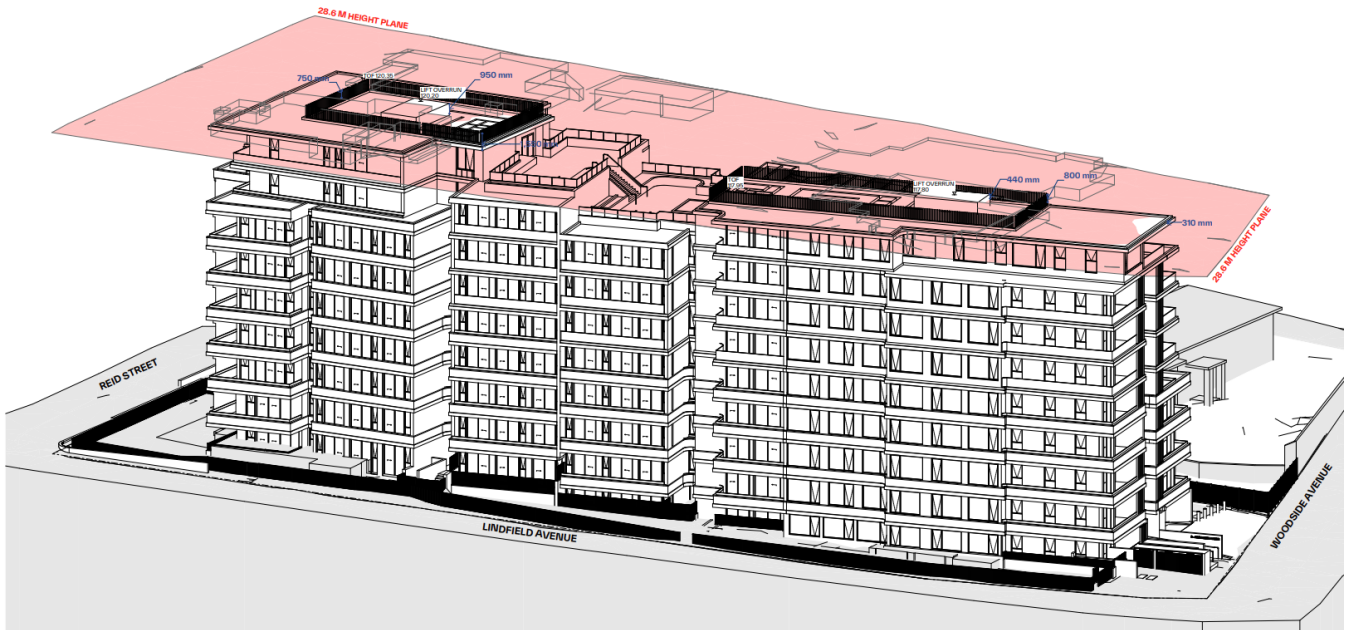


Figure 6: A 3D model of the development as viewed from the west, showing proposed elements that do not comply with the 28.6 metre building height overlay (denoted by the pink overlay)

Source: PBD Architects, 2026

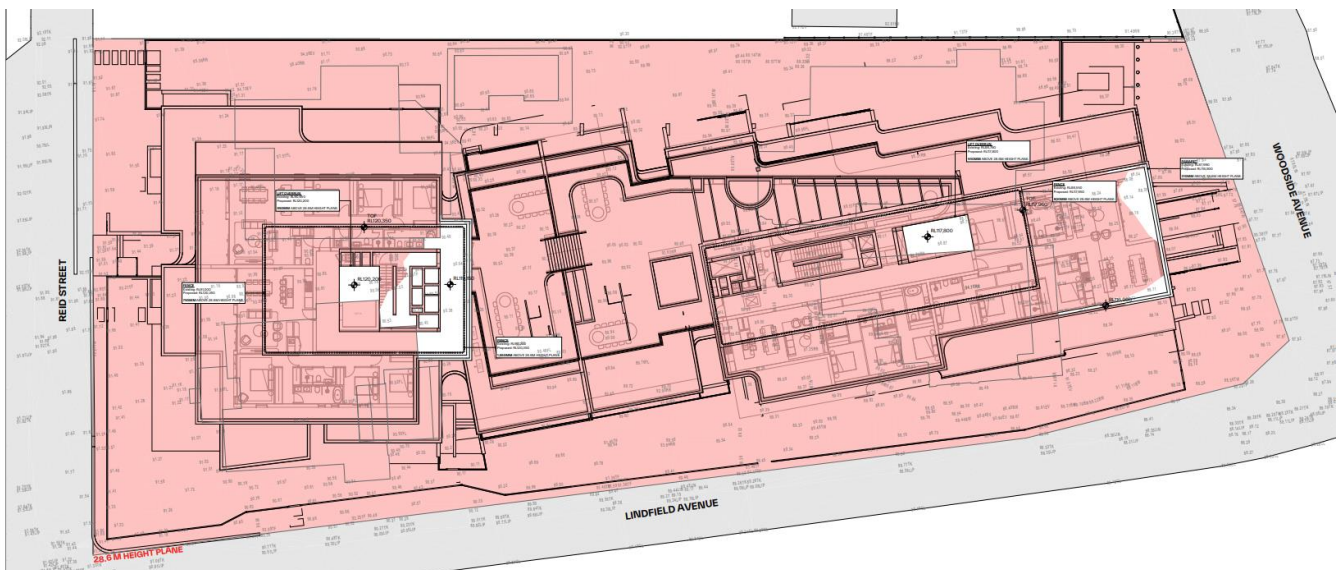


Figure 7: A height limit diagram which displays the proposed elements that do not comply with the 28.6 metre building height overlay (denoted by the pink overlay)

Source: PBD Architects, 2026



5 Assessment

5.1 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

In *Wehbe V Pittwater Council* (2007) 156 LGERA 446 (Wehbe), Preston CJ set out 5 different ways in which an objection (variation) may be well founded and under which a proponent could demonstrate that compliance with a development standard is unreasonable or unnecessary as per Clause 4.6(3)(a)).

For reference, the five ways in which a variation may be well founded are listed as follows:

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard;***
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *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;*
5. *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 that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

It is generally understood that Clause 4.6(3) can be satisfied if it is established that a development satisfies one or more of the above scenarios. This objection is based on the **first test**, which is addressed further below.

In Chapter 2, Part 2, Division 1 of the Housing SEPP, there are no objectives that are relevant to the assessment of building height; the only objective within this Division is contained within Section 15A of the Housing SEPP, and provides the following:

The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.

Such an objective would be met, through the provision of 16 high quality and variably sized affordable dwellings within the development.

Further, while this written request seeks to vary Section 16(3) of the Housing SEPP, for completeness the aims of Chapter 5 (as provided by Section 150 of the Housing SEPP) have also been considered. The aims of Chapter 5 (pursuant to Section 150 (Aims of Chapter) of the Housing SEPP) provide the following:

- (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.*



Mecone's Assessment against Section 150(a)

The subject site is located well within 400 metres walking distance of Lindfield Station, approximately 260 metres from the site to the nearest public access point, as defined by the Housing SEPP. While the eligibility criteria specifically reference heavy rail stations, Lindfield Station also functions as a key public transport interchange, providing access to both the T1 and T9 railway lines as well as numerous bus services connecting to surrounding centres, including Chatswood and Macquarie Park.

The proposed development replaces the existing four dwellings with 89 apartments, representing an increase of 85 dwellings, a density increase of 2,125%. This substantial increase directly aligns with the objectives of Section 150(a), significantly boosting housing supply within 400 metres of public transport and associated local amenities.

The site presents specific physical constraints that influence the design, including:

- A north-to-south sloping topography,
- Varying dimensions and progressive narrowing towards the southern boundary,
- The requirement to address three street frontages, and
- The context of existing surrounding development.

The proposed development has been carefully designed to respond to these constraints. The layout maximises the site's potential through a contextually responsive design that ensures functional efficiency, integrates effective stormwater management, and delivers a positive interface with the streetscape.

To achieve the additional housing density while accommodating these site-specific conditions, a modest variation to the building height development standard is required. This minor height variation is consistent with the intent of Section 150(a), as it facilitates the delivery of additional high-quality, accessible dwellings in a location well-served by public transport.

In summary, the proposal satisfies the objectives of Section 150(a) by:

- Substantially increasing housing density and supply in a highly accessible location,
- Providing well-designed dwellings that respond to the physical constraints and context of the site, and
- Supporting the Housing SEPP's aim of optimising residential development around existing and planned public transport

Mecone's Assessment against Section 150(b)

The proposal will deliver a residential flat building that is close to Lindfield Station. The design of the building considers and responds to the context of the area and the design principles prescribed by Schedule 9 of the Housing SEPP; while reference is made to Appendix F for responses to the design principles, to briefly summarise the proposal is well designed, in that it:

- Responds to site-specific considerations and local development context and character (see below for further discussion regarding character),
- Provides appropriate building form, height, bulk and scale,
- Is consistent with housing density that are envisioned within TOD areas,
- Provides affordable housing for the locality



- Provides good landscape design,
- Provides for very high levels of internal residential amenity,
- Optimises residential safety (refer to Section 6.6 within **EIS**),
- Provides a range of apartment sizes and layouts, with flexible floor plans and choices for varying and changing residential demographics, and
- Provides a design and external appearance that responds to both the existing and future development context, while presenting a high-quality interface to the public domain.

Further, the proposed development will provide appropriate height and bulk consistent with the future character of the locality.

When considering 'compatibility' with surrounding residential environments, reference is made to the planning principles within *Project Venture Developments v Pittwater Council* [2005] 141 LGERA 80; such principles determined that compatibility is not about 'sameness' but rather about a proposal's ability to exist in harmony with its surroundings. Compatibility also relates to the acceptability of a proposal's physical impacts on surrounding development. When considering the proposal's compatibility with the surrounding area, the two tests used in Senior Commissioner Roseth's findings are assessed below.

Test 1 - Is the proposal's appearance in harmony with the buildings around it and the character of the street?

The surrounding area, as detailed in the Environmental Impact Statement (EIS), features a highly diverse mix of development. This diversity is evident in the varying ages, building typologies, heights, bulk, and scale of existing developments, reflecting the range of zoning across the area.

The site is located within the Lindfield TOD precinct, within 260 metres walking distance of Lindfield Station. The desired future character of the area aligns with the intent of the TOD provisions under the Housing SEPP, which support higher-density, well-designed housing near public transport hubs to promote sustainable urban growth and reduce car dependency. The assessment below demonstrates that, despite the non-compliance, the proposed Height of Building (HOB) continues to achieve a development outcome that remains consistent with and compatible with the area's intended future character as envisioned by this policy. Therefore, the proposed nine storey development will facilitate a transition to these adjoining and existing residential developments.

This is evident at a more granular level when the scale of the proposed development is compared to the adjoining and future development per the description of developments below:

- Adjoining and immediate surrounding sites:
 - **2-8 Highgate Avenue:** Directly adjoining the site, these properties contain four residential dwellings. A separate SSD application is proposed for a nine-storey residential flat building, featuring affordable housing, basement car parking, and associated works (SSD-78493518).
 - **59 Linfield Avenue:** An older three-storey residential dwelling with a dual frontage to Woodside Avenue.
 - **1 Woodside Avenue:** An older single-storey residential dwelling with a dual frontage to Havilah.
 - **3 Woodside Avenue:** An older single-storey residential dwelling with a dual frontage to Havilah.
 - **2b Havilah Road:** A contemporary, high-density residential development comprising five-storey residential flat buildings with basement parking.
 - **Lindfield Avenue/ known as 7/1A Greengate Road, Killara:** Railway line
 - **2 Reid Street:** An older single-storey residential dwelling with a dual frontage to Lindfield Avenue.
 - **4 Reid Street:** An older single-storey residential dwelling
 - **6 Reid Street:** An older two-storey residential dwelling.



Surrounding area:

- The area is predominantly characterised by low-density residential development, comprising mainly one to two-storey single dwellings. These include a mix of traditional Federation-style homes and contemporary bungalows featuring brick and rendered facades.
- To the southeast, along Woodside Avenue, there is a noticeable shift in scale and density. This includes a six-storey residential flat building and an older two-storey brick building, which together provide a transition between the surrounding low-density dwellings and the emerging higher-density development.
- This gradual increase in building height and intensity reflects the area's evolution toward the Lindfield Shopping Centre precinct. This precinct features several six-storey residential flat buildings and a nine-storey mixed-use development, indicating a shift toward a more urbanised character while retaining elements of the established residential identity.

The surrounding context is as follows:

- To the north and between the site and Kenilworth Road, the area remains predominantly low-density residential, consistent with the R2 Low Density Residential zoning.
- To the east, toward Blenheim Road, the area is also largely low-density residential and zoned R2. However, several sites in close proximity to the Lindfield local centre now fall within the Lindfield Transit Oriented Development (TOD) Area and are subject to the provisions of Chapter 5 of the Housing SEPP.
- To the south and southeast, within the Lindfield local centre, the area comprises a mix of low-, medium-, and high-density development, including commercial and mixed-use buildings. This area is zoned E1 Local Centre and R4 High Density Residential and is undergoing a transition, as evidenced by recent developments of six and seven storeys (plus basement and rooftop) along Lindfield Avenue.
- To the west, the site is adjacent to Lindfield Railway Station and nearby R3 Medium Density and R4 High Density Residential zones. This area is also transitioning to medium- and high-density development and includes a large two-storey commercial building. It forms part of the Lindfield TOD Area and is also subject to the provisions of Chapter 5 of the Housing SEPP.

At the time of writing, several State Significant Development Applications and a planning proposal have either been recently approved or are currently under assessment in the Lindfield area. This indicates an expected transition of these sites into high-density residential development in the near future.

Refer to **Table 1** and **Figure 7** below for details of other State Significant Development applications within the Lindfield TOD area currently under consideration by DPHI.

Table 1 - Other State Significant Development Application in Lindfield

Site number	Address	Reference number	Description and Status
1	2-8 Highgate Road, Lindfield	SSD-78493518	• State Significant Development Application for in-fill affordable housing proximate to the site. • Demolition of existing structures and the construction of a 9 storey residential flat building with 83 apartments, including 23 affordable housing. • SEARs issued on 20 December 2024. • Status on the Major Projects tracker – Response to Submissions



Site number	Address	Reference number	Description and Status
2	27-29 Tryon Road, Lindfield	SSD-78669234	- State Significant Development Application for in-fill affordable housing proximate to the site. - Demolition of existing structures and the construction of a 9 storey residential flat building with 66 apartments, including affordable housing. - SEARs issued on 20 December 2024. - Status on the Major Projects tracker – Response to Submissions
3	12-16 Bent Street, Lindfield	SSD-78156462	- State Significant Development Application for in-fill affordable housing proximate to the site. 119 apartments including 29 affordable housing units - SEARs requested 29 November 2024. - Status on the Major Projects tracker – Assessment (more information required)
4	345 Pacific Highway, Lindfield	PP-2023-2371 RR-2024-9	- Planning proposal / rezoning review for 98 dwellings and 3,285m² of commercial floor space. - Rezoning review recommended the proposal should be submitted for a Gateway determination. - Rezoning review determination: 26 June 2024
5	59 – 63 Trafalgar Avenue and 1A and 1B Valley Road, Lindfield	SSD-79276958	- State Significant Development Application for in-fill affordable housing proximate to the site. 237 Apartments, including 48 affordable rental housing units - SEARs issued on 16 January 2025. - Status on the Major Projects tracker – Response to Submissions.
6	24, 26 & 28 Middle Harbour Road, Lindfield,	SSD-82548708	- State Significant Development Application for in-fill affordable housing proximate to the site. 94 apartments including 20 affordable housing units - SEARs requested 15 April 2025. - Status on the Major Projects tracker – Response to Submissions
7	11-19 Middle Harbour Road, Lindfield	SSD-82900461	- State Significant Development Application for a Concept proposal for an in-fill affordable housing proximate to the site. 173 apartments including 28 affordable housing units - SEARs requested 8 May 2025. - Status on the Major Projects tracker –Response to Submissions
8	10-14 Milray Street and 3 Havilah Road, Lindfield	SSD-85818457	- State Significant Development Application for in-fill affordable housing proximate to the site. 200 apartments including 49 affordable housing units - SEARs requested 12 June 2025. - Status on the Major Projects tracker – Prepare EIS
9	9-17 Balfour Street, Lindfield	SSD-85974227	- State Significant Development Application for in-fill affordable housing proximate to the site. 177 apartments including 37 affordable housing units - SEARs requested 13 June 2025. - Status on the Major Projects tracker – Assessment (more information required)
10	19 - 25 Balfour Street, Lindfield	SSD-82709458	- State Significant Development Application for in-fill affordable housing proximate to the site. 98 apartments including 27 affordable housing units - SEARs requested 22 April 2025.



Site number	Address	Reference number	Description and Status
			• Status on the Major Projects tracker – Response to Submissions
11	6-20 Middle Harbour Road, Lindfield	SSD-83431958	• State Significant Development Application for in-fill affordable housing proximate to the site. • 100 apartments including 22 affordable housing units • SEARs requested 5 June 2025. • Status on the Major Projects tracker – Response to Submissions
12	9-21 Beaconsfield Parade, Lindfield	SSD-81623209	• State Significant Development Application for in-fill affordable housing proximate to the site. • 377 apartments including 56 affordable housing units • SEARs requested 27 March 2025. • Status on the Major Projects tracker – Response to Submissions
13	2-4 Drovers Way & 9A Gladstone Parade, Lindfield	SSD-84875208	• State Significant Development Application for in-fill affordable housing proximate to the site. • 119 apartments including 24 affordable housing units • SEARs requested 26 May 2025. • Status on the Major Projects tracker – Prepare EIS
14	5-7 Beaconsfield Parade, Lindfield	SSD-85519964	• State Significant Development Application for in-fill affordable housing proximate to the site. • 151 apartments including 26 affordable housing units • SEARs requested 6 June 2025. • Status on the Major Projects tracker – Prepare EIS
15	1-5 Nelson Road, Lindfield	SSD-82899468	• State Significant Development Application for a Concept proposal for an in-fill affordable housing proximate to the site. • 167 apartments including 24 affordable housing units • SEARs requested 8 May 2025. • Status on the Major Projects tracker –Response to Submissions



Figure 8: Other Residential Flat Building Projects in Proximity to the Site

Source: Mecone

Like the subject site, the Housing SEPP permits:

- Large/high-density residential development (i.e. residential flat buildings) on R2 and R3 zoned sites, which under local planning provisions only allows low and medium density residential development, and
- High-density residential development with building heights and FSR of up to 22 metres and 2.5:1 respectively, which also is much greater than what is permitted by local planning standards.

These provisions are expected to transform R2/R3 zoned areas into a high-density residential precinct, similar to an R4 zone, with heights and scale consistent with this application.

Since the lodgement of this SSDA, Ku-ring-gai Council formally adopted on 5 June 2025 an alternative plan to replace the State-led TOD Program, known as the *Ku-ring-gai Local Government Area Alternative Plan* (the Alternative Plan). This plan has been submitted to the NSW Government for review. Subsequently, on 13 June 2025, the NSW Government released a revised TOD Sites Map, which deactivated the TOD Program across the Ku-ring-gai LGA except for sites that were already the subject of SSDAs or had been issued Secretary's Environmental Assessment Requirements (SEARs) under the TOD Program. The subject site is one of the remaining sites where the TOD Program continues to apply. This plan was approved on November 2025.

Under the approved Alternative Plan, the height of buildings applicable to the site has been increased from 9.5 metres to 29 metres, which exceeds the height permitted under Chapter 2 and Chapter 5 of the Housing SEPP. More broadly, the Alternative Plan introduces a revised height structure for the Lindfield Town Centre, including building heights ranging from 51.5 to 61 metres west of the rail line, and heights of 29 metres east of the rail line, stepping down to 9.5 metres towards the adjoining heritage conservation areas.



The table below outlines the variations to the KLEP 2015 and Housing SEPP, for completeness, noting that this variation request is subject to the Housing SEPP. It is important to note that if the proposal was assessed against the KLEP 2015, it would also be subject to the 30% bonus height under section 16 of the Housing SEPP, effectively establishing a height of 37.7m. Under this scenario, the proposed height of 30.15m is fully compliant.

Building A			
	<u>Height (RL)</u>	<u>Exceedance to 28.6m (under the Housing SEPP)</u>	<u>Exceedance to 29m (under the KLEP)</u>
	120,350mm	1035mm	635mm
<i>Lift Overrun</i>	120,200mm	1020mm	620mm
<i>Parapet</i>	119,300mm	110mm	Complies
Building B			
	<u>Height (RL)</u>	<u>Exceedance to 28.6m (under the Housing SEPP)</u>	<u>Exceedance to 29m (under the KLEP 2015) without the Housing SEPP bonus</u>
<i>Top of Fence</i>	117,950mm	415mm	15mm
<i>Lift Overrun</i>	117,800mm	300mm	Complies
<i>Parapet</i>	116,900mm	120mm	Complies

In summary, the surrounding area is expected to undergo a transition to a high-density residential environment in the near to medium term, consistent with the scale and density proposed by this SSDA. The design and built form of the proposal are compatible with both the existing urban context and the future character anticipated under the Housing SEPP and the Ku-ring-gai LEP.

Test 2 - Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

The proposed development covered by this variation request will not significantly affect neighbouring properties' amenity. While the proposed building height exceeds the development standards in some localised areas, it aligns with the built form outcomes envisaged in strategic planning for the area. The proposal reflects the transition towards higher-density development and is consistent with the scale and form expected in the future built environment. Consequently, the height variation will not cause unreasonable physical impacts on adjacent residential areas. This is explored in more detail below.

Overshadowing:

The shadow diagrams within **Figure 9** below and **Appendix E** of the EIS demonstrate that the proposed development will not result in excessive or unreasonable levels of overshadowing of adjoining sites, with an overview of solar access and overshadowing as follows:

- **59 Lindfield Avenue:**
 - Overshadowing begins at 1:00pm, affecting only the front setback with no impact on the existing dwelling. By 2:00pm, shadows extend to the front part of the dwelling, and by 3:00pm, they move across the northeastern corner of the building.
- **1 Woodside Avenue:**



- At 2:00 p.m., overshadowing is still minimal, affecting only the front setback and the northwestern corner of the dwelling. By 3:00 p.m., shadow covers the entire dwelling.
- **3 Woodside Avenue:**
 - At 3:00 p.m., overshadowing begins, with minimal impact limited to the northwestern corner of the dwelling and the western façade.

The areas of the proposed building that exceed the height limit—such as the lift overruns, rooftop plant areas, and the northwest and southwest parts of the roof—are situated in locations where any additional overshadowing caused by these elements will be contained within the development site. As a result, they will not have any additional impact on the adjoining site.

The minor wall height variations at Level 9 of the proposed development will not result in significant overshadowing of adjoining properties. Between 9:00 a.m. and 12:00 noon, shadows fall primarily over Lindfield Avenue. By 12:00 noon, a small portion of 59 Woodside Avenue and Lindfield Road is affected. By 3:00 p.m. on June 21, shadow extends to 1 Woodside Avenue and a portion of 3 Woodside Avenue. The slight height exceedance at this level generates only a minimal additional shadow impact when compared to a development that fully complies with the maximum height control.

Despite some overshadowing, the development complies with minimum solar access requirements. The affected properties receive at least three hours of direct sunlight, with overshadowing occurring later in the day. This ensures ample sunlight during the morning and early afternoon, maintaining adequate solar access.

- These impacts are justifiable and acceptable for several reasons.
 - Overshadowing occurs later in the day, which reduces the impact on the affected properties. At 1:00 p.m., the overshadowing is minimal, ensuring that the majority of daylight hours in mid-winter remain unaffected.
 - The building's height, massing, and orientation are consistent with the broader context of the area, where similar developments are planned or already exist, including other 9-storey buildings by the same developer. The gradual increase in overshadowing between 1:00 p.m. and 3:00 p.m. follows the natural progression of shadow movement throughout the day and is typical for developments of this scale.
 - the overshadowing does not have an adverse impact on the affected properties. Although most of the dwelling at 3 Woodside Avenue is in shadow by 3:00 pm, this occurs at a time when sunlight is less critical. Importantly, the development still meets the minimum solar access requirements, ensuring consistency with the expected outcomes for a development of this scale.
- The areas of the proposed building that exceed the height limit—such as the lift overruns, rooftop plant areas, and the northwest and southwest parts of the roof on Level 9—may result in some additional overshadowing beyond the development site. However, this impact will be minimal and will not cause any adverse effects on adjoining properties.
- The northwest-most part of Level 9, including the most south-western corner that breaches the building height standard, is positioned in such a way that any additional overshadowing will not adversely affect the dwellings 59 Lindfield and 1-3 Woodside Avenue. Given the rate at which the shadow moves from west to east, the living and private open space areas of these dwellings, along with those on the development site, will still receive more than three hours of direct solar access on June 21.

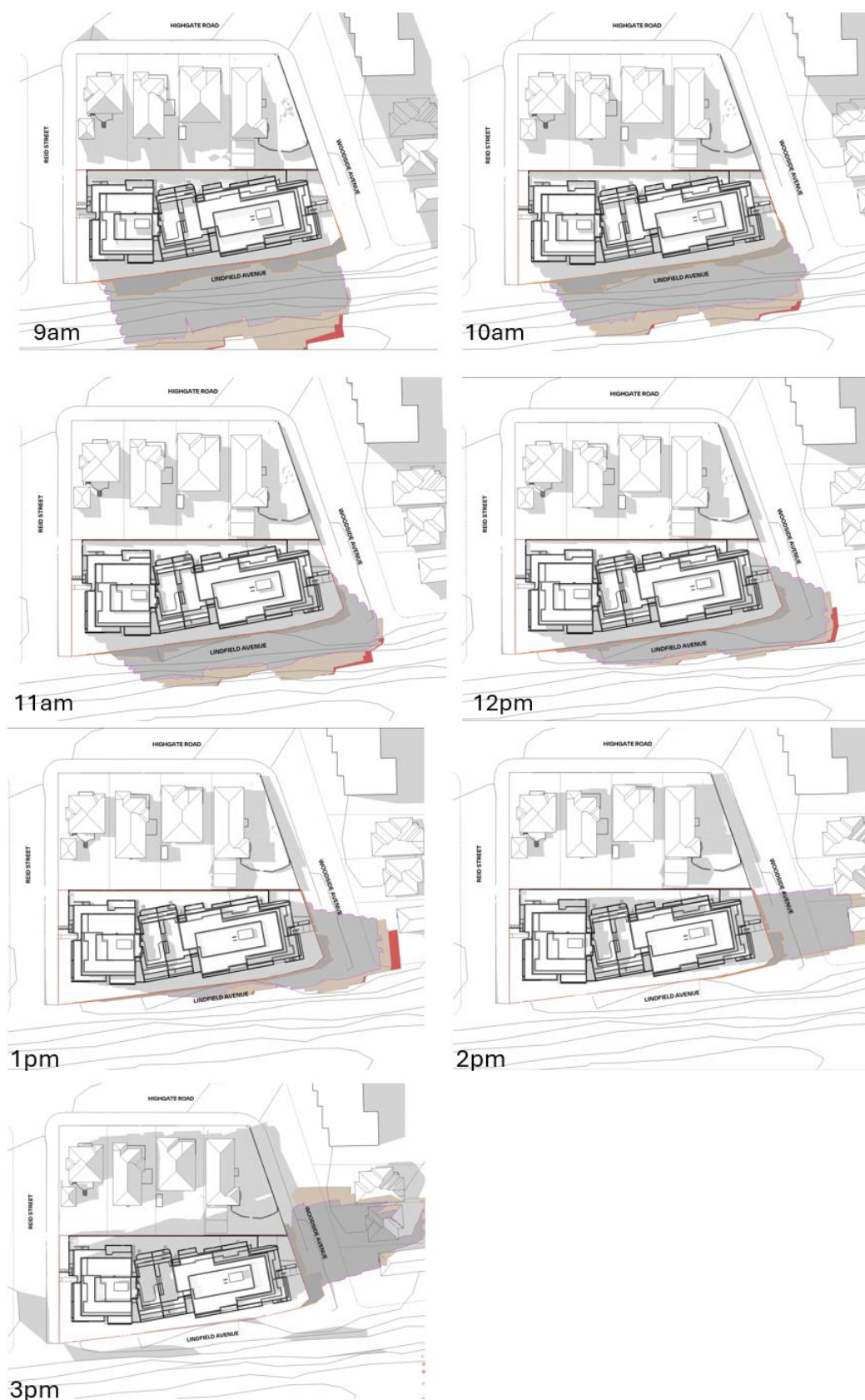


Figure 9: Overshadowing Impacts – additional shadowing created by breach of height control is shown Red

Source: Mecone



As demonstrated by the above, the size of the proposed development and the associated building height variations will therefore not result in excessive or unreasonable overshadowing impacts on adjoining residential sites.

Visual privacy:

The elements of the proposed development that exceed the building height standard include the lift overruns, rooftop plant equipment, and the upper-most sections of the walls on Level 9. Importantly, no rooftop common areas are proposed, meaning there will be no opportunities for additional overlooking from shared spaces. In terms of visual privacy, the site benefits from separation on three sides due to the surrounding road network, which provides effective screening and ensures there is no adverse impact on adjoining developments in those directions, regardless of the minor height exceedances. The only potential interface for visual privacy consideration is to the south, where no development application has yet been lodged. Any future development on that adjoining land will be required to manage privacy impacts through its own design response in accordance with applicable planning controls.

Views:

There are no significant views obtainable from the site. Regardless, given the topography of the site and surrounding area (which features a predominately east-to-northwest/southwest downhill slope) and the location of proposed height breaches towards the centre/ northwest and southwest parts of the proposed building, the proposed height variations will not give rise to view impacts that may be considered significant by surrounding residents.

Visual impact:

The locations of the proposed height variations are located within the centre of the rooftop and on the northwest and southwest side of Level 9 at the edge of the development (see **Figure 10**). The locations of the lift overruns and plant enclosures will be centred within the roof above Level 9, which itself will be set back from the edges of Level 8, and as such would not be visible from the surrounding public domain.

From adjoining sites, only the top-most parts of the plant enclosures may be visible from the upper apartments of fifth level of 2b Havilah Road (see **Figure 10**). However as evidenced in this figure these breaches will be nominal and imperceptible. They do not add any significant bulk to the building and are no different visually than if the development was to fully comply with the 28.6 height limit.

Furthermore, the height breaches associated with the roof are positioned towards the northwest and southwest sides of Level 9. Due to their relatively small size and location, these breaches will not be noticeable from the surrounding public domain.

As a result, they will not have any significant visual impact on the area.



Figure 10: Photomontage of the development from an elevated position at 59 Lindfield and 1-3 Woodside Ave. Roof areas breaching the height standard are outlined in red.

Source: PBD Architects, 2025

In summary, the proposed development will not give rise to unacceptable impacts, and as such will therefore satisfy the second test.

Regarding the above, this written request demonstrates that the proposal satisfies the two tests used in *Project Venture Developments v Pittwater Council* to establish the proposal's ability to exist in harmony with its surroundings. Both Department and Council can therefore be satisfied that the proposed development will be compatible with the existing and future character of the area.

Further, and in addressing aim (b)(iii) which relates to amenity and liveability, the design of the development will provide for very high levels of internal amenity and liveability on the subject site, in that the proposed residential development will provide:

- Very high levels of internal amenity, with internal solar access the minimum requirements is achieved whilst with cross-ventilation that exceeds minimum requirements as prescribed by the ADG,
- A variety of apartment layouts ranging from 1 to 4 bedrooms provide flexible living arrangements for residents,
- Suitable access arrangements for persons of all physical abilities, and
- A large number of dwellings that are within short walking distances of public transport, services and public amenities.

In summary, despite the proposed building height variations, the aim of the Housing SEPP will be satisfied, as the proposal will result in the delivery of a residential flat building in proximity to heavy rail that is well designed, provides for appropriate height, bulk and scale that that will likely be consistent with future development character within the local area, and will provide for suitable amenity and liveability, both on and around the subject site.



Mecone's Assessment against Section 150(c):

Section 150(c) seeks to encourage the development of affordable housing to meet the needs of essential workers and vulnerable members of the community.

The Ku-ring-gai Housing Strategy to 2036 provides a 20-year framework to guide future housing in the LGA, identifying the quantity, location, and type of residential development required based on comprehensive community engagement and analysis of key demographic and housing factors. The Strategy initially identified capacity for 3,000 to 3,600 additional dwellings between 2021 and 2026. Since its endorsement, however, the NSW Government has significantly increased Ku-ring-gai's housing target to 7,600 new dwellings for the 2024–2029 period.

Despite this elevated target, progress to date has been limited. The UDIA NSW Housing Accord Progress Report (March 2025) indicates that only 3,276 dwellings have been approved and just 1,080 completed, representing only 14% of the 2024–2029 target.

The proposed development responds directly to the Housing Strategy and Section 150(c) by:

- Addressing the need for increased, diverse, and affordable housing in the Ku-ring-gai LGA;
- Delivering a mix of apartment sizes, with an emphasis on larger, family-friendly dwellings to accommodate a range of household types;
- Providing affordable housing through:
 - One one-bedroom apartment;
 - seven two-bedroom apartments, and
 - nine three-bedroom apartments of which 14 are to be provided and managed as affordable housing for at least 15 years, and a further three in perpetuity. Notably, the inclusion of larger two- and three-bedroom units specifically supports the housing needs of essential workers and vulnerable households with families;
- Increasing overall housing supply, including both market and affordable dwellings, contributing to a more inclusive and sustainable community;
- Supporting Ku-ring-gai Council in meeting updated housing targets by delivering high-quality, well-designed residences in a strategically located area.

By delivering a substantial number of affordable dwellings alongside a diverse apartment mix, the proposal clearly advances the objectives of Section 150(c) and contributes to meeting the housing needs of essential workers and vulnerable members of the community.

Further, while the maximum building height is prescribed by Section 16(3) of the Housing SEPP (rather than clause 4.3(2) the KLEP 2015) the objectives pursuant to clause 4.3(1) of the KLEP 2015 are the ones that specifically relate to building height. It is also noted that as a result of Ku-ring-gai TOD Alternatives scheme now being adopted, the site is afforded a higher height under the KLEP 2015 as outlined in **Section 4.3** and **Section 4.4** above.

Reference is therefore made to the objectives prescribe by clause 4.3(1) of the KLEP 2015, which for reference are as follows:

- (a) to ensure that the height of buildings is appropriate for the scale of the different centres within the hierarchy of Ku-ring-gai centres,*
- (b) to establish a transition in scale between the centres and the adjoining lower density residential and open space zones to protect local amenity,*
- (c) to enable development with a built form that is compatible with the size of the land to be developed.*

An assessment of these objectives is as follows:



Mecone's assessment of objective (a):

The proposed development would present to both surrounding sites and public domain as a nine-storey RFB

Despite variations being proposed to the building height development standard:

- such variations are of a very modest 5.42% increase to height, noting that
- the majority of the proposed development otherwise complies with the standard.

Such building heights are envisioned for development on the site, noting that:

- at the time that the subject SSDA was lodged, Section 16(3) of the Housing SEPP provided for building heights of up to 28.6 metres on the site, and
- exhibited mapping for Council's TOD Alternative provided for R4 zoning on the site in conjunction with building heights of up to 29 metres.
 - Proposed amendments to KLEP 2015 therefore anticipate that high-density development on the sites and surrounding sites to the south and west that are in proximity to the centre.

Such heights would provide for buildings up to nine storeys in height, which is consistent with existing high-density development within the Lindfield town centre, in addition to numerous other current development proposals in proximity to the Lindfield town centre. Except for relatively small proportions of the development that will be located well behind the building's outer envelopes, the proposal is otherwise consistent with anticipated development height and scale in the area. The proposal is therefore consistent with this objective.

Mecone's assessment of objective (b):

The subject site is located to the north of the Lindfield local centre (see **Figure 5**). Being located within:

- 400 metres walking distance of Lindfield railway station,
- the former TOD area (see **Figure 4**), and
- an R4 zone under Council's proposed alternative TOD mapping,

the site and its surroundings (both within the nearby town centre and areas in proximity to that centre) both contain, and are likely to provide for, a range of development typologies, including taller/higher density development such as RFBs and shop top housing developments..

Both Chapter 5 of the Housing SEPP (at the time of lodgement) and the proposed amendments to the KLEP 2015 (as well as other provisions such as Chapter 6 (Low and mid rise housing) in the Housing SEPP) anticipate that greatest building heights and densities will be located within the Lindfield town centre, with a progressive height and density transition to lower density zones (such as the R2 zone) further to the north, east and northwest of the site.

The proposed development will be generally consistent with the building height standard and proposed development within the surrounding area (noting both the SSDA (SSD-79261463) at 1-3 Reid Street and 2-4 Woodside Avenue immediately to the southwest and the Planning Proposal (PP-2023-2371) at 345 Pacific Highway further to the southwest). Further, if Council's proposed amendments to the KLEP 2015 proceed, then other future development to the south and north is likely to be of similar heights and scales to that proposed by the subject SSDA. As assessed elsewhere within this written request, the locations of the proposed height variations will also not be visible from the public domain, therefore the height of the proposed development will not present an incongruent appearance or transition when both viewed from surrounding streetscapes and compared with likely future development (particularly to the southwest).

As such, the proposal will not affect the ability of the site and surrounding sites to provide progressive height transitions away from the Lindfield town centre.

The proposal is therefore consistent with this objective.



Mecone's assessment of objective (c):

As addressed above the proposed development will provide appropriate height and bulk consistent with the future character of the locality. The surrounding area is expected to undergo a transition to a high-density residential environment in the near to medium term, consistent with the scale and density proposed by this SSDA. The design and built form of the proposal are compatible with both the existing urban context and the future character anticipated under the Housing SEPP and the Ku-ring-gai LEP.

The proposal delivers a well-designed residential flat building within close walking distance of Lindfield Station, consistent with the intent of the Housing SEPP and TOD policy objectives. The design responds effectively to site conditions, the surrounding development context, and the design principles of Schedule 9 of the Housing SEPP, providing appropriate height, bulk and scale, high levels of internal amenity, good landscaping, safe and functional access, and a diverse range of dwelling types, including affordable housing.

An assessment of compatibility, using the planning principles in *Project Venture Developments v Pittwater Council*, confirms that the development is harmonious with both its existing and emerging context and will not result in unacceptable physical impacts. Overshadowing, visual privacy, view impacts and visual bulk have been assessed and found to be reasonable, with all non-compliances generating only minimal or imperceptible off-site impacts. The proposal meets all relevant solar access and amenity requirements, and the height variations, limited primarily to rooftop elements do not materially alter the building's visual presentation or impact.

The broader Lindfield area is undergoing significant residential intensification, evidenced by numerous SSD applications and planned developments that mirror the proposed scale. Recent strategic planning further supports this transition. Although Ku-ring-gai Council has adopted an Alternative Plan that supersedes the State-led TOD Program, the subject site remains within the area where the TOD provisions continue to apply. Under the Alternative Plan, the site's permissible height increases substantially, and the wider Lindfield centre is identified for considerable uplift. This confirms that the proposed form is consistent with both the existing and future character of the locality.

The proposal is therefore consistent with this objective. Refer to the assessment provided above for Section 150(b) of the Housing SEPP.



5.2 Clause 4.6(3)(b) – Environmental planning grounds to justify contravention of the development standard

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the Court found at [23]-[25] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*
25. *The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

In this regard, we submit that there are numerous and substantive environmental planning grounds to justify the proposed contraventions of the building height development standard and are detailed below.

Provision of additional housing density

As indicated within Section 3 of this document, the aims of Chapter 5 of the Housing SEPP seek in part to maximise dwelling density on the site. The proposed development is consistent with such aims, as it will provide density uplift on the site.

As shown by the plans, the entirety of the development will comprise of residential apartments and infrastructure, facilities and building elements that are necessary to support such development, with proposed height variations being of a modest (i.e. 6.11%) nature that relate to ancillary building elements (such as parapets, roof overruns, screens for plant equipment and wall height).

Conversely to necessitate compliance with the maximum building height permitted under the Housing SEPP would require:

- The removal of at least two to three apartments, or
- The redistribution of floor area to incorporate the two Level 9 apartments elsewhere within the development would reduce the sizes of apartments on those lower levels.

Such outcomes would therefore be contrary to the objectives of Chapter 5 of the Housing SEPP, in particular objectives (a) and (b).



Responsiveness to site constraints and provision of enhanced amenity

The existing ground surface elevations generally range from RL 91.75 m AHD at the northern eastern corner, sloping down to RL 87.80m AHD at the Woodside Avenue frontage. The building's design largely responds to this constraint, with its height predominantly contained within the 28.6 metre building height limit. However, due to:

- The northwest/southwest slope across the site, and
- The narrowing of the site towards its southern end,

the proposed design results in minor variations in building height, with the most notable variations occurring at the south-western corner, where the site is at its narrowest.

The design prioritises cross-through apartments to enhance natural ventilation and daylight access. Introducing stepped floor levels to comply strictly with the height control would create internal level variations within these apartments, significantly reducing their flexibility and accessibility. While an alternative approach could reduce the number of cross-through apartments to accommodate stepped levels, this would increase the proportion of single-aspect apartments, some of which—due to the site's orientation—would not receive direct solar access.

Maintaining a consistent building footprint level ensures superior design and amenity outcomes, even though it results in a modest exceedance of the height standard. Excavating further to lower the building footprint would create subterranean rooms on the southern side of the ground level, reducing internal amenity and sunlight access to lower-level units. Such an approach would be inconsistent with good design principles and the objectives of the Ku-ring-gai Development Control Plan.

Given the relatively minor degree of the building height variations and their limited environmental impact (as discussed in a separate planning assessment), the proposal achieves an appropriate balance between:

- Managing site constraints,
- Maintaining an appropriate built form, and
- Maximising dwelling amenity and density.

Permitting the proposed building height variations will result in enhanced amenity and strong planning outcomes, ensuring a well-designed and responsive development.

Lack of significant or unreasonable impacts on surrounding sites and the public domain

As demonstrated through this written request and the EIS to which it is appended, the proposed variations to the building height development standard will not significantly nor adversely affect surrounding sites and the public domain, in that they would not:

- Give rise to adverse visual privacy impacts,
- Excessively or unreasonably worsen adverse overshadowing impacts on adjoining sites, and
- Create discernible visual impacts that would be incongruous with the likely future development character of the surrounding area.

To require compliance with the building height standard would not significantly alter built form outcomes nor impacts on surrounding sites and reduce the capacity for much needed housing - therefore compliance with the building height standard would be unreasonable and unnecessary in the specific circumstances of this proposal.



Provision of suitably sized and designed housing

- As reflected within Part 3 of this written request, the proposed development aims to deliver a varied mix of apartment types to cater to a broader range of housing needs, providing one, two, three and four-bedroom homes. The inclusion of diverse, accessible, high-quality, and high-amenity apartments close to public transport and services responds to both market demand and strategic planning objectives. The aims of Chapter 5 of the Housing SEPP (i.e. to provide more housing around accessible centres), and
- Changing local demographics of this part of Sydney.

With regard to the second of these points, the Ku-ring-gai Council (Council) Australian Bureau of Statistic Data records the following:

- 55% of households are family households with children,
- The Ku-ring-gai LGA is home to an increasingly large proportion of Culturally And Linguistically Diverse (CALD) households, and

The Department of Planning population projections released November 2024 projects:

- The Ku-ring-gai LGA's population of persons aged 65 and above is projected to be 24.2% by 2041.

Both the proposed number of apartments and their diversity (in terms of number of bedrooms, floor areas, layouts and variable configurations) have been designed in response to such demographic changes (in particular multi-generational living). It is therefore submitted that the proposed building height variations are suitable for the site, as to reduce building heights to comply with the development standard would likely require the removal of partial Level 9, which would subsequently reduce:

- The number of proposed apartments, and/or
- The size and diversity of such apartments (particularly if they are to be amalgamated into lower levels to offset the loss of apartments), noting that their variable sizes and designs seek to cater for anticipated demographic changes within the Ku-ring-gai LGA.

Given the modest sizes of the proposed height variations and their lack of unreasonable impacts, to reduce the maximum building heights to comply with the development standard is therefore considered to be unnecessary and unreasonable in the circumstances of this particular proposal.

For the reasons outlined above, it is evident that there are sufficient substantive environmental planning grounds which justify contravening the building height development standard.



6 Conclusion

Having regard to the provisions within both Section 155(2) of the Housing SEPP and Clause 4.6 of the KLEP 2015, we have formed the considered opinion that:

- a) The contextually responsive development is consistent with objectives that relate to building height within Chapter 5 of the Housing SEPP, and
- b) The application does not propose a variation to a Clause that is subject to the application of Clause 4.6(8) of the KLEP 2015 or a development prohibition within another EPI, and
- c) There are sufficient environmental planning grounds to justify contravening the building height development standard, and
- d) That having regard to a) and b), compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case.

Pursuant to Clause 4.6(3) of the KLEP 2015, the consent authority can therefore be satisfied that the applicant's written request has adequately 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.*

In conclusion, we believe that in working with both the constraints of the site and the desired outcomes of the Housing SEPP, the proposed building height contraventions present better planning, housing delivery and design outcomes when compared to alternative and more compliant options that were explored throughout the design process. Further, we have formed the considered opinion that there is no statutory or environmental planning impediment to the approval of a building height contravention in this instance.

As this written request has satisfied statutory requirements pursuant to Clause 4.6 of the KLEP 2015, the proposed variation to the building height development standard can be approved.

