

Clause 4.6 Variation Request – Building Height

Section 16(1) of the State Environmental Planning Policy (Housing) 2021

810 Pacific Highway, Gordon – SSD101444458

1. Introduction and Purpose

This Clause 4.6 variation request has been prepared to accompany the Environmental Impact Statement (EIS) submitted in support of the State Significant Development Application (SSDA) – SSD101444458 for a mixed-use development at 810 Pacific Highway, Gordon (*Subject Site*).

The proposed development includes the provision of affordable housing and seeks to rely on the incentive framework under Section 16(1) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP), which provides a bonus to development standards. As a consequence, the proposal results in a minor numerical exceedance of the mapped maximum building height control under Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015), requiring assessment pursuant to Clause 4.6, which is assessed under Section 16(1) of the Housing SEPP.

The purpose of this report is to constitute a written request pursuant to Clause 4.6 of KLEP 2015 to justify a variation to the maximum building height development standard applicable to the Subject Site.

This request seeks the consent authority's satisfaction that:

- compliance with the height development standard is unreasonable or unnecessary in the circumstances of the case; and
- there are sufficient environmental planning grounds to justify the contravention.

2. Site and Planning Controls

2.1 Site Description

The Subject Site is legally described as **Lot 12 DP 631351**, located at 810 Pacific Highway, Gordon, within the Ku-ring-gai Local Government Area. The site area is **2,357m²** and occupies a prominent corner position within the Gordon town centre, immediately adjoining the Gordon Railway Station precinct and the Ku-ring-gai Council Chambers.

2.2 Relevant Planning Controls

The Site is subject to the following key controls:

- **Zoning:** E1 Local Centre
- **Maximum Building Height:** 73.5 metres



- **Affordable Housing Incentive - Section 16(1) (Housing SEPP):** up to 30% additional Building Height, resulting in an effective Maximum Building Height of up to 95.55m (subject to compliance).

The proposed development exceeds the mapped maximum building height and therefore requires a variation under Clause 4.6 of the KLEP 2015.

3. The Development Standard to be Contravened

The development standard the subject of this request is:

- **Clause 4.3(2) – Height of Buildings** of KLEP 2015, assessed under Section 16(1) of the Housing SEPP.

This standard is not expressly excluded from the operation of Clause 4.6.

4. Extent of the Variation

Control	Standard	Proposed	Variation
Maximum Building Height	73.5m	74.75m	1.7%

Note:

The proposed height variation is minor in quantitative terms and does not facilitate any additional gross floor area beyond that already assessed and constrained by the applicable floor space ratio controls. The limited increase in overall building height results from the efficient and orderly accommodation of permissible floor space enabled by the Housing SEPP and reflects a built-form-led design response, including an appropriate resolution of the building's roof form and façade articulation, rather than any attempt to generate additional development yield.

With the application of the varied height standard and the 30% incentive available under the Housing SEPP, the maximum permissible building height is 97.175 metres. The proposed variation, therefore, operates solely to enable the effective translation of approved floor space within a high-quality built-form envelope.

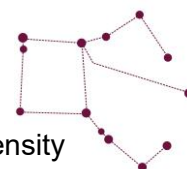
5. Clause 4.6(3)(a): Unreasonable or Unnecessary Compliance

Compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case for the following reasons:

5.1 Achievement of the Underlying Planning Outcome

The proposed development delivers a built-form outcome that is consistent with the strategic planning intent for Gordon Town Centre, including:

- its location within walking distance of a high-frequency rail interchange;
- the policy direction to accommodate greater height and density within centres; and



- the role of the site as a transition point between civic, commercial and higher-density residential uses.

The proposed exceedance does not undermine the objectives of the height control, which are directed to managing bulk, scale, transition and amenity, not to imposing a rigid numerical ceiling irrespective of context.

5.2 Interaction Between Height and Floor Space Controls

Recent amendments to Ku-ring-gai Local Environmental Plan 2015 increased the maximum permissible building height for the Subject Site without a corresponding adjustment to the applicable floor space ratio. This has resulted in a structural misalignment between the two principal controls regulating built form and development intensity.

In this context, floor space ratio operates as the primary determinant of development intensity, while building height functions as an enabling control to facilitate appropriate built-form outcomes.

This relationship is not unique to the Subject Site. A review of surrounding centre-zoned land within the Gordon Town Centre demonstrates a lack of consistent correlation between maximum building height and permissible floor space ratio across the precinct.

For example, the adjoining Council-owned land to the north is subject to a lower floor space ratio of 5:1 but benefits from a higher maximum building height of 83.5 metres (approximately 10 metres higher than the base height control applying to the Subject Site), without any affordable housing requirement. Similarly, land to the south within the Gordon Centre benefits from incentive-based controls permitting building heights of up to 109 metres.

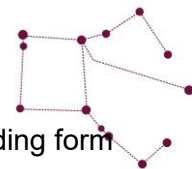
In these circumstances, rigid application of the mapped height control in isolation would impose an artificial constraint that prevents the efficient and orderly translation of permissible floor space into an appropriate tower form. This would frustrate the Housing SEPP's intended operation and result in inferior urban design outcomes without any corresponding public benefit.

Accordingly, building height within the Gordon Town Centre functions as a facilitating control rather than a proxy for development intensity.

5.3 Built Form–Led Design Response

The proposed height outcome is not an arbitrary uplift but the consequence of a **built-form-led design response**, driven by:

- podium height and active street interface requirements;
- tower slenderness and separation distances;
- view corridor protection;
- modulation of bulk through setbacks and articulation; and
- the need to reconcile affordable housing delivery with acceptable residential amenity.



Reducing height to achieve numeric compliance would result in a broader, heavier building form with inferior urban design and environmental outcomes. In fact, the variation relates to architectural crowning of the building rather than GFA, as can be shown in Figures 1-3 below.

The maximum overrun is 1.584m and is predicated on the Top of Wall of the building at its highest point being circa + 222.55m AHD (see Figure 2 and 3). This equates to an approximate height plane of 97.15m (with 30% bonus uplift). Importantly, the proposed height outcome remains substantially below the maximum height envelope enabled by the Housing SEPP across much of the building, confirming that the variation is limited, targeted and design-led rather than yield-driven.

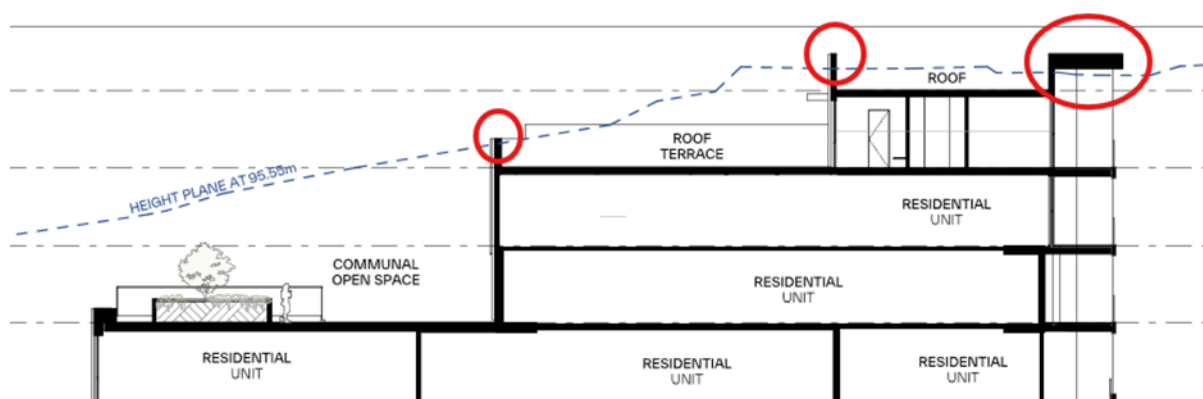


Figure 1 - Extent of Height Plane Incursion

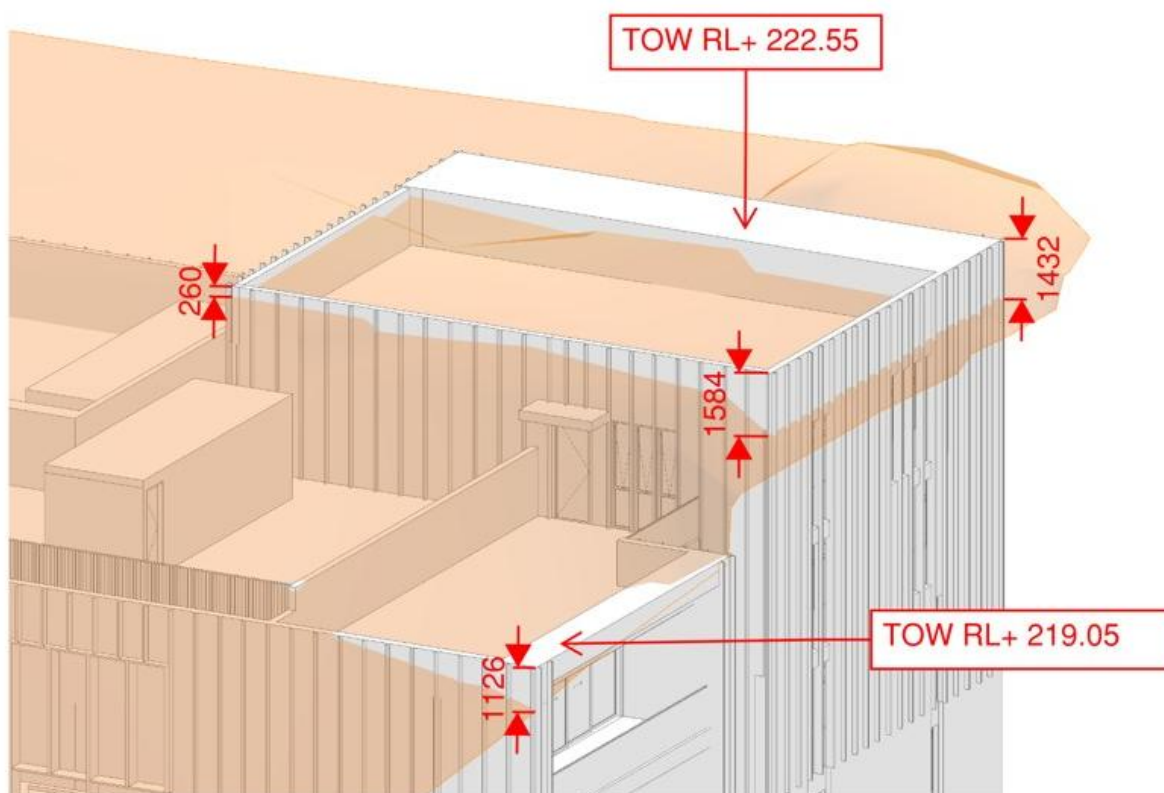


Figure 2 - Extent of Height Plane Incursion

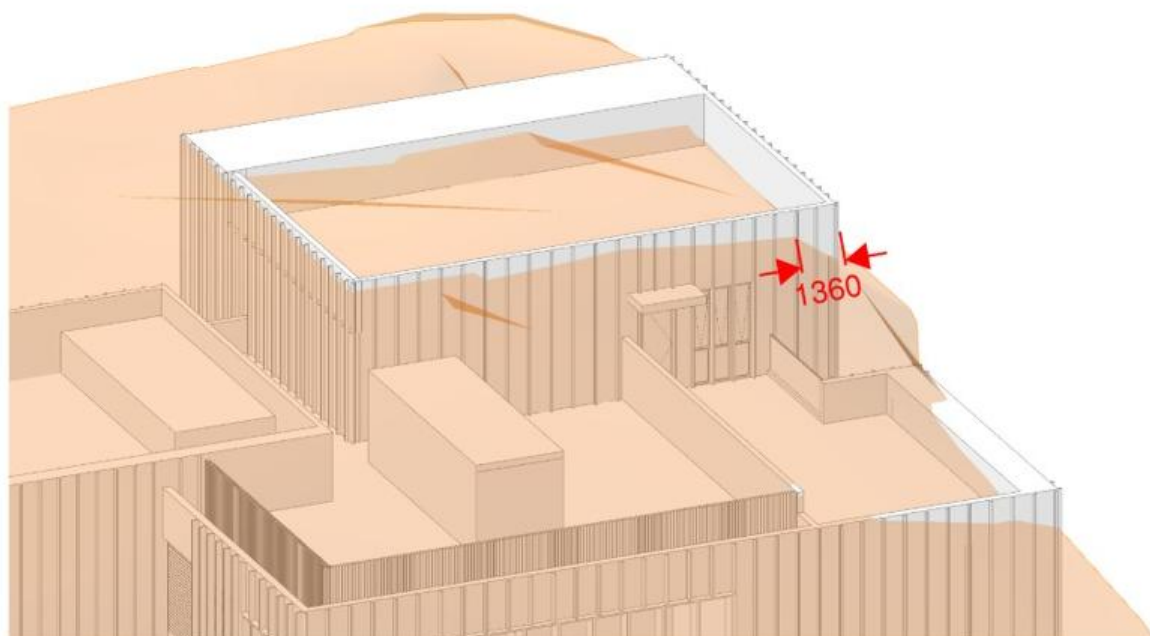
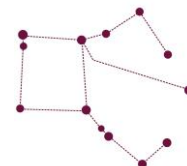


Figure 3 - Extent of Height Plane Incursion

In addition, it should be noted that the proposed development is up to 4 levels below the permitted height plane in many parts of the building. Figure 4 below shows the range of locations within the building that are below the maximum height plane.

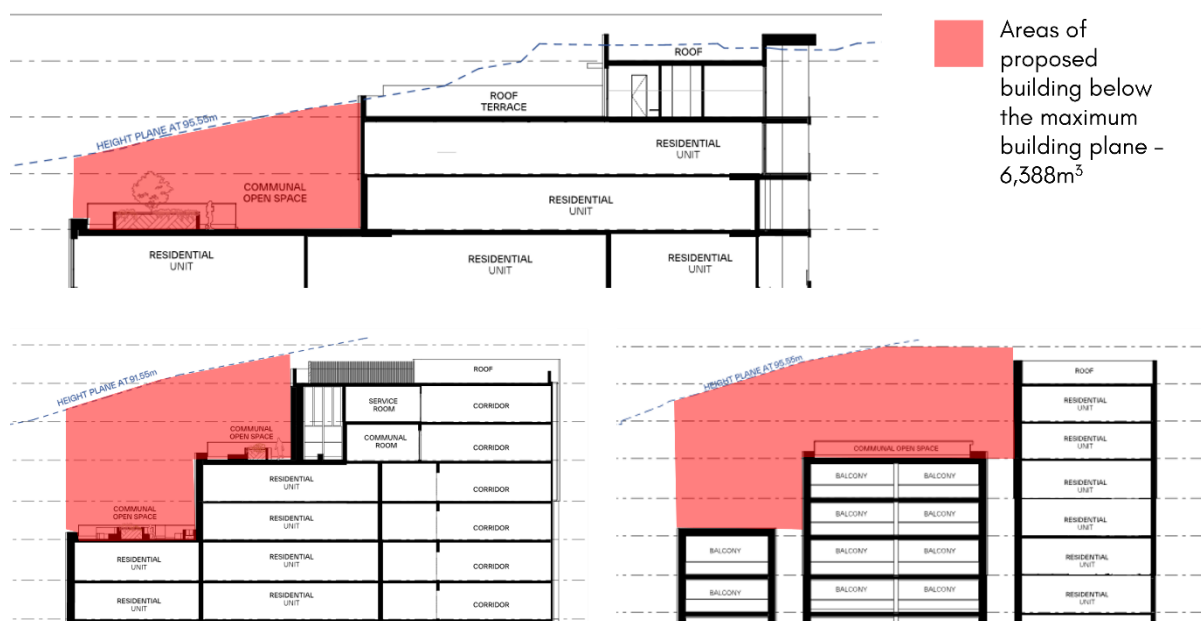


Figure 4 – Areas of Building below the maximum Height of Building



5.4 Functional and Feasibility Constraints

The development incorporates:

- a full-line supermarket with integrated servicing and loading;
- deep basement excavation responding to site levels and access constraints; and
- minimum floor-to-floor heights required to accommodate residential amenity, building services and affordable housing compliance.

Strict compliance with the height standard would require either the loss of critical floor-to-floor clearances or the removal of development yield that has already been moderated through FSR and design controls. In these circumstances, compliance is unreasonable and unnecessary.

6. Clause 4.6(3)(b): Environmental Planning Grounds

There are sufficient environmental planning grounds to justify the variation, including the following site-specific and proposal-specific considerations.

6.1 Strategic Merit and Public Benefit

The proposal:

- delivers 180 new homes (including 39 affordable housing apartments) in a highly accessible centre;
- reinforces Gordon's role as a local centre through the delivery of a supermarket and active ground-floor uses; and
- optimises existing infrastructure investment, including public transport.

These outcomes represent a clear public benefit that outweighs strict adherence to the numerical height standard.

6.2 Consistency with Zone Objectives

The development is consistent with the objectives of the **E1 Local Centre zone**, including:

- providing a mixture of residential, retail and commercial uses;
- supporting the vitality and viability of the centre; and
- accommodating housing close to jobs, services and public transport.

The proposed height facilitates these objectives rather than compromising them.



6.3 Amenity, Context and Impact

The EIS demonstrates that the proposed height does not result in unacceptable impacts in relation to solar access, overshadowing, visual bulk or residential amenity.

In relation to heritage, the Statement of Heritage Impact acknowledges that the proposal will result in a change to the visual setting of nearby heritage items, particularly the Ku-ring-gai Council Chambers. However, it also concludes that the development will not impact the fabric, use or curtilage of the heritage items, and that the broader setting has already been substantially altered by successive waves of redevelopment within Gordon Town Centre.

The identified heritage impacts are therefore visual and contextual in nature, have been carefully mitigated through setbacks, podium articulation and the provision of a landscaped public interface, and do not give rise to unacceptable heritage outcomes.

6.4 Local Character and Surrounding Planning Controls

The character of the immediate locality is defined by its role as Gordon Town Centre, as reinforced by the recently amended KLEP 2015 height and zoning maps. Surrounding development reflects a transition from lower-scale residential development to higher-density mixed-use and commercial buildings, including sites benefiting from significantly increased height controls as part of the Gordon Station Precinct planning framework.

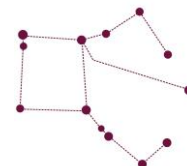
Against this backdrop, the proposed building height is consistent with the emerging planning context and does not introduce a scale or form that is anomalous or inconsistent with surrounding controls. In this context, the proposal represents a continuation of the planned evolution of the Gordon Town Centre rather than an unanticipated or isolated departure from established or emerging character.

6.5 Urban Design and Built-Form Efficiency

The EIS demonstrates that the height variation relates to a minor rooftop encroachment involving an approximate volume of **36 m³**, compared with approximately **6,388 m³** of unused building volume below the mapped height plane.

This confirms that the variation improves rooftop articulation, services integration and architectural resolution rather than facilitating additional gross floor area or increased development yield. The variation, therefore, enhances design quality without giving rise to further environmental or amenity impacts.

An extract from the Architectural Design Report (Appendix I of the EIS) is illustrated in Figure 5 below.



BUILDING HEIGHT



Figure 5 – Proposed Minor Building Height Variation Relative to Unutilised Height Capacity (shown in red)

7. Clause 4.6(4): Public Interest

The proposed development is in the public interest because it is consistent with:

- the objectives of the height of buildings development standard;
- the objectives of the E1 Local Centre zone; and
- contemporary State housing, centre-based and affordable housing policy.

Granting the variation will enable a better planning and design outcome than strict compliance.

8. Matters of State or Regional Significance

The proposed contravention does not raise any issues of State or regional environmental planning significance. The proposal aligns with State policy encouraging increased housing supply in centres and Transport-

Oriented Development locations.

There is no identifiable public benefit in maintaining strict application of the height development standard in this instance, particularly noting that additional heights are permitted on the adjoining Council site to the north (base 83.5m) and Gordon Centre to the south (base 109m).



9. Conclusion

This written request demonstrates that:

- compliance with the building height development standard is unreasonable and unnecessary in the circumstances of the case;
- sufficient environmental planning grounds exist to justify the variation; and
- the proposed development is in the public interest and achieves a superior planning outcome.

Accordingly, the consent authority is requested to exercise its discretion under **Clause 4.6 of KLEP 2015** assessed under **Section 16(1) of the Housing SEPP** to permit the proposed variation to the height of buildings development standard.

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