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Written request to vary a development standard
Clause 4.3 Height of Buildings
State significant development
Affordable housing and build to rent
Concept development application
2A Gregory Place, Harris Park



Submitted to Department of Planning, Housing and Infrastructure
August 2025

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1 Introduction

This written request under clause 4.6 of the Parramatta Local Environmental Plan 2011 seeks a variation to the applicable height of buildings development standard for the proposed affordable and inclusive housing development at 2A Gregory Place, Harris Park.

The justification provided in this clause 4.6 variation report is informed by a wide range of expert reports and multidisciplinary inputs that form part of the development application package. These reports address key matters including built form design, heritage integration, visual impact, social outcomes, environmental sustainability, traffic, acoustic performance, and legal interpretation of the statutory planning framework. Together, they establish a detailed and transparent basis for the consent authority to be satisfied that:

- The proposed variation is well founded, reasonable and necessary.
- There are sufficient environmental planning grounds to justify the departure.
- The development remains in the public interest and consistent with the objectives of the standard and zone; and
- The variation will deliver superior urban, environmental, and social outcomes when compared with both a compliant scheme and the existing site condition.

This written request must therefore be read in conjunction with the expert documents identified in Table 1, which substantiate the strategic, environmental, social and heritage rationale for the height variation.

Table 1 Relevant reports supporting this clause 4.6 variation request

Appendix	Title	Relevance to Clause 4.6 Justification
Appendix A	Design Report	Demonstrates contextual design response, built form massing strategy, transition in scale, heritage setbacks and performance-based rationale for height.
Appendix C	Amended Clause 4.6 – Building Height	The current document providing justification for the variation under clause 4.6.
Appendix D	Legal Opinion	Provides statutory interpretation of Housing SEPP Division 5, confirms permissibility and public interest test post-SCC.
Appendix E	Visual Impact Assessment	Evaluates the visual relationship between proposed height and adjoining land uses, confirms visual compatibility and view sharing.
Appendix P	Updated Statement of Heritage Impact	Assesses impacts of building height and massing on heritage items, confirms that proposed built form preserves setting and improves upon existing conditions.

Appendix X	Updated Social Impact Assessment	Establishes social planning justification for affordable housing, confirms that height variation supports social sustainability and public benefit outcomes.
Appendix BB	Updated Economic Impact Assessment	Supports the viability and economic rationale for delivering affordable housing at proposed yield and height.
Appendix U	Transport and Accessibility Impact Assessment	Demonstrates how proposed density and height integrate with existing infrastructure and support modal accessibility.
Appendix I	Updated Ecologically Sustainable Design Report	Confirms environmental performance of mid-rise built form and how height supports passive design, energy performance and liveability.
Appendix Y	Updated Community and Stakeholder Engagement Report	Documents feedback from public and agency consultation processes, demonstrating transparency and support for a refined height and form outcome.

1.1 Savings provisions*

1.1.1 Parramatta LEP 2011

While the Parramatta LEP 2011 has since been repealed and replaced by the Parramatta LEP 2023, clause 1.8A of the 2023 Plan operates as a general savings provision. It mandates that any development application lodged prior to the commencement of the 2023 Plan must be assessed as if that Plan had not commenced. Accordingly, this application is properly assessed under the provisions of the Parramatta LEP 2011. For the purpose of this report the term “LEP” relates to the 2011 version unless noted as the later instrument from 2023.

1.1.2 State Environmental Planning Policy (Affordable Rental Housing) 2009

The development application is supported by a site compatibility certificate issued under clause 37 of the now-repealed *State Environmental Planning Policy (Affordable Rental Housing) 2009*. In accordance with Schedule 7A, clause 3(3) of the *Housing SEPP 2021*, this certificate is taken to be a certificate issued under Division 5 of Chapter 2 of the Housing SEPP. Accordingly, the proposed residential flat building development must be assessed in accordance with the provisions of the Housing SEPP, including the built form provisions in Part 4, while the *Parramatta LEP 2011* remains the relevant local environmental plan due to the operation of clause 1.8A of the *Parramatta LEP 2023*. The clause 4.6 variation request is therefore appropriately made under clause 4.6 of the 2011 LEP, with the design outcomes and compatibility supported by the Housing SEPP and the Secretary’s prior SCC determination.

1.1.3 The site compatibility certificate

The site compatibility certificate issued for the subject site on 19 July 2017 was valid at the time of development application lodgement. In accordance with clause 39(10) of the *Housing SEPP 2021*, the certificate remains valid for the purpose of this application until it is finally determined. This provision ensures that the certificate continues to have legal effect and underpins the development’s permissibility and strategic compatibility, as established under clause 37 of the now-repealed *Affordable Rental Housing SEPP 2009* and preserved under clause 3(3) of Schedule 7A of the *Housing SEPP 2021*.

2 Request to vary clause 4.3 Height of Buildings in Parramatta Local Environmental Plan 2011

This written variation request has been prepared in accordance with the November 2023 guide issued by the Planning Secretary (secretary).

2.1 Site and proposed development

The land to which this concept DA applies is located at 2a Gregory Place, Harris Park and has a legal description of Lot 2 in DP 802801. The subject site comprises one lot and is known legally as follows:

Table 2 Site details

Address	Lot details	Area (m ²)
2a Gregory Place	Lot 2 DP 802801	19,480
Total Area		19,480

The land occupies a prominent position at the eastern edge of the Parramatta CBD, immediately south of Hassall Street. It is directly bordered by significant State heritage sites including Hambledon Cottage, the Experiment Farm Reserve, and the Our Lady of Lebanon Co-Cathedral (OLOLC), as well as the Clay Cliff Creek stormwater channel and areas of emerging mid-rise residential development.

The site currently contains a number of industrial structures, including a dominant 23-metre-high brick warehouse built hard against the northern boundary. The structure is further increased in height by the various infrastructure elements that are located on this form that provides a height of structure at approximately 24-25 metres. The buildings are utilitarian, visually intrusive, and incompatible with the site's sensitive heritage and civic setting. The land has a history of industrial occupation but is now physically isolated from viable employment lands and functionally disconnected from Parramatta's modern industrial economy.

The site is zoned IN1 General Industrial under the Parramatta Local Environmental Plan 2011, (LEP). However, its strategic role and context have shifted dramatically. The Parramatta Local Strategic Planning Statement (City Plan 2036), supported by the City of Parramatta Council (council) Employment Lands Strategy – Review and Update (2020), identifies the site as a future residential precinct with capacity for integrated housing and open space renewal. The zoning has not yet been updated to reflect this intended function.

In response to this strategic direction, Pacific Planning on behalf of a community housing provider and the land owning proponent, has obtained a valid site compatibility certificate (SCC) under Division 5 of the Housing SEPP 2021, confirming that the proposed residential flat building is compatible with the surrounding built form and land use pattern with relevant conditions of the schedule applied. This SCC forms the statutory foundation for progressing a development application under the Housing SEPP pathway.

The proposal seeks to deliver a high-quality mid-rise residential community, including:

- Approximately 320 apartments in a series of 2, 4, 6 and 8 storey buildings, arranged around a network of public and communal open space.
- 50% of the yield allocated as affordable housing, managed by Pacific Community Housing.

- A build-to-rent structure offering long-term, stable, and professionally managed tenancies.
- A robust heritage interface strategy including a 30-metre-wide axial view corridor between Hambledon Cottage and OLOLC.
- Deep soil planting zones, integrated stormwater and channel edge management, and accessible pedestrian linkages.
- High-performing environmental and architectural outcomes based on ADG compliance, sustainability benchmarks, and public domain improvements.

The design has been refined by Tzannes and Yerrabingin in collaboration with the wider project team, the NSW Heritage Council (HC) and the Department of Planning, Housing and Infrastructure (department), incorporating extensive community consultation, agency feedback, and independent design review. Built form has been sensitively located and scaled to minimise impact on heritage settings, improve connectivity, and optimise housing yield without compromising urban quality.

The development represents a carefully conceived transformation of a strategically located but environmentally degraded site, delivering a socially inclusive, environmentally sustainable, and contextually respectful infill housing outcome. The requested variation to the height of buildings standard under clause 4.3 is essential to enabling this transition and ensuring the integrated delivery of housing, heritage, and landscape objectives.

2.1.1 Description of the site

The subject site is located at 2A Gregory Place, Harris Park, legally described as Lot 2 in DP 802801, with a total area of approximately 19,480m². The site has an irregular rectangular shape, with a frontage of approximately 230 metres along its northern boundary, a width of 95 metres along the eastern edge, and narrowing to approximately 75 metres along the western boundary. The land is accessed solely from Gregory Place to the east.

The site occupies a prominent position just beyond the eastern boundary of the Parramatta City Centre, directly to the south of Hassall Street, and immediately adjacent to the State-significant heritage precincts of Hambledon Cottage and Reserve and the Experiment Farm Reserve. These heritage lands and built forms define the western and northern interfaces of the site, while the Clay Cliff Creek stormwater channel corridor, the Our Lady of Lebanon Co-Cathedral (OLOLC), larger residential flat building forms define the southern and southeastern context.

The existing development on the site comprises a number of industrial and commercial buildings, ranging in scale from 2 to 8 storeys (equivalent height). The built form includes a large and dominant 23 metre high brick warehouse structure on the northern boundary, which presents a harsh visual and spatial edge to adjacent heritage land. While parts of the site are still nominally in use as commercial offices, most of the buildings and surrounding structures are disused, physically degraded, and visually discordant with their context. The land previously operated as a pharmaceutical manufacturing facility, but the site is now functionally obsolete and characterised by building decay, expansive sealed hardstand areas, and minimal canopy or landscaping.

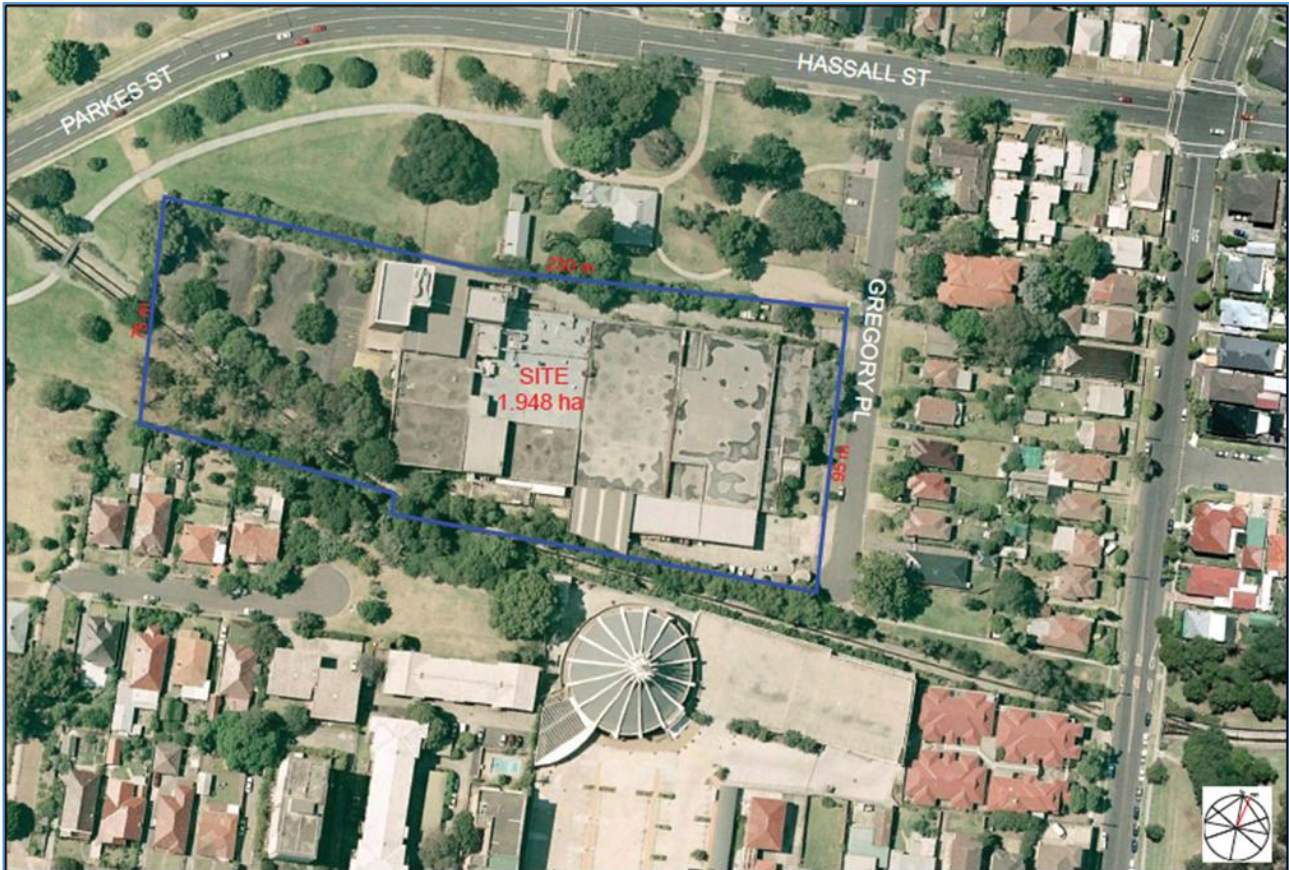


Figure 1 Site location



Figure 2 Unsympathetic industrial form dominating heritage

The land is zoned IN1 General Industrial under the LEP. While industrial uses remain permissible, the site is no longer fit for contemporary employment functions and sits within a rapidly transforming urban context. The immediate area to the south and east is defined by emerging mid-rise residential development, institutional and religious uses, and key elements of Parramatta’s historic landscape.

Topographically, the site is relatively flat, and there are no significant natural features on the land. The site is not affected by any known threatened species habitat or remnant vegetation. It does, however, lie within an area of known Aboriginal and historical archaeological sensitivity, and both forms of heritage have been assessed in specialist reports prepared to inform the current proposal.



Figure 3 The storm water channel view from west

Strategically, the site benefits from high levels of public transport access and proximity to Parramatta CBD, Westmead health precinct, and local services. It is located within walking distance of Parramatta and Harris Park train stations, light rail, major bus routes, and key regional infrastructure, making it highly suited for residential redevelopment under the Housing SEPP framework.

The site has been identified in the Parramatta Local Strategic Planning Statement (City Plan 2036) (LSPS) and council’s Employment Lands Strategy (2020) as a priority urban renewal location, where industrial activity has ceased or diminished, and where a transition to housing, community, and public domain uses is both logical and supported. These strategies recognise that the site no longer contributes meaningfully to Parramatta’s employment lands supply and instead presents an opportunity for transformation into a mixed-tenure, socially integrated housing precinct that complements the surrounding heritage and urban environment.



Figure 4 Existing factory building view from western boundary)

2.1.2 Description of the proposed development

The proposed development involves the transformation of a disused industrial site into a mid-rise, mixed-tenure residential community delivering approximately 320 apartments, including a significant affordable housing component of 50% to be managed by Pacific Community Housing, a registered community housing provider. The development is advanced under the Division 5 provisions of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP), supported by a valid SCC issued by the Planning Secretary.

The project adopts a build-to-rent model, designed to provide long-term secure tenancies, socially inclusive housing typologies, and a high standard of professional management. The building typologies, unit mix, and internal configurations have been developed in accordance with the Apartment Design Guide (ADG) and chapter 4 of the Housing SEPP, with a focus on liveability, adaptability, and amenity.

The development comprises:

- Five primary building elements, varying between 2, 4, 6 and 8 storeys, arranged to allow for solar access, cross-ventilation, and outlook.
- A maximum building height of 29.0 metres, concentrated at the central and southern portions of the site, with reduced heights at sensitive northern and western edges adjoining heritage land.
- A total of 320 apartments, including studio, 1, 2 and 3-bedroom dwellings, a portion of which are adaptable or universally designed to accommodate tenants with disability and ageing in place needs.

- A central green spine connecting Gregory Place to Clay Cliff Creek, incorporating communal open space, tree planting, and active recreation areas.
- A 30-metre-wide axial view corridor creating a new visual connection between Hambledon Cottage and the Our Lady of Lebanon Co-Cathedral and reinforcing the project’s alignment with its historical and more recent contemporary landscape context.
- Deep soil zones, bio-retention areas, and sustainable drainage infrastructure designed to manage overland flow and promote ecological resilience.
- Two levels of basement car parking, accessed via Gregory Place, including resident and accessible spaces, and screened from public view.
- Onsite communal facilities and support spaces, including rooms for tenant services, flexible community use, and bicycle storage.

The architectural response has been prepared by Tzannes Architecture, with urban design principles grounded in contextual compatibility, solar performance, spatial hierarchy, and public domain activation. Built form modulation has been carefully developed to reduce apparent bulk, increase permeability, and maintain generous setbacks to adjacent heritage lands, including Hambledon Cottage and Experiment Farm Reserve. These principles were embedded into the design in response to consultation with Heritage NSW, the Department of Planning, and community submissions during the SCC process.

The project achieves a site coverage of approximately 50%, with over 30% of the land dedicated to landscaping and deep soil planting, exceeding minimum ADG and Housing SEPP benchmarks. Rooftop terraces are provided where permissible, designed to minimise visual bulk and acoustic impact while enhancing open space access. The design methodology includes a specific landscape strategy of green roofs that enhance the external and internal visual amenity and liveability for residents.

The development is a context-led urban renewal initiative, delivering not just housing but a socially cohesive, environmentally responsive, and heritage-integrated residential precinct. It replaces a deteriorating and oversized industrial building with a modulated, open, and landscaped urban structure, strengthening connections between Parramatta’s historic fabric and its emerging residential communities.

2.2 Planning instrument, development standard and proposed variation

2.2.1 What is the environmental planning instrument proposed for variation?

The environmental planning instrument (EPI) that is subject to the variation request is the Parramatta Local Environment Plan 2011 (PLEP).

2.2.2 What is the site’s zoning?

The site is zoned IN1 General Industrial.

The objectives of the zone are the following:

- To provide a wide range of industrial and warehouse land uses.
- To encourage employment opportunities.
- To minimise any adverse effect of industry on other land uses.

- To support and protect industrial land for industrial uses.
- To facilitate a range of non-industrial land uses that serve the needs of workers and visitors.

2.2.3 Identify the development standard to be varied.

The variation subject to this request is the height of building at clause 4.3 of the PLEP.

The objectives of the height of building development standard are the following:

(1) *The objectives of this clause are as follows—*

(a) *to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,*

(b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*

(c) *to require the height of future buildings to have regard to heritage sites and their settings,*

(d) *to ensure the preservation of historic views,*

(e) *to reinforce and respect the existing character and scale of low density residential areas,*

(f) *to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*

2.2.4 Identify the type of development standard and its numerical value.

The variation applies to a numeric development standard for a maximum height of a building of 9.2 metres.

2.2.5 What is the difference between the existing and proposed numeric values?

The difference of the height of building is metres being a maximum of 29 metres to the development standard of 9.2 metres.

2.2.6 What is the percentage variation (between the proposal and the environmental planning instrument)?

The proposal exceeds the applicable 9.2 metre development standard by **19.8 metres**, representing a **percentage variation of approximately 215%**.

Calculation: $(29.0 - 9.2) \div 9.2 \times 100 = 215.2\%$

Figure 5 shows the height in storeys this corresponds to building heights and roof infrastructure.

Table 3 explains the range of proposed exceedance and the relevant percentages.

Table 3 Heights of proposed buildings in storeys, metres and variation percentage

Storeys	Metres	Exceedance (metres)	Percentage variation (%)
2	9	-0.2	-2.2%
4	15	5.8	63.0%
6	21	11.8	128.3%
8	29	19.8	215.2%

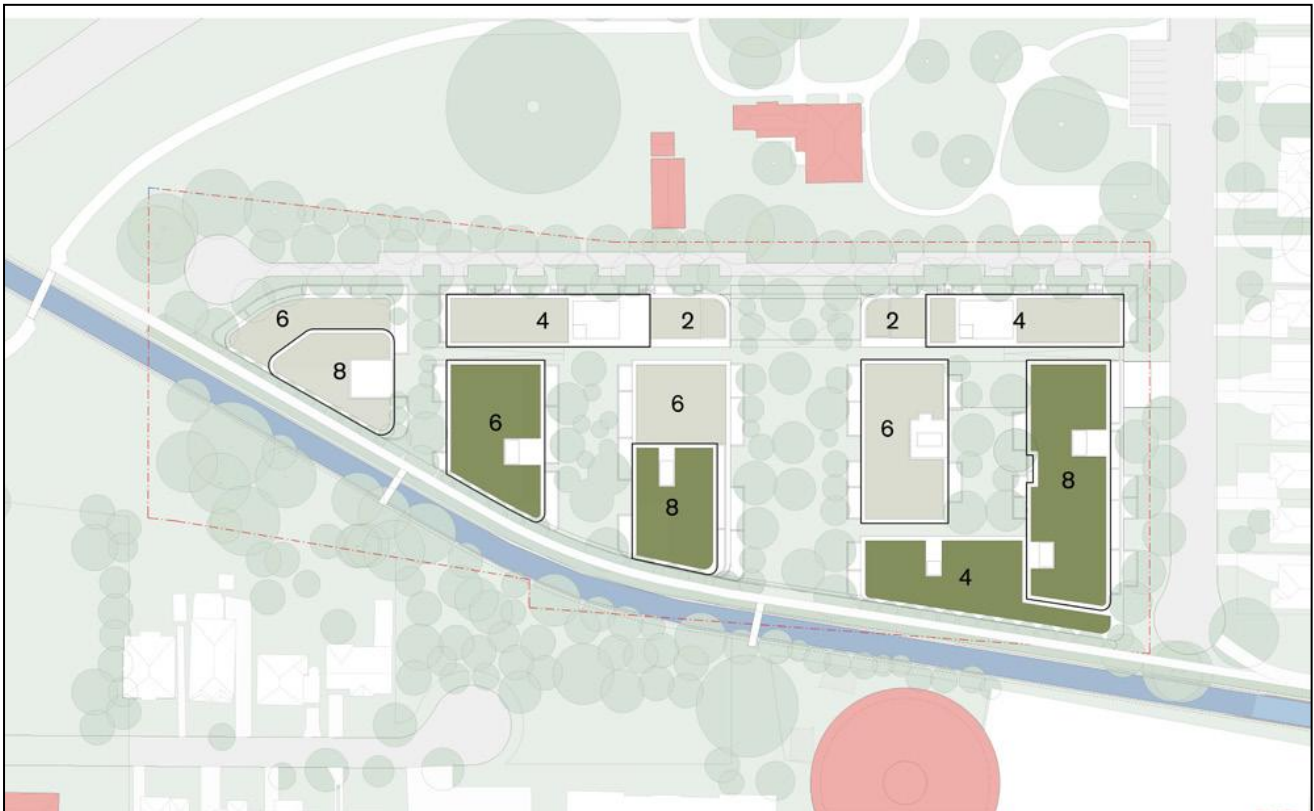


Figure 5 Placement of built form

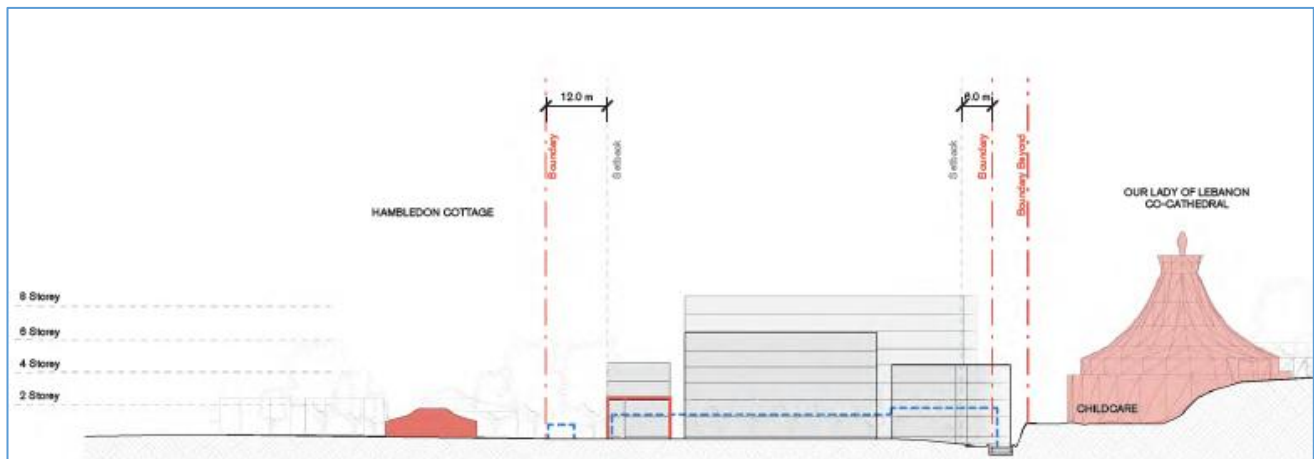


Figure 6 Built form strategy and set backs

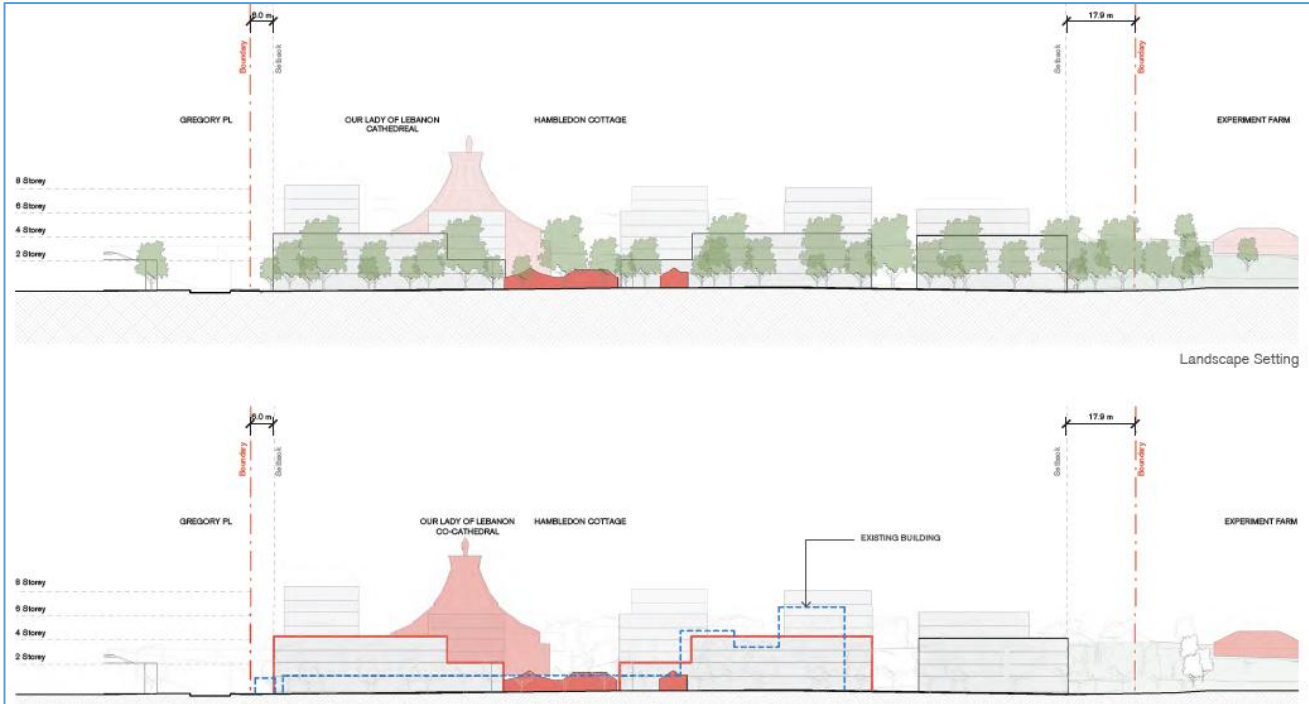


Figure 7 Built form elevations



Figure 8 Proposed scheme looking north through central space over Hambleton cottage



Figure 9 Proposed scheme view from north to south



Figure 10 View from east overlooking Hambleton cottage



Figure 11 View from west to east along the channel and new channel walk

2.3 Justification for the proposed variation

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

This section draws on the five established Wehbe grounds, as reaffirmed in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* and codified in the 2023 DPE Guide. You only need to satisfy one of the five, but for rigour, we will address three of the most applicable grounds.

2.3.2 How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

Yes. In the circumstances of this application, strict compliance with the numerical height of buildings development standard mapped under clause 4.3 of the LEP is both unreasonable and unnecessary. This conclusion is supported by multiple grounds, each of which reflects the strategic and statutory planning context now applying to the site.

This is a proposal that sits at the convergence of outdated industrial zoning and a contemporary State-led housing policy imperative. The land is zoned IN1, yet it is identified for residential renewal in the Parramatta Local Strategic Planning Statement (LSPS). More importantly, the secretary has issued a valid SCC under clause 38(1) of the Housing SEPP, confirming that the proposed mid-rise affordable and inclusive housing scheme is compatible with the surrounding context. It follows that any evaluation of the development standard's application must be informed by the actual strategic intent, compatibility finding, and planning controls that now govern the site, not by the legacy industrial framework.

We address the relevant grounds for variation below, referencing relevant precedent, policy, and the built form and landscape response documented in the submitted design report, statement of heritage impact, and environmental compatibility assessment in the primary report.

2.3.2.1 a) Are the objectives of the development standard achieved notwithstanding the non-compliance?

The proposal satisfies all seven objectives of clause 4.3 of the LEP. The exceedance of the mapped height standard does not compromise, and in fact facilitates, superior achievement of those objectives when measured against both the existing site condition and a hypothetical compliant scheme.

Objective (a): Height transitions.

The proposed 29 metre envelope is distributed across a series of freestanding buildings of 2, 4, 6 to 8 storeys. These forms are modulated, separated, and strategically located to step down to 2-4 storeys at sensitive edges adjoining Hambledon Cottage, Experiment Farm Reserve, and OLOLC. In contrast, the existing condition includes a monolithic brick industrial building of approximately 24-25 metres in height built hard against the heritage boundary. The proposed development removes this building entirely and introduces deep setbacks, permeability, and public domain relief.

Objective (b): Compatibility with existing and future development.

The current mapped height control reflects a legacy industrial condition that is neither appropriate to its surroundings nor aligned with the LSPS vision. The surrounding area includes a mix of mid-rise apartments (to the south), heritage precincts (to the north and west), and evolving residential land. The proposed development is compatible with the desired future character of the precinct, which envisions residential intensification and reintegration of the heritage landscape. This future character has been endorsed through the department’s SCC determination and the LSPS.

Objective (c): Relationship to heritage sites and their settings.

The project removes an industrial building that dominates the visual and spatial curtilage of two state-listed heritage items. The proposed built form is set back, broken into discrete elements, and softened through layered landscaping and view corridors. These interventions were assessed as compatible in the submitted statement of heritage impact and through agency consultation post the SCC process.

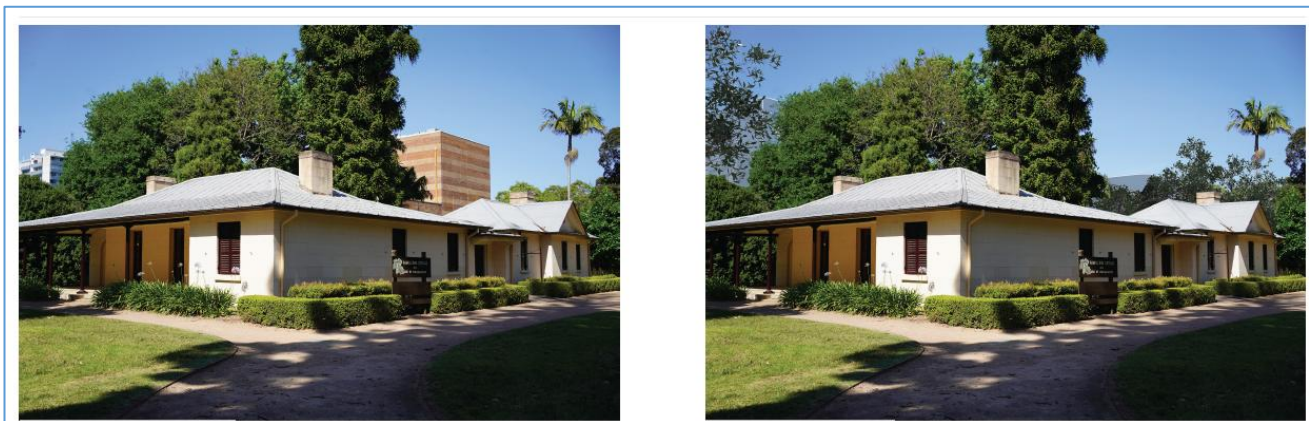


Figure 12 Removal of unsympathetic industrial form

Objectives (d)–(f): Character, views, visual impact, solar access, and public domain.

The scheme avoids overshadowing of adjacent heritage land, enables substantial sky exposure and daylight to both streets and public spaces, and frames historic sightlines through a 30-metre-wide axial corridor. Visual impact is significantly reduced compared to the current built form, and public benefit outcomes (such as landscape permeability and communal open space) would not be achievable under a lower, broader scheme.

This performance-based approach aligns with the reasoning in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, in which Commissioner Gray found that the objectives of a height standard may be satisfied through alternate built form and strategic justification.

2.3.2.2 b) Are the underlying objectives or purpose of the development standard not relevant to the development?

Yes, In the circumstances of this application, the underlying objectives and purpose of the height of buildings development standard — as reflected in clause 4.3 of the LEP — are not relevant to the proposed development. This is because the mapped standard and its accompanying zoning framework were developed for a very different land use and urban function than what is now proposed, endorsed, and strategically supported.

The subject land is zoned IN1, and the mapped height standard under clause 4.3 was devised to regulate built form outcomes associated with general industrial uses. These outcomes include warehouse structures, light manufacturing facilities, and logistics infrastructure — building types that are defined primarily by bulk, storage capacity, and access to vehicle movement corridors, not public domain compatibility, residential amenity, heritage interface, or urban design performance. The development standard was not conceived for or tested against residential flat building typologies, let alone integrated affordable housing schemes located within sensitive heritage landscapes.

The proposed development — a mid-rise, landscape-integrated residential scheme delivering 320 apartments including 50% affordable housing — does not share the land use purpose or built form characteristics that informed the height control’s original application. As such, the underlying intent of the standard is of limited relevance. Rather than controlling industrial scale and access, the proposed development is governed by:

- The Housing SEPP, particularly division 5 and chapter 4 design principles and the supporting apartment design guide (ADG) which assists residential built form and amenity standards.
- The secretary’s certified opinion that the proposal is compatible with surrounding context, which must be given determinative weight in assessing built form impacts and strategic fit.

Furthermore, the existing industrial building on the site already exceeds the mapped height limit, highlighting the disconnect between the numerical standard and real-world built form outcomes. The lawful structure — a monolithic brick warehouse of approximately 24-25 metres — was not subject to any heritage or urban design compatibility requirements. Its replacement with a 29-metre residential envelope that is pulled back from sensitive boundaries, articulated and separated into finer urban grain, represents a vastly superior outcome on all relevant planning grounds.

Importantly, the development standard is not supported by a DCP or LEP provision that has been updated to reflect the LSPS. That LSPS — adopted by council and endorsed by the department — clearly identifies this land as appropriate for residential transition, embedded open space networks, heritage curtilage restoration, and housing diversity. The housing proposal before the consent authority is the direct expression of that strategic direction, and the continued application of an industrial height control to frustrate its delivery would be contrary to orderly planning.

In this context, it is clear that the original purpose of the height control is not relevant to the assessment of a mid-rise affordable housing development that has been confirmed as compatible with condition under division 5 of the Housing SEPP. The development is not of the type that the control was intended to regulate, and its impacts — visual, amenity, and contextual — must instead

be assessed against more relevant instruments and policies, including the Housing SEPP, the ADG, and the design principles endorsed in the design report, visual impact assessment and the extensive research and consideration in the various additional supporting expert reports.

Accordingly, this ground is satisfied. The underlying purpose of the development standard is no longer applicable in light of the site's strategic transformation and the policy-led delivery of housing diversity, affordability and heritage integration.

2.3.2.3 c) Would the underlying objective or purpose be defeated or thwarted if compliance was required?

Yes. Requiring strict compliance with the mapped height control in this case would actively defeat or thwart the underlying objectives of the height of buildings standard under clause 4.3 of the *Parramatta Local Environmental Plan 2011*. That clause sets a nominal maximum height of 9.2 metres for the subject site, a control inherited from a now-outdated industrial zoning regime. Enforcing that standard in the current context — following the issue of a Site Compatibility Certificate and in light of the site's strategic residential transition — would frustrate the planning outcomes the clause seeks to achieve.

Clause 4.3(1) of the LEP establishes height limits with the objectives to:

- Provide a transition in built form and land use intensity within the area.
- Minimise visual impact, view disruption, privacy loss and solar access loss.
- Ensure future buildings have regard to heritage sites and settings.
- Preserve historic views.
- Reinforce and respect the existing character and scale of low-density residential areas; and
- Maintain satisfactory sky exposure and daylight to buildings and key areas of the public domain.

In this instance, the continued application of the 9.2-metre standard — formulated for industrial buildings — would directly inhibit those very objectives. The control was never intended to regulate residential flat buildings, nor does it account for design quality requirements under the Housing SEPP or ADG. It does not respond to heritage transitions, solar access envelopes, or landscape curtilage. Indeed, a compliant scheme would produce an inferior environmental and urban design outcome.

If strict compliance were imposed, the following planning failures would likely result:

1. Built form compression and loss of spatial generosity

A compliant envelope would redistribute floor area horizontally, increasing bulk at lower levels, reducing building separation, and compromising solar access, tree canopy, and landscape permeability. Articulated setbacks and open space between buildings would be lost.

2. Elimination or narrowing of heritage view corridors

The scheme's 30-metre axial view line from Hambledon Cottage to the OLOLC site and parklands relies on concentrating built form height in strategic locations. Height compliance would preclude this spatial strategy and frustrate view preservation objectives.

3. Loss of heritage curtilage and landscaped buffers

The proposal replaces an urban blight in the form of an unsympathetic 24–25 metre-high industrial building situated directly adjacent to a nationally significant heritage context. The proposed scheme introduces a more refined, modulated built form with substantial separation, stepped height transitions, and generous landscape setbacks that actively restore visual and spatial curtilage to Hambledon Cottage and Experiment Farm. In contrast, a compliant scheme would require increased bulk at the site’s perimeter to maintain yield, eroding these buffers and compromising heritage outcomes. Moreover, there would be no planning or economic incentive to remove the existing industrial structures—elements that already significantly exceed the 9.2-metre height limit under the 2011 LEP. This would entrench an outcome that is both physically incompatible and directly contrary to the objectives of clause 4.3 and the compatibility framework established in the SCC process.

4. Reduced social and environmental performance

The development delivers 50% affordable housing and meets accessibility, energy, and sustainability benchmarks enabled by its mid-rise typology. Reducing height would reduce yield, diminish cost efficiency, and erode public benefit—undermining division 5 of the Housing SEPP.

5. Incompatibility with strategic planning intent

The site is clearly identified in the LSPS and GPOP Place-based Infrastructure Compact as a key housing renewal location. Enforcing a 9.2 metre height as commented in point three would not prevail and would perpetuate industrial-era form and miss the strategic transition endorsed by state and local policy.

In summary, the requested variation does not subvert the intent of clause 4.3—it enables its proper application in a more strategic, performance-based context. The objectives of transition, solar protection, heritage integration, and amenity are better realised through the proposed scheme than through a numerically compliant design. To insist on strict compliance would yield inferior environmental and public outcomes, contrary to the purpose of the standard and inconsistent with the certified compatibility of the site.

2.3.2.4 Has the development standard been virtually abandoned or destroyed by the council’s own actions in granting consents departing from the standard?

While there may be limited evidence that council has systematically approved height exceedances within the IN1 zone across the LGA, in the context of Gregory Place, it is clear that the development standard has been functionally abandoned or rendered obsolete—not merely by consent decisions, but by the council’s own strategic planning processes, its adoption of the Local Strategic Planning Statement (LSPS), and its engagement in collaborative precinct planning that acknowledges the unsuitability of the industrial zone and associated height control for this site.

The mapped height standard applying to the site under clause 4.3 of the Parramatta LEP reflects an industrial land use context that is no longer relevant or strategically supported. The council has itself identified this site, through the LSPS, as appropriate for residential transition, affordable housing, public domain renewal and heritage landscape reintegration. The LSPS confirms that industrial retention in this location is not a desired future outcome and instead calls for land uses that serve the broader public interest.

In addition to strategic abandonment, there is now clear evidence that council has supported exceedances of the height standard on nearby sites within the same contextual and heritage setting. In 2021, council approved a Section 4.56 modification to a consented aged care development at 128A Alfred Street, Harris Park—located directly to the south of the subject site and in even closer proximity to the curtilage of Elizabeth Farm. That modification allowed an increase in building height from 18.8 metres to 20.0 metres, on land mapped at 9.2 metres representing a 117.4 per cent variation.

Critically, the approved building at 128A Alfred Street appears significantly more prominent than its height would suggest in plan. The built form is situated directly on the eastern bank of the Clay Cliff Creek channel, within approximately three metres of the concrete channel edge, and is constructed on elevated terrain above the flood channel. This siting has the effect of visually amplifying the apparent height and dominance of the structure when viewed from the Elizabeth Farm landscape and public domain.



Figure 13 128A Alfred Street seniors housing - view from Gregory Place

Furthermore, while the numerical height variation approved at 128A Alfred Street was lower in percentage terms, the building’s visual prominence is significantly elevated due to its physical setting. As shown in Figure 13 and Figure 14, the development is constructed on the high southern eastern bank of Clay Cliff storm water channel, within approximately one metre of the concrete channel edge, providing minimal opportunity for landscape planting, with ground RLs at 8.5 metres and a roofline exceeding RL 26.5 metres. The built form dominates the established channel walk at approximately RL 4 and creates a dominating presence. In contrast, the Gregory Place development is grounded on a substantially lower datum, with ground RLs generally around 5.2 metres and a maximum RL of approximately 34.2 metres with significantly greater setbacks to boundaries to promote landscaping and specific placement of buildings to ensure a sympathetic transition to

heritage elements. This yields a reduced height impact despite a greater numerical variation. The siting and topographical conditions of Gregory Place inherently moderate its visual presence and ensure a less dominant outcome when viewed from the Elizabeth Farm landscape and surrounding public domain as shown in Figure 15. The development's lower base plane and contextual restraint support the conclusion that it achieves a more compatible built form outcome than the already approved neighbouring building, further reinforcing the redundancy of the mapped height control in this transitional precinct.

Despite this, council was satisfied that the height increase and set back to the channel was acceptable and did not materially detract from the setting of Elizabeth Farm or the amenity of the local environment. This affirms that council is willing to take a pragmatic, context-responsive approach to height where the design is well resolved and the outcome is consistent with broader public objectives.

While the numerical variation sought at Gregory Place is greater, it arises from a different planning origin—being a Housing SEPP-based affordable housing project supported by a valid Site Compatibility Certificate. The proposal has been subject to extensive design refinement and heritage review and will deliver an identified public benefit in a precinct already earmarked for transition.

This condition underscores the importance of contextual siting and sensitive design, particularly within the visual envelope of Elizabeth Farm, one of New South Wales most significant early colonial heritage sites. The built form at 128A Alfred Street provides little spatial or visual relief and demonstrates a design response that is generally unsympathetic to its heritage adjacency.

By contrast, the Gregory Place proposal has been deliberately set further back from the creek edge, benefits from a substantially lower base RL, and incorporates landscaped setbacks and articulated massing designed to transition more gently into the surrounding environment. The comparative prominence of the Alfred Street building, both physically and visually, reinforces the conclusion that the proposed built form at Gregory Place achieves a more sensitive and contextually responsive outcome.

Accordingly, the standard has been effectively abandoned in this location, both strategically and in terms of site-specific development outcomes. To insist upon strict compliance in the context of Gregory Place would be to uphold an obsolete control in contradiction to the planning framework that now governs this evolving urban neighbourhood.

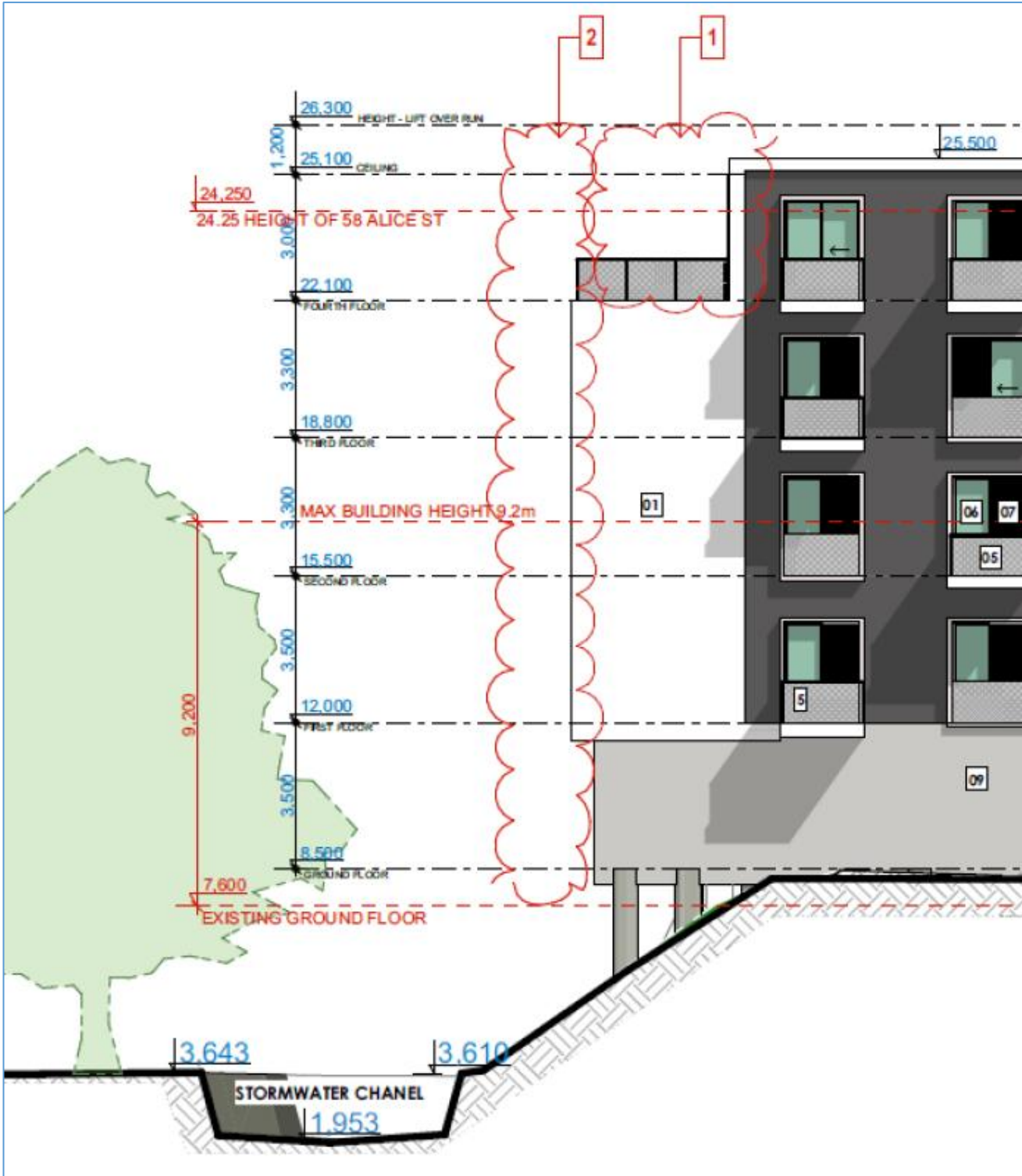


Figure 14 128A Alfred Street development context to stormwater channel and height

When considered alongside the consent at 128A Alfred Street, the present proposal demonstrates that the 9.2 metre height development standard has been functionally and contextually superseded. The approval of higher and more visually prominent built form on the creek edge—closer to Elizabeth Farm—reinforces the conclusion that the mapped standard no longer reflects either current planning practice or the council’s operational position in this precinct.



Figure 15 128A Alfred Street seniors housing - view from Elizabeth Farm reserve

[The above view shown in Figure 15 illustrates the stark and abrupt interface between the approved development at 128A Alfred Street and the public domain along the Clay Cliff Creek stormwater channel, as seen from within or near the Elizabeth Farm heritage setting. The building mass presents as highly visible and visually dominant, with minimal transitional landscape or architectural modulation to soften its impact. Located within approximately three metres of the concrete creek edge, the building sits on elevated terrain and projects multiple balconies and solid forms directly toward the open channel and public realm].

2.3.2.5 e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?

Yes. In the circumstances of this application, the land as IN1 under the LEP is inappropriate, and as a consequence, the continued application of the mapped height of buildings development standard is both unreasonable and unnecessary. This conclusion is supported by a multi-layered planning and statutory context which demonstrates that the land has already transitioned — strategically, functionally, and institutionally — away from industrial use, despite the retention of an outdated zoning control.

The proposal is being advanced under division 5 of the Housing SEPP, supported by a valid SCC issued by the secretary. That certificate confirms that on condition of assessment the proposed built form and land use — a residential flat building delivering 50% affordable housing in a mid-rise configuration — is compatible with the surrounding context. It also confirms that the zoning of the land is no longer a barrier to delivery, subject to assessment under division 5 and part 4 of the EP&A Act to grant consent.

The continued application of the IN1 General Industrial zone and its associated height control is inappropriate for the following reasons:

1. The industrial use of the site has ceased, and the existing building is in poor condition

The site contains a disused industrial building of approximately 24-25 metres in height that provides no contemporary employment function and generates negative urban interface impacts. Its continued lawful use is incompatible with adjoining heritage land, open space networks, and the residential character to the south and east. The built form is obsolete, and the site is physically and visually disconnected from viable employment land networks.

2. The strategic framework no longer supports industrial retention

The LSPS confirms that this site sits within a broader area designated for residential renewal, housing diversity, and public domain improvements. The site is explicitly referenced in council’s employment lands Strategy – review and update (2020) as one where rezoning to residential should be investigated, recognising that the industrial zoning no longer serves a productive or land-efficient purpose.

3. The zoning undermines public policy intent to deliver housing and affordability

The IN1 zone prohibits residential flat buildings and does not facilitate public domain, environmental, or housing affordability outcomes. The zoning itself creates a statutory conflict between the LEP and the state’s affordable housing policy under the Housing SEPP. In this case, the application of the zoning (and the controls that derive from it) frustrates the purpose of a state-significant housing delivery mechanism and perpetuates regulatory misalignment only resolved through a division 5 process that on assessment results in a consideration of appropriate development standards to deliver the strategically aligned outcome.

4. The height control derives from an outdated industrial typology

The height of buildings standard mapped for this site was devised to regulate bulk storage and industrial structures. It was not developed in the context of ADG design principles, solar access requirements, or heritage setting protection. Ironically, the existing industrial building exceeds the mapped height limit, further illustrating the disconnect between the standard and actual built form performance. Retaining the height control in this context is illogical and produces inferior urban design outcomes.

5. Legal interpretation confirms that zoning inconsistencies should not constrain approval

Legal advice from Jason Lazarus SC and Justin Doyle (10 August 2023) confirms that when a site has been granted a SCC under division 5, the relevant provisions of an LEP — including zoning objectives and associated development standards — must be read down where they conflict with the intent and operation of the Housing SEPP. It would therefore be contrary to law and planning purpose to apply the zoning and height control rigidly where a higher-order policy instrument has determined the site’s use and scale as compatible.

In summary, the zoning of the land is clearly outdated and inappropriate. It is inconsistent with state and council policy, obstructs the delivery of affordable housing, and perpetuates controls that were never designed for residential development and set at a time where the protection of heritage was a lower order consideration. The development standard sought to be varied arises directly from that inappropriate zoning and is similarly ill-suited to the proposal. In these circumstances, the standard is unnecessary and its variation is justified.

2.3.3 Functional height modelling and solar access compatibility

The proposed height of buildings at Gregory Place is not the result of an abstract design ambition or a uniform departure from the mapped height standard. Rather, it reflects a deliberately modelled functional height envelope, shaped and refined in direct response to environmental performance constraints — most notably, the need to protect solar access to adjacent heritage land and sensitive community uses. This approach represents best-practice, performance-led planning, and offers a superior method for achieving the objectives of clause 4.3 when compared to application of a rigid numerical cap.

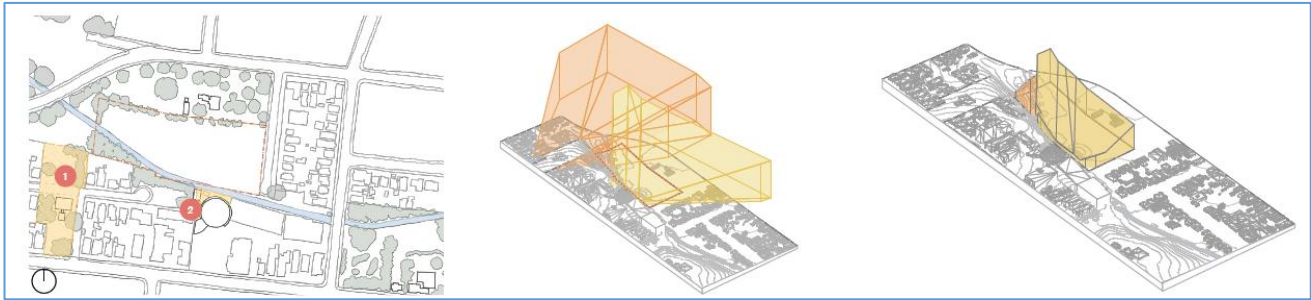


Figure 16 Solar amenity and solar access methodology

The proponent has elected not to present a traditional height blanket diagram. Instead, a detailed solar access plane analysis as highlighted in Figure 16 has been prepared and included within the architectural design report (in that report figures 112–114), demonstrating that built form placement and scale have been derived from rigorous testing of overshadowing impacts on external sites. This includes:

- **Experiment Farm**, where protection of solar access and open sky exposure is essential to preserving setting and heritage significance (notwithstanding that clause 7.7 of the LEP technically does not apply to this site, as it lies outside the defined CBD Height of Buildings map), and
- **Young Academics Early Learning Centre**, which must retain a minimum of 2 hours of solar access to 158m² of outdoor play space under the department’s *Child Care Planning Guideline*.

As the shadow analysis confirms, the proposed built form fully protects solar access to both of these sensitive receptors during the critical mid-winter window as per Figure 16 above replicated from the design report. The tallest elements of the proposal (up to 29 metres) are carefully located in the central and southern portions of the site, where overshadowing risks are minimal. In contrast, the northern and western edges are reduced to 2–6 storeys, consistent with the heritage interface strategy and ensuring open sky views to the Experiment Farm precinct are preserved.

This approach results in a graduated height profile, which varies across the site in direct correlation to contextual constraints and environmental sensitivities. As such, height is treated not as a static control, but as a derived outcome of the performance response. The development responds to solar access protection, visual integration, and spatial transition rather than applying a crude, flat-plane height benchmark.

The result is a proposal that demonstrably meets the purpose of clause 4.3, by:

- Preventing overshadowing of important communal and heritage landscapes.

- Optimising internal amenity and passive solar access for future residents.
- Allowing for view sharing and landscape restoration through a refined massing strategy.

To impose the mapped 9.2 metre maximum uniformly across the site would frustrate these outcomes and lead to undesirable results — including increased building footprint, reduced setbacks, inferior cross-ventilation, and greater overshadowing of internal spaces. In this way, the proposed variation is not only justified but necessary to achieve a more compatible and sustainable urban outcome.

This methodology is consistent with the ADG, which promotes solar-responsive design and deep soil integration; the Housing SEPP division 5 framework, which requires consideration of compatibility through built form performance rather than strict compliance; and relevant case law, including *Wehbe v Pittwater Council* and *Initial Action Pty Ltd v Woollahra Council*, which confirm that development standards must be applied purposively and flexibly in light of broader planning objectives.

The solar plane study therefore serves as the key evidence base for understanding the logic and appropriateness of the proposed height. It supports the conclusion that the variation is not only justified in planning terms, but essential to delivering a high-quality, publicly beneficial and environmentally integrated outcome for the site and its surrounds.

2.3.4 Heritage curtilage, setbacks and spatial compatibility

The proposed development has been deliberately configured to preserve and enhance the heritage setting of adjacent and nearby state-significant items, most notably Hambledon Cottage, Experiment Farm Reserve, and the broader Harris Park colonial landscape. The site interfaces directly with these places along its northern and western edges, presenting both a design constraint and an opportunity to deliver positive curtilage outcomes through sensitive massing, view preservation and landscape transition.

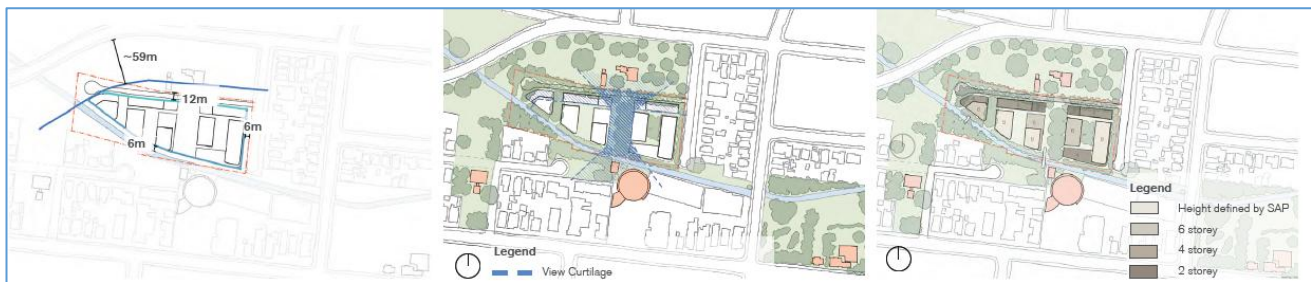


Figure 17 Built form strategies

Rather than relying solely on height reduction to address heritage proximity, the project employs a spatial compatibility strategy based on generous setbacks, view corridor preservation, and modulation of built form to establish a respectful interface. As highlighted in Figure 17, this strategy has been guided by site-specific testing and is graphically illustrated in the submitted design report (Section 5.4 – Built Form Strategies), including:

- **A 59-metre setback from Parkes Street**, establishing a significant parkland buffer between new buildings and the open space setting of Experiment Farm and Hambledon Cottage. This setback allows for the continuation of a cohesive park landscape, physically and visually connecting historic and emerging urban elements.

- **A 12-metre building setback from the northern boundary**, facilitating the creation of a shared way and tree-lined boulevard, separating residential activity from the cottage curtilage while also defining a formal frontage to the park. This setback reinforces the legibility of the heritage edge and protects view lines from and toward heritage structures.
- **A variable large to a minimum 6-metre setback from Clay Cliff Creek stormwater channel**, establishing a green edge with activated public and communal open spaces, enhancing ecological function and reinforcing landscape separation from the Co-Cathedral and community infrastructure to the south.
- **A 6-metre landscaped setback along Gregory Place**, consistent with the existing street pattern and capable of supporting mature canopy trees, further softening the interface and promoting a cohesive streetscape character.

These setbacks are not tokenistic or residual — they have been spatially and programmatically designed to establish a strong somesthetic buffer between the scale of new development and the finely grained heritage fabric. The resulting public domain achieves a sensory compatibility, not just a physical one, by offering breathing space, layered landscape zones, and a modulation of visual and spatial rhythm across the site.

The architectural design reinforces this compatibility through height stepping, articulated façades, and material selection that references the tonal and textural qualities of adjacent heritage structures. Lower scale elements (2–4 storeys) are placed closest to Hambledon Cottage and the Experiment Farm precinct, while taller forms (6–8 storeys) are confined to central locations where curtilage intrusion is negligible.

This approach satisfies both the intent and spirit of clause 4.3 of the LEP and the heritage and urban design objectives of the LEP, confirming that the development does not overwhelm or intrude upon sensitive settings. Instead, it actively participates in their preservation and legibility by reinstating a coherent spatial framework — one that was previously fragmented by inappropriate industrial structures now proposed for removal.

The result is a demonstrably compatible urban transition, where setbacks and landscape perform dual roles: functional heritage protection and experiential design calibration. The variation in height being sought under this application is shaped and mitigated by these spatial devices, delivering a net planning benefit that could not be achieved through numerical compliance alone.

2.3.5 Are there sufficient environmental planning grounds to justify contravening the development standard?

Yes. There are clear, compelling and site-specific environmental planning grounds that justify the variation of the height of buildings development standard in this case. These grounds relate directly to the objectives, scope and purpose of the EP&A Act, and to the intended operation of the planning system in delivering good design, sustainable development, housing diversity and the orderly use of land.

This proposal arises within the context of a certified SCC under division 5 of the Housing SEPP and guided by its chapter 4, which confirms that the proposed mid-rise, affordable and inclusive housing scheme is compatible with the surrounding built form, environmental setting and infrastructure context. The variation to the height control is necessary to achieve the very outcomes endorsed by

that compatibility assessment, and to fulfil the planning purposes articulated in both state and local policy.

The environmental planning grounds can be grouped under the following headings:

2.3.5.1 The proposal advances key objects of the EP&A Act

The proposed variation directly promotes the objectives of the EP&A Act, in particular:

- **Section 1.3(c):** *To promote the orderly and economic use and development of land* The subject site is an underutilised industrial parcel that no longer serves a viable employment function and is strategically positioned within walking distance of key public transport, open space and services. The proposal transforms the land from an incompatible industrial interface into a high-performing residential community. The variation enables an efficient development footprint that supports housing targets, enables tree canopy coverage, and avoids adverse impacts on neighbouring land.
- **Section 1.3(d):** *To promote the delivery and maintenance of affordable housing* The development delivers 320 dwellings, 50% of which are affordable housing to be managed by a registered community housing provider. A compliant scheme would significantly reduce development yield and compromise the viability of the affordable housing component. The proposed height variation is directly tied to enabling this public benefit outcome.
- **Section 1.3(f):** *To promote sustainable development* The variation allows the development to consolidate built form into articulated, compact mid-rise footprints while maximising deep soil zones, retention of stormwater overland flow corridors, solar access, and passive ventilation. These environmental outcomes would not be achievable under a broader, low-rise built form constrained by the current height control.
- **Section 1.3(g):** *To protect the environment, including the conservation of heritage* The design removes an existing 24-25 metre high industrial structure that currently encroaches on the curtilage of Hambledon Cottage and Experiment Farm Reserve. In its place, the proposal introduces 30-metre view corridors, enhanced landscape buffers, and modulated building envelopes that significantly reduce visual dominance. These heritage and environmental enhancements are only made possible through the varied height profile now proposed.

2.3.5.2 The variation enables superior public and environmental outcomes

Environmental planning grounds must relate specifically to the aspect of the development that contravenes the standard — in this case, the height of buildings. The proposed exceedance is not a result of poor design or overdevelopment but is a deliberate design response that achieves:

- **Landscape-led separation between buildings**, delivering outlook, privacy and visual permeability.
- **Improved solar access** to apartments and public spaces, confirmed through design testing and shadow diagrams.
- **Retention and framing of heritage views**, including a structured east–west visual axis connecting OLOLC to the Experiment Farm heritage setting.
- **Enhanced walkability and permeability**, including connections to the Clay Cliff Creek storm water channel, the open space corridor and the wider Harris Park precinct to the south.

- **Provision of rooftop communal space**, increasing open space access without expanding the development footprint.
- **Deep soil planting and ecological regeneration**, including more than 30% of the site as deep soil, exceeding ADG targets.

These environmental benefits are directly dependent on the proposal's ability to distribute built form vertically. If constrained to a lower numerical height, the development would need to increase its footprint, reduce setbacks, or sacrifice yield — all of which would diminish the environmental and heritage planning performance of the scheme.

2.3.5.3 The variation supports implementation of the Parramatta LSPS and strategic planning instruments

The variation also facilitates the implementation of key local and regional strategies, including:

- **Parramatta LSPS (City Plan 2036)**: which identifies this site as appropriate for residential transition and public domain enhancement.
- **Parramatta Employment Lands Strategy (2020)**: which recommends investigating rezoning of this site from industrial to residential.
- **Central City District Plan (GSC)**: which promotes affordable housing delivery and precinct-based renewal in the Harris Park/GPOP area.

These strategies collectively affirm that the site is no longer suitable for industrial use and should be planned to accommodate housing and public domain improvements. The mapped height control is a legacy constraint that does not reflect the desired future character or strategic land use intent. Varying the standard enables alignment with these frameworks and facilitates realisation of their social and environmental objectives.

In conclusion, the variation is necessary to deliver the full suite of environmental and public outcomes envisioned in the project's strategic planning context. The environmental planning grounds are substantive, specific, and defensible under clause 4.6(3)(b). They directly relate to the built form aspect that exceeds the development standard and provide a clear and well-evidenced basis for supporting the height variation.

2.3.6 Is there any other relevant information relating to justifying a variation of the development standard?

Yes. There is substantial and compelling additional information that supports the justification for varying the mapped height of buildings standard. This includes the legal effect and policy intent of the SCC, the cumulative social benefits and inclusive design rationale of the project, and the multi-year design refinement process undertaken in close consultation with the department, HC, and community stakeholders. These factors materially inform the assessment of the development standard's appropriateness and demonstrate that the variation is not only necessary, but consistent with orderly and strategic planning.

2.3.6.1 Statutory effect and significance of the Site Compatibility Certificate

The Gregory Place project is supported by a valid SCC issued under division 5 of the Housing SEPP 2021, confirming that the development is compatible with the surrounding land uses, built form context, environmental constraints, and infrastructure capacity. Legal advice from Jason Lazarus SC and Justin Doyle (dated 10 August 2023) confirms that the existence of an SCC creates a powerful

statutory presumption in favour of the proposed use and scale of development. While not binding, the SCC establishes that the planning authority has already considered the site’s capacity to support housing, including its height and interface conditions .

The advice notes that refusal of a proposal consistent with a valid SCC would undermine the operation of division 5 and subvert the legislative framework intended to facilitate affordable housing in locations otherwise constrained by outdated or misaligned local controls. Accordingly, any decision on the clause 4.6 variation must be made in the context of the SCC’s findings and the Housing SEPP’s overarching policy purpose.

2.3.6.2 Extensive design evolution, agency feedback, and community consultation

The current design represents the outcome of an iterative and rigorous refinement process over several years. As detailed in the design report and summarised in the statement of heritage impact, the proposal has undergone:

- Multiple rounds of independent design review panel engagement.
- Detailed heritage advice and adjustments to height, setbacks, and articulation to reduce impacts on Hambleton Cottage and Experiment Farm.
- An expanded and deepened landscape buffer along sensitive edges, including heritage boundaries and stormwater channel walk.
- Repositioning of built form to preserve key view corridors and heritage curtilage.
- Community consultation processes, including letter drops, site notices, public meetings, and one-on-one engagement with key community stakeholders.

This level of iterative response demonstrates that the proposed height is the result of careful reconciliation between urban design performance, heritage protection, environmental management, and community expectations. The increased height facilitates deeper setbacks, communal open space, reduced visual bulk, and compliance with solar access controls that would otherwise be compromised.

2.3.6.3 Social impact and public interest justification

The social impact assessment (SIA) and related submissions confirm that Gregory Place delivers exceptional public value, particularly in a context where affordable housing need is acute. The development will provide:

- 50% affordable housing dwellings, managed by a registered CHP, prioritising key workers, people with disability, migrant families, and lower and middle income households.
- Inclusive and adaptable design consistent with best practice for social inclusion, including intergenerational living, accessible units, and culturally responsive spaces.
- Partnerships with community and multicultural organisations to ensure ongoing connection, support, and participation.
- A build-to-rent structure that supports housing tenure security and resident wellbeing over time.

As noted in the project’s social compatibility framework, the scheme reflects a person-centred planning outcome, responding to both statutory obligations and the lived experience of housing

disadvantage. The proposal does not merely satisfy a numerical yield — it anchors a socially integrated community in a high-amenity location, offering measurable and lasting benefits.

2.3.6.4 Functional obsolescence of existing zoning and controls

As discussed in 2.3.2.4, the IN1 zoning and its associated height control are no longer appropriate for the site and have been effectively overtaken by strategic planning processes. Retention of the existing 24-25 metre-high brick industrial building would result in continued interface conflicts, heritage disconnection, and missed opportunities for precinct-scale renewal. By contrast, the removal of this building and its replacement with a well-designed, height-varied scheme delivers not only superior outcomes but gives tangible effect to the Parramatta LSPS, the Greater Sydney Region Plan, and the State Government’s Ministerial Planning Priorities for housing delivery and social equity.

In summary, the SCC, the statutory policy framework, the demonstrable public benefit, and the extensive planning history of the site all support the conclusion that a variation to the height standard is justified. The proposed development is not only reasonable and appropriate in its context but also represents a superior outcome to strict compliance — consistent with the legal purpose of Clause 4.6 and the principles of merit-based planning under the EP&A Act.

2.3.7 Consistency with relevant SEPP and LEP objectives

2.3.7.1 Division 5 of the Housing SEPP – Policy objectives and site-specific application of the SCC requirements

The proposed development is consistent with the purpose and objectives of division 5 of the Housing SEPP, which provides a critical pathway to facilitate the delivery of affordable and inclusive housing on sites where such development would otherwise be prohibited under local planning controls. Section 3 of the Housing SEPP establishes the overarching policy intent of the instrument, which includes:

- encouraging the development of housing that meets the needs of vulnerable members of the community, including people on very low to moderate incomes, seniors, and people with disability.
- promoting housing diversity and enabling inclusive communities.
- facilitating residential flat buildings in appropriate locations, even where prohibited under local zoning, subject to the issue of a Site Compatibility Certificate (SCC); and
- prioritising strategic housing delivery and aligning local assessments with state-led housing imperatives.

In accordance with these objectives, a valid SCC has been issued for the subject site under clause 39 of the Housing SEPP. This certificate confirms that a residential flat building is compatible with the surrounding land use context, subject to satisfaction of specific conditions. These conditions establish a framework for further consultation, refinement and assessment, rather than granting automatic approval. The SCC thus acts as a gateway instrument — a formal recognition that residential development is permissible and potentially appropriate, provided that its detailed design is tested and refined to deliver actual compatibility.

As clarified in the legal advice of Lazarus SC and Doyle dated 10 August 2023, the SCC constitutes a statutory instrument reflecting the secretary’s formal assessment of compatibility under section

39(6) of the Housing SEPP. It must therefore be afforded significant weight by the consent authority when considering variations to local development standards under clause 4.6 of the LEP.

Since the issue of the SCC, the proposal has been the subject of an iterative, consultative and multidisciplinary design process. The SCC conditions required that the applicant consult, test and adapt the design in response to matters including:

- sensitive land uses and heritage significance (particularly Hambleton Cottage, Experiment Farm and the broader Harris Park colonial landscape).
- Built form and urban design integration.
- Visual impact and public domain outcomes.
- Access, infrastructure and environmental performance.
- Alignment with the desired future character of the locality as articulated in the Parramatta LSPS and regional housing strategies.

In direct response to those conditions, the proponent has undertaken comprehensive stakeholder engagement, responded to public submissions, and commissioned a wide range of expert inputs to support and refine the final scheme. These include urban design studies, updated architectural testing, visual impact assessments, detailed heritage analyses, solar envelope modelling, ecological and acoustic assessments, transport strategies and landscape master planning. The proposal now lodged for determination reflects the outcome of that structured process — a scheme that has been demonstrably shaped by feedback, evidence, and planning rigour.

Crucially, compatibility in this context is not measured by visual sameness or numeric conformity, but by the ability of a development to coexist harmoniously with its setting — functionally, spatially, socially and environmentally. The proposal achieves this by stepping down in height towards heritage boundaries, integrating extensive landscaped setbacks and deep soil zones, delivering generous public domain improvements, and providing housing that responds to urgent social needs. These outcomes directly support the compatibility objectives in section 39 of the Housing SEPP.

Accordingly, the proposed development satisfies the intent of the applicable height and zone objectives when interpreted through the current policy, legal and urban design framework. It gives effect to the statutory gateway established by the SCC and exemplifies the kind of strategic, performance-led housing delivery division 5 of the Housing SEPP was expressly designed to enable.

2.3.7.2 Objectives of the IN1 General Industrial Zone – Parramatta LEP 2011

The subject site zoned IN1 under the LEP. The zone objectives include:

- To provide a wide range of industrial and warehouse land uses.
- To encourage employment opportunities.
- To minimise any adverse effect of industry on other land uses.
- To support and protect industrial land for industrial uses.
- To facilitate a range of non-industrial land uses that serve the needs of workers and visitors.

These objectives relating to industrial purpose are no longer appropriate or relevant to this site. The existing industrial use has ceased, and the current structure is a deteriorated brick warehouse of

approximately 24- 25 metres in height at the worst possible location for the heritage context and is also out of scale and form with adjacent residential and heritage areas. The site does not contribute to any contemporary employment lands network and is explicitly identified in council’s Employment Lands Strategy for potential rezoning to enable residential renewal.

In contrast to the zone objectives, the proposed development supports high levels of residential amenity, provides inclusive and accessible housing, and removes a non-conforming industrial land use that negatively affects heritage and landscape values. The application of zone objectives must be read down in this case, as confirmed in senior counsel advice, given the Housing SEPP’s operation and the overriding effect of the SCC.

2.3.7.3 Objectives of Clause 4.3 – Height of Buildings (Parramatta LEP 2023)

Noting the legality of the savings provisions from the LEP that apply to the development application, it is still meritorious and logically valid to consider the current statutory provisions of the existing land use controls. The objectives of Clause 4.3 of the Parramatta LEP 2023 are slightly different to that of the 2011 LEP and include:

- To ensure that building heights are appropriate to the scale and character of the locality.
- To minimise the impact of development on adjoining and nearby properties.
- To ensure development allows reasonable daylight access to adjacent properties and public spaces.

The proposed height variation meets these objectives. It allows for:

- A graduated and stepped built form that transitions from heritage boundaries to contemporary edges.
- Increased communal and landscaped open space.
- Deepened setbacks and enhanced visual permeability.
- Preservation of view lines and solar access for both the site and surrounding heritage curtilages.
- A high standard of amenity for future residents while delivering a net environmental gain relative to the existing condition.

Notably, the existing industrial building on the site already exceeds the mapped height control of 9.2 metres and does so without achieving any of the above objectives. The proposal, while exceeding the height standard numerically, delivers superior outcomes in terms of landscape, heritage interface, sunlight, character alignment.

2.3.7.4 Conclusion – Public interest and statutory alignment

The variation to the mapped height standard is consistent with the relevant objectives of the Housing SEPP, the LEP development standard relevant to this development application and that of the 2023 standard, and the underlying zone. It delivers better environmental and social outcomes than strict compliance and supports state-led policy objectives under the EP&A Act section 3.28.

Given the site-specific incompatibility of the IN1 industrial zoning and height control with both the Housing SEPP and the current strategic planning framework, the variation is not only reasonable but necessary to realise a lawful and well-founded planning outcome. The proposal will deliver high-

quality, mixed-income housing on an underutilised urban site, resolve longstanding land use conflicts, and demonstrate how carefully considered built form can advance the public interest.

3 Conclusion

This written request demonstrates that strict compliance with the development standard under clause 4.3 of the LEP 2011 and the later Parramatta Local Environmental Plan 2023, which prescribes a maximum building height of 9.2 metres, is both unreasonable and unnecessary in the circumstances of this case. The proposed development seeks a maximum building height of 29.0 metres, representing a variation of 19.8 metres, or approximately 215 per cent. This variation is not arbitrary but reflects a carefully modelled height envelope derived from environmental, social and heritage compatibility principles, refined through rigorous design testing and statutory consultation.

The application satisfies all relevant statutory tests under clause 4.6 of the LEP, as follows:

- **Clause 4.6(3)(a):** Compliance is unreasonable or unnecessary because:
 - The objectives of clause 4.3 are achieved notwithstanding the non-compliance, as the proposed built form delivers an environmentally responsive, socially beneficial and spatially compatible outcome.
 - Strict compliance would frustrate the underlying intent of the control and produce inferior results with respect to overshadowing, landscape, amenity, and the curtilage of State heritage items.
 - The mapped height and zone standards are legacy controls derived from an outdated industrial context and no longer reflect the strategic or physical character of the site or its surrounds.
- **Clause 4.6(3)(b):** There are sufficient environmental planning grounds to justify the variation, including:
 - The delivery of 50 per cent affordable housing in a mid-rise, build-to-rent format that aligns with the Housing SEPP and Ministerial Directions.
 - The removal of an intrusive industrial structure and reinstatement of a landscaped open space setting around heritage-listed assets including Hambledon Cottage and Experiment Farm.
 - A solar-responsive and context-sensitive built form strategy, in which height and massing have been shaped by environmental constraints and visual interface conditions rather than by fixed vertical limits.
 - The proposal's alignment with the Parramatta LSPS 2020, the Housing SEPP 2021 (Division 5), and other relevant State and local policy frameworks.
- **Clause 4.6(4)(a):** The development is in the public interest because it is consistent with:
 - The objectives of clause 4.3, including protection of solar access, urban transition, and compatible built form outcomes.
 - The objectives of the IN1 General Industrial zone, interpreted purposively in light of the SCC, which establishes residential development as the strategic and physically appropriate future use of the land.

Importantly, the proposed development has emerged through a statutory framework defined by a SCC issued under clause 39 of the Housing SEPP. That certificate confirms that the proposed residential use, height and scale are compatible with surrounding land uses, subject to further testing and refinement. The schedule of the SCC explicitly requires:

- Consultation with the Department of Planning, Housing and Infrastructure.
- Refinement of the design in response to agency and stakeholder feedback.
- Consideration of built form, visual impact, and curtilage treatment around heritage items.
- Demonstration that the final development achieves contextual compatibility.

These requirements have been met. The proposal has undergone extensive design evolution involving multidisciplinary expert input, community engagement, and testing of built form performance through environmental and heritage lenses. The built form has been progressively adjusted to respond to height transition, solar protection, interface conditions and public domain improvements. The resulting scheme is not only consistent with the compatibility principles established by the SCC but exceeds the performance that would be achieved through strict adherence to the LEP's numerical height standard.

The requested variation facilitates a superior planning outcome when measured against:

- The existing condition (a derelict and oversized industrial facility out of character with its surroundings).
- A compliant scheme (which would constrain design flexibility, diminish public benefit and increase bulk in less appropriate locations).
- A permissible industrial redevelopment (which would perpetuate environmental conflict, underutilisation and urban incompatibility).

In contrast, the proposed development delivers:

- Urgently needed affordable housing in a high-demand location.
- Improved heritage curtilage, open space and public domain integration.
- A solar-sensitive and landscape-supported height envelope.
- Design consistency with strategic planning policies.
- Full implementation of the SCC conditions through iterative refinement and stakeholder consultation.

Accordingly, the variation to clause 4.3 satisfies the purpose, intent and operative requirements of clause 4.6 and should be supported as a legitimate, meritorious and strategically endorsed departure from the development standard. To refuse the variation would be to disregard the compatibility findings and frustrate the core intent of the Housing SEPP to enable high-quality, affordable housing delivery on strategically significant urban land.