

Clause 4.6 Variation Request

Height of Building

2 -16 Pockley Avenue, Roseville

SSD-77825469

14 October 2025

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1.0 INTRODUCTION

This Clause 4.6 Variation Request has been prepared on behalf of Aqualand Prestige 2 Pty Ltd as The Trustee for Aqualand Prestige 2 Unit Trust (**Aqualand**) to support the the State Significant Development Application (**SSDA**) SSD-77829461 at 2 -16 Pockley Avenue, Roseville, pursuant to Part 4 of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).

This Clause 4.6 Variation Request relates to the development standard for building height under Section 16(3) of the *State Environmental Planning Policy (Housing) 2021* (**Housing SEPP**). Clause 4.6 of the *Ku-ring-gai Local Environmental Plan 2015* (**KLEP**) enables a consent authority to grant consent for a development even though the development contravenes a development standard of the KLEP or another environmental planning instrument, such as in this occasion.

Clause 4.6(3) of the KLEP requires that a consent authority be satisfied of two matters before granting consent to a development that contravenes a development standard. These two matters are that the applicant has demonstrated that:

- a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

The consent authority's satisfaction in respect of those matters must be informed by the objectives of Clause 4.6, which are to provide an appropriate degree of flexibility in the application of the relevant development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

1.1 Legal Guidance

The Land and Environment Court (LEC) has established planning principles to guide assessment of whether a variation to development standards should be approved. Guidance on Clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

1.2 Overview

In accordance with the above requirements, this Clause 4.6 Variation Request:

- Explains the amended allocation of infill Affordable Housing pursuant of Section 16 of the Housing SEPP (**Section 2.3**);
- Identifies the development standard to be varied and the amended allocation of infill Affordable Housing pursuant of Section 16 of the Housing SEPP (**Section 3.0**);
- Identifies the variation sought (**Section 4.0**);
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 5.0**); and
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 6.0**).

In summary, this Clause 4.6 Variation maintains that, notwithstanding the minor non-compliance with the Building Height development standard:

- The minor non-compliance is specific to the circumstances of the proposed development, as the site slopes significantly and the height exceedance is only to those parts of the upmost storey where the ground level (existing) falls away.
- Compliance with the development standard would be unreasonable and unnecessary, as the proposed development satisfies the objectives of Chapter 2 and the aims of Chapter 5 of the Housing SEPP which apply to the site,
- There are sufficient environmental planning grounds to justify the contravention of the height of building control, as the proposed development causes no unreasonable impact in terms of overshadowing or view loss as a result of the non-compliance, and is compatible with the future desired character of the area as established by the Housing SEPP,

Therefore, in accordance with the flexibility allowed under Clause 4.6 of the KLEP, this SSDA may be approved with the variation as proposed.

2.0 THE SITE AND CONTEXT

2.1 Site Description

The Site is located at 2-16 Pockley Avenue, Roseville in the Ku-ring-gai LGA. The Site consists of eight allotments and has a total site area of 6,539sqm. The Site has four street frontages, including two to Pockley Avenue to the north and west, one to Larkin Street to the east and one to Maclaurin Parade to the south.

Key to this Clause 4.6 request, the Site slopes approximately 21m from the eastern frontage to the western frontage. Refer to the revised survey plan prepared by Rygate Surveyors appended to the Submissions Report.

2.2 Surrounding Context

The statutory planning context for the site has been subject to considerable change during the preparation and following the lodgement of the SSDA.

- **May 2024:** The State Government's Transit Orientated Development (**TOD**) planning policy was implemented with the inclusion of TOD provisions under Chapter 5 of the Housing SEPP for identified sites with a 400m walking catchment of Roseville, Lindfield, Killara and Gordon train stations in the Ku-ring-gai LGA.
- **15 November 2024 - 17 December 2024:** - Four alternative TOD scenarios were prepared by Ku-ring-gai Council (**Council**) and put on public exhibition to redistribute the housing supply envisioned under the TOD provisions.
- **2 April 2025 – 22 April 2025:** Following the exhibition of the four alternatives, Council placed their Preferred Scenario on public exhibition.
- **24 April 2025:** The subject SSDA (SSD-79276958) was submitted. The future context according to the applicable statutory controls at the time of submission is demonstrated in **Figure 7** in **Section 6.1**.
- **22 May 2025 – 18 June 2025:** The public exhibition period for the subject SSDA.
- **5 June 2025:** The Council adopted the Preferred Scenario which was submitted to DPHI.
- **13 June 2025:** The DPHI repealed the TOD provisions that applied to the Ku-ring-gai LGA except for sites that were 'saved'. Therefore,
 - New development applications cannot be lodged utilising the Housing SEPP TOD controls, nor can applications be lodged utilising Council's Preferred Scenario planning controls until they are implemented by DPHI. Applications can still be lodged under Council's existing planning controls (*Ku-ring-gai Local Environmental Plan 2015*), the low and mid-rise provisions under Chapter 6 of the Housing SEPP, or for sites that have been 'saved'.
 - Development applications that have been 'saved' can still utilise the TOD provisions of the Housing SEPP. This includes the subject site.
- **19 June 2025:** DPHI published updated maps under the KLEP 2015 identifying locations where local DAs and SSDAs have been 'saved' and the TOD provisions still apply - including the subject site.
 - The following sites in the nearby vicinity have been 'saved':
 - 2-4 Larkin Street, 1-5 Pockley Avenue, Roseville
 - 2-16 Pockley Avenue, Roseville
 - 7-11 Pockley Avenue, Roseville
 - 17-21 Shirley Road, Roseville
- **14 November 2025:** The DPHI published the amending instrument for Council's Preferred Scenario, *State Environmental Planning Policy Amendment (Ku-ring-gai Station Precinct) 2025 (Ku-ring-gai Station Precinct SEPP Amendment)*. Therefore, the controls proposed for the Ku ring gai Council's Preferred Scenario can now be applied to new DAs. This amendment has no changes to the applicable TOD provisions for the subject site which are now formally saved under Clause 1.8A of the KLEP 2015.

This context has been considered in the consideration of future desired character as discussed in **Section 6.1**.

2.3 Relevant Height Controls applying to the Site

The lodged proposal provided 15.4% of total GFA as affordable housing GFA, including 13.4% of the total GFA allocated as infill affordable housing which allowed the proposal to achieve an additional 26.8% increase in height and FSR controls under Section 16 of the Housing SEPP. Therefore, the permissible building height equated to 27.9m and permissible FSR 3.17:1 from base controls of 22m and 2.5:1 respectively.

The submitted proposal with a maximum building height of 32.31m exceeded the permissible building height control by 4.41m (15.8%).

The project refinements now include reconfiguration of apartments at various levels and result in the reallocation of market and affordable housing GFA including an increase in affordable housing dwellings to 17% of total GFA. This consists of maintaining 2% of GFA in perpetuity (Section 156, Housing SEPP) and an increase in infill affordable housing to 15% of GFA for a minimum of 15 years. The additional allocation of infill affordable GFA allows for the full application of 30% additional height and FSR to the base controls. This results in a maximum permissible building height control of 28.6m and maximum permissible FSR control of 3.25:1, which allows for a total permissible GFA of 21,252 sqm.

Following project refinements, the maximum building height is 34.95m being located at the north-western corner of the lift overrun at Pavilion A, resulting in a height exceedance of 6.35m (22.2%). The total GFA of the proposal has increased to 21,252 sqm which equates to a proposed FSR of 3.25:1 and is compliant.

Importantly, this project refinement has resulted in the increase of affordable housing dwellings from 39 to 46 (number of total apartments also increasing from 178 to 180) whilst largely maintaining the building envelope that was initially submitted.

3.0 DEVELOPMENT STANDARD TO BE VARIED

3.1 Relevant Development Standard Applicable to the Site

The development standard to be varied is Section 16 of Part 2, Chapter 2 of the Housing SEPP:

16 Affordable housing requirements for additional floor space ratio

(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the development on the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).

(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows—

$$\text{affordable housing component} = \frac{\text{additional floor space ratio}}{(\text{as a percentage})} \div 2$$

(3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the development on the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).

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

4.0 NATURE OF THE VARIATION SOUGHT

As outlined in **Section 2.0** above, the Site has a maximum height of building control of 28.6m made available under Chapter 2 and 5 of the Housing SEPP.

Following project refinements, the maximum building height is 34.95m being located at the north-western corner of the lift overrun at Pavilion A, resulting in a height exceedance of 6.35m (22.2%). Refer to **Figure 1**. The parts of the proposed development exceeding the maximum height are limited to rooftop Communal Open Space (COS), lift overrun and services, as well as only small parts of the uppermost levels of each building as a result of the significant slope across the site. Services plantrooms (for the condenser plant and hot water plant) have been sized to meet requisite needs and will not be visible from the street level.

As a result of the Response to Submissions and further engagement with DPHI in relation to providing adequate and equitable residential COS, the proposal has been revised to include a rooftop COS for each building. The increased maximum height exceedance is attributed to the provision of rooftop COS which has extended lift access to the roof levels and consequently also extent of the lift overrun of each building. The elements of the rooftop that exceed the height plane are outlined in **Figure 2**.

Despite the additional rooftop COS, on balance, the height exceedance is considered acceptable as the 2,749 m³ of volume above the permissible height plane is considerably less than the 5,195m³ of underutilised volume under the 28.6m height limit. This is demonstrated in **Figure 3**. Further, there are sufficient environmental planning grounds that demonstrate that the contravention including the additional height exceedance will have minimal impacts as demonstrated in the following sections of this report.

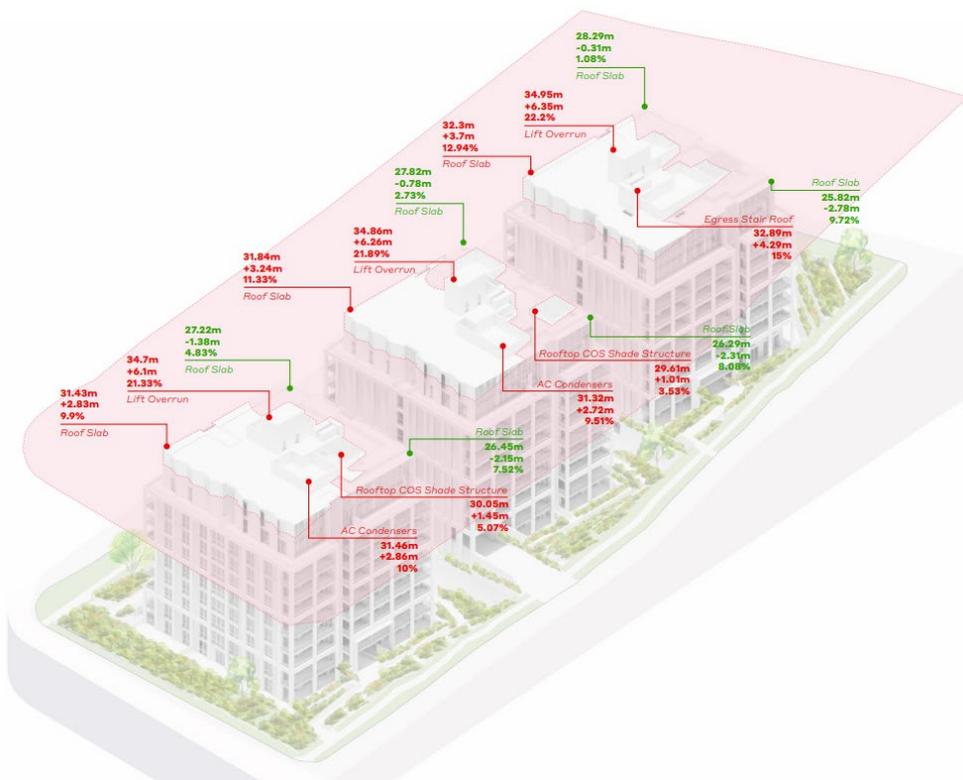


Figure 1: Building Height Plane 3D Diagram- Spot Heights
Source: Woods Bagot

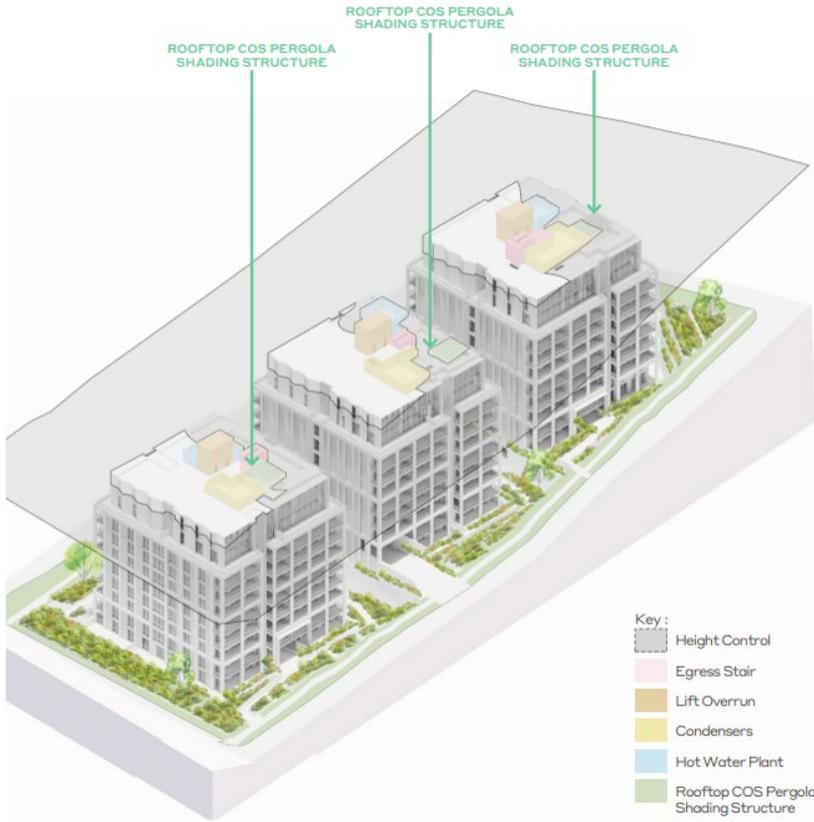


Figure 2: Rooftop Elements Over the Height Plane
 Source: Woods Bagot

Total Volume Over Height Control : 2,749m³
 Total Unused Volume Under Height Control : 5,195m³



Figure 3: Building Height Plane 3D Diagram - Volumes Over and Under
 Source: Woods Bagot

5.0 CLAUSE 4.6(3)(A) COMPLIANCE IS UNREASONABLE OR UNNECESSARY

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five ways in which it could be shown that compliance with a development standard is unreasonable or unnecessary. His Honour in that case (and subsequently in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 confirmed that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis is of assistance in applying Clause 4.6 given that subclause 4.6(3)(a) uses the same language as Clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]; *Initial Action* at [16]).

The five methods outlined in *Wehbe* were:

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

5.1 Objective of Chapter 2, Part 2 of SEPP Housing

In this instance, the First Method is of particular assistance in establishing that compliance with the development standard is unreasonable or unnecessary. Part 2 of Chapter 2 of the Housing SEPP (the infill affordable provisions) includes a single objective at s15A:

15A Objective of division

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

The proposed development satisfies the above objective as it will facilitate the delivery of new in-fill affordable housing that will meet the needs of very low, low and moderate income households. The proposed development will provide 17% of the total gross floor area of the building as affordable housing, including 15% under Chapter 2 of the Housing SEPP, and an additional 2% under Chapter 5 of the Housing SEPP. Bridge Housing as the community housing provider (**CHP**) has been nominated with a revised letter of support that confirms that the proposed affordable housing units comprised 38 in-fill affordable housing units managed for a period of at least 15 years and 8 affordable housing units managed in perpetuity.

The proposed development, notwithstanding the proposed height exceedance, satisfies the objective of Part 2, Chapter 2 of the Housing SEPP. The proposed exceedance, which is predominately a result of the steep, sloping nature of the site, will facilitate the delivery of new in-fill affordable housing. A compliant building height that is stepped with the sloping terrain would provide less affordable housing, as a direct result of less floor area, but also as a result of accessibility and constructability challenges and additional costs related resulting from more complex suspended slab elements and other structural implications.

Additionally, the environmental impacts of the part of the building that exceeds the permitted height is addressed in **Section 6.0**, and determine that there are sufficient environmental planning grounds to justify the contravention.

5.2 Aims of Chapter 5 of SEPP Housing

Chapter 5 of the Housing SEPP does not include objectives, however, for completeness this Clause 4.6 Request considers the proposed development against the *aims* of the chapter provided in Section 150. The aims of Chapter 5 are addressed below and demonstrate that the proposed development achieves the aims of the Chapter notwithstanding the proposed height non-compliance.

Table 1: Aims of Chapter 5 of the Housing SEPP

| 150 Aims of chapter | Response |
|---|---|
| <i>(a) to increase housing density within 400m of existing and planned public transport,</i> | <p>The proposed development will increase housing density within 400m of existing public transport, notwithstanding the contravention of the height standard.</p> <p>The proposed height exceedance will directly increase the housing density within 400m of Roseville rail station.</p> |
| <i>(b) to deliver mid-rise residential flat buildings, seniors housing in the form of independent living units and shop top housing around rail and metro stations that</i> | <p>The minor height contravention will facilitate the delivery of mid-rise residential flat buildings around Roseville rail station.</p> |
| <i>(i) are well designed, and</i> | <p>The proposed development is well designed and has been refined through the State Design Review Panel (SDRP) process. Refer to the Design Report submitted with the EIS and RTS Design Report Appendix prepared by Woods Bagot for the RTS submission.</p> <p>The height exceedance is as a result of the steep terrain which cannot be feasibly mitigated with a stepping of the floor plate as a result of accessibility and constructability challenges, as well as excessive costs related resulting from more complex suspended slab elements and other structural implications.</p> <p>There is far more of the proposal below the height standard than above it. Refer to Section 4.0.</p> |
| <i>(ii) are of appropriate bulk and scale, and</i> | <p>The proposed development is of an appropriate bulk and scale for the site and its context, particularly considering the future desired character (refer to Section 6.1) for this area of Roseville notwithstanding the proposed height exceedance, which is a result of a significantly sloping site. The bulk and scale of the proposed development is considered further in Section 6.0 below.</p> |
| <i>(iii) provide amenity and liveability,</i> | <p>The proposed development provides a high level of amenity and liveability to residents including sunken courtyard apartments (refer to Chapter 06 of the Addendum Design Report) and surrounding development.</p> <p>The proposed development provides adequate internal amenity including maximising solar access given the site's urban nature and topographic constraints, with justified building separation and maximised solar access.</p> <p>The environmental impacts of the height variation are minor as demonstrated in Section 6.0.</p> |
| <i>(c) to encourage the development of affordable housing to meet the needs of essential workers and vulnerable members of the community.</i> | <p>The proposed development provides affordable housing under Chapter 2 and Chapter 5 of the Housing SEPP, far exceeding the minimum 2% affordable housing required pursuant to s156(2)(a) of Chapter 5. The additional height supports the provision of more housing including affordable housing under Chapter 2 to meet the needs of essential works and vulnerable members of the community.</p> |

6.0 CLAUSE 4.6(3)(B) ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY THE CONTRAVENTION

Clause 4.6(3)(b) of the KLEP requires the consent authority to be satisfied that the Applicant’s written request has adequately addressed this clause by demonstrating *that there are sufficient environmental planning grounds to justify contravening the development standard.*

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, the Commissioner found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. On appeal in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J upheld this as a valid approach.

There are sufficient environmental planning grounds to justify contravention of the height of building standard in the specific circumstances of the proposed development, as demonstrated in the following sections of this report.

6.1 Bulk, Scale and Character

The bulk and scale of the proposed development has been carefully developed over the course of the project to minimise impacts on surrounding development and public space. **Figure 3** shows the alternative massing options that were presented at the SDRP, where the proposal’s massing was supported by the SDRP.

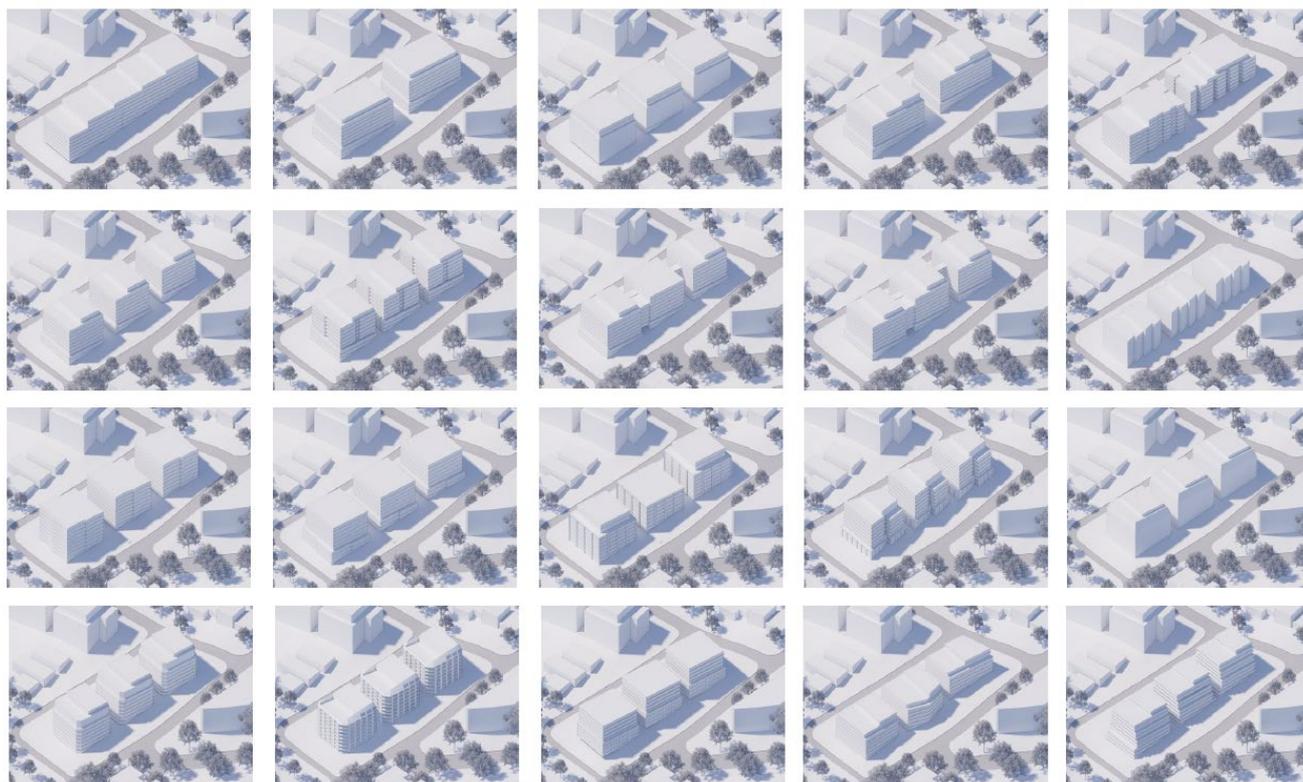


Figure 4: Massing Studies from SDRP
Source: Woods Bagot

In addition, the proposed development is compliant with the maximum permitted floor space ratio control of 3.25:1 pursuant to Chapter 2 and 5 of the Housing SEPP.

The proposed development is of an appropriate scale, notwithstanding the proposed height exceedance, and is compatible with the future desired character of Roseville as further discussed below. The distribution of building mass and the overall architectural approach, which has been supported by the SDRP and has further incorporated feedback and minimises environmental impacts to the surrounding area and residents on a significantly steeply sloping constrained site.

The surrounding context of the site is clearly an area undergoing transition as evidenced by the introduction of the TOD program and implementation of Chapter 5 Transport Oriented Development provisions for the identified Roseville Station catchment by the State Government, which has since been followed by the alternative Preferred Scenario for a revised TOD boundary by Council. Notwithstanding, the TOD provisions have been saved for the subject site, as well as others in the precinct. Importantly, the Council endorsed Preferred Scenario considers greater heights in the site's immediate context.

Section 20 (3)(b) of the Housing SEPP requires the consent authority to consider whether the design of the residential development is compatible with "for precincts undergoing transition – the desired future character of the precinct".

Desired future character is not a defined term in any relevant planning legislation however in the case *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115, Chief Justice Preston described "desired future character" as requiring consideration of "at least the zoning of the land, the zone objectives, the range of permissible uses, the development standards, and in this case the designation of heritage significance of the area". The test considers factors including:

- LEPs,
- SEPPs,
- Existing built and natural elements,
- Approved developments in the area,
- Historical and cultural context.

Therefore, the above considerations have been made to determine how to interpret desired future character for the subject site with regard to the planning background outlined in **Section 2.2**.

The Council Preferred Scenario which has now been published as part of the *State Environmental Planning Policy Amendment (Ku-ring-gai Station Precinct) 2025 (Ku-ring-gai Station Precinct SEPP Amendment)* are considered in the future desired character. The amended LEP maps for zoning and height are provided in **Figure 4** to **Figure 6** and show that the Council preferred scenario considers a high density precinct with heights up to 29m. regardless, the original TOD provisions were saved for the site as a DA was lodged prior to their amendment.

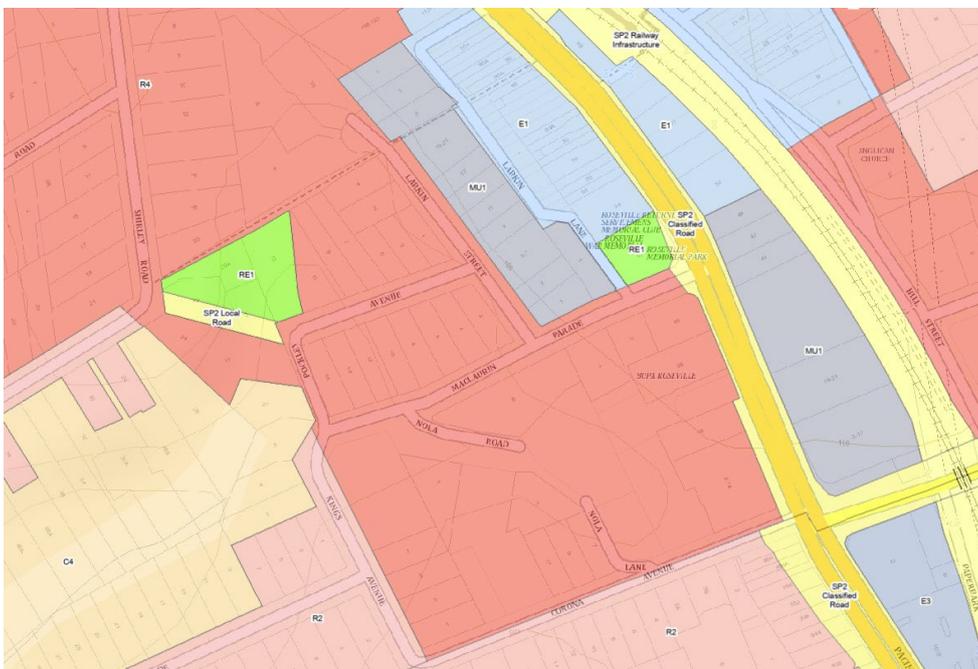


Figure 5: KLEP 2015 Amended Map for Land Zoning
Source: NSW Planning Portal Spatial Viewer



Figure 6: KLEP 2015 Amended Map for Height of Buildings
 Source: NSW Planning Portal Spatial Viewer

In *Big Property Pty Ltd v Randwick City Council* [2021], Commissioner O’Neill referenced *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 (SJD) and held that: “As generic standards, [development standards] do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPIs that incentivise particular development with GFA bonuses or other mechanisms that intensify development.”

Therefore, in addition to the LEP amendments as part of the Ku-ring-gai Station Precincts SEPP Amendment, the project has considered the following to contribute to interpreting the desired future character of the site’s surroundings:

- Saved DPHI TOD sites (as identified in the current Transport Oriented Development Sites Map for the Housing SEPP),
- Development under construction (such as at 4-10 Maclaurin Parade) and already constructed (such as 9-11 Kings Avenue),
- Additional 30% infill bonuses for FSR and height may be applied to surrounding areas,
- Alignment of the Proposal with Chapter 5 TOD objectives.

The following **Figure 7** demonstrates that the proposed development is compatible within the desired future character as considered above.



Figure 7: Site Context Analysis
Source: Woods Bagot

The analysis undertaken by Woods Bagot shows that the proposed development is not inconsistent with the surrounding context of the site, which even under the Ku ring gai Council's Preferred Scenario is identified as R4 High Density Residential lands with building heights up to 29m, which when allowing for the application of the provisions of Chapter 2 of the Housing SEPP, might consider buildings up to 37.7m. This is some 9.1m over the current maximum permissible building height control of 28.6m that applies to the site.

The proposed development, in this bulk and scale is considered appropriate to the character of the site in the context of an area undergoing transition.

6.2 Overshadowing

Revised overshadowing diagrams have been provided in the Addendum Design Report and distinguish between:

- Shadow cast by the proposal within compliant envelope (area within height control),
- Shadow cast by the proposal beyond compliant envelope (area above height control),
- Compliant scheme shadow overcast more than the proposal, and
- Shadow cast by updated roof amenity.

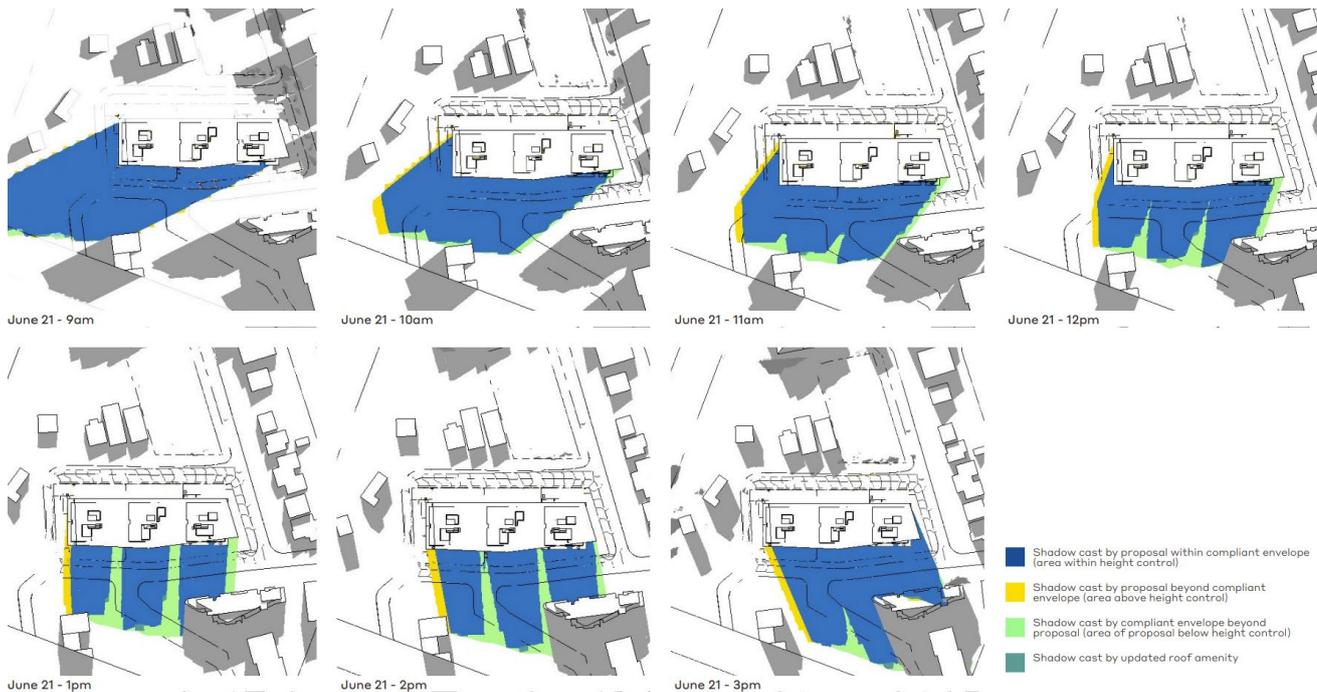


Figure 8: Shadow Diagrams

Source: Woods Bagot

The location, size and configuration of the plantrooms, overruns and rooftop COS were investigated in consultation with the Department and the decision to locate rooftop COS was pursued, with the eastern side preferred so as to limit additional environmental impacts including additional shadows. The additional shadows from the proposed communal open spaces has minor significance to the shadows as demonstrated in **Figure 8**.

Overall, the diagrams demonstrate that overshadowing impacts caused by the proposed development is minor, notwithstanding the height exceedance, as:

- Neighbouring dwellings to the north, east and west of the site are not overshadowed by the proposed development between 9am and 3pm on 21 June.
- The additional overshadowing cast by building elements that exceeds the building height control is imperceptible and mostly limited to impacting the road or the north-eastern corner of the existing building on 9-15 Kings Avenue only at 1pm and 2pm.
- The additional shadow created by the 6.35m additional height is negligible, particularly the additional rooftop COS element.
- The site is located in an urban location undergoing renewal. The proposed development reflects the anticipated future character of the area and the minor exceedance does not create any unreasonable additional impact in terms of overshadowing compared to a compliant envelope. Additionally, privacy to surrounding developments is ensured by supportable setbacks which are increased at higher levels as well as material privacy treatment to minimise overlooking.

Additionally, privacy to surrounding developments is ensured by supportable setbacks which are increased at higher levels as well as material privacy treatment to minimise overlooking.

6.3 View Sharing

Figure 9 is reproduced from the RTS Design Report Appendix, of Viewpoint 02 from 5-7 Larkin Street perspective from the north. This visual assessment demonstrates the proposed height exceedance does not cause any impact on public or private views compared to a compliant building envelope. All other views assessed in the VIA have negligible differences in the comparison between proposed development and the height control.

The proposed development will retain and share existing views. The site and surrounds do not benefit from any significant views identified in any environmental planning instruments or Council policies.



View Impact Assessment Prepared By Virtual Ideas - 15 April 2025

Figure 9: View Impact Assessment highlighting height overs and under from 5-7 Larkin Street (North) view
Source: Woods Bagot

Further, the visual impact of the additional rooftop COS from the public domain is imperceptible from the two lowest points of the site, at street level, demonstrated in Figure 10 and Figure 11. The location, size and configuration of the plantrooms, overruns and rooftop COS were investigated and were primarily driven by the intention to limit additional environmental impacts. The potential view impact of these elements is mitigated by the setbacks of the upper-most levels including the rooftop levels.



Figure 10: View Analysis - south-western corner
Source: Woods Bagot



Figure 11: View Analysis -north-western corner
Source: Woods Bagot

6.4 Topography

The site slopes significantly spanning approximately 21m from the eastern frontage to the western frontage. The parts of the proposed development that exceed the maximum permitted height are mainly limited to the ‘lowest’ parts of the Site at the west and south west corners, where the ground level (existing) falls away, as demonstrated in **Figure 12** below.

The design has sought to address the slope through the splitting of the form into three distinct pavilions.

A compliant building height that stepped with the sloping terrain would result in significant accessibility and constructability challenges, as well as unreasonable costs related to complex suspended slab elements and other structural implications to these parts of the building. It is unreasonable in the specific circumstances of the proposed development, given the challenging topography of the land, to require strict compliance with the height of building control as a result. It has been demonstrated above that the proposed development, including the part of the building exceeding the height control, does not unreasonably impact on other existing or future development. Further, no private habitable floors are located entirely above the permitted height plane.

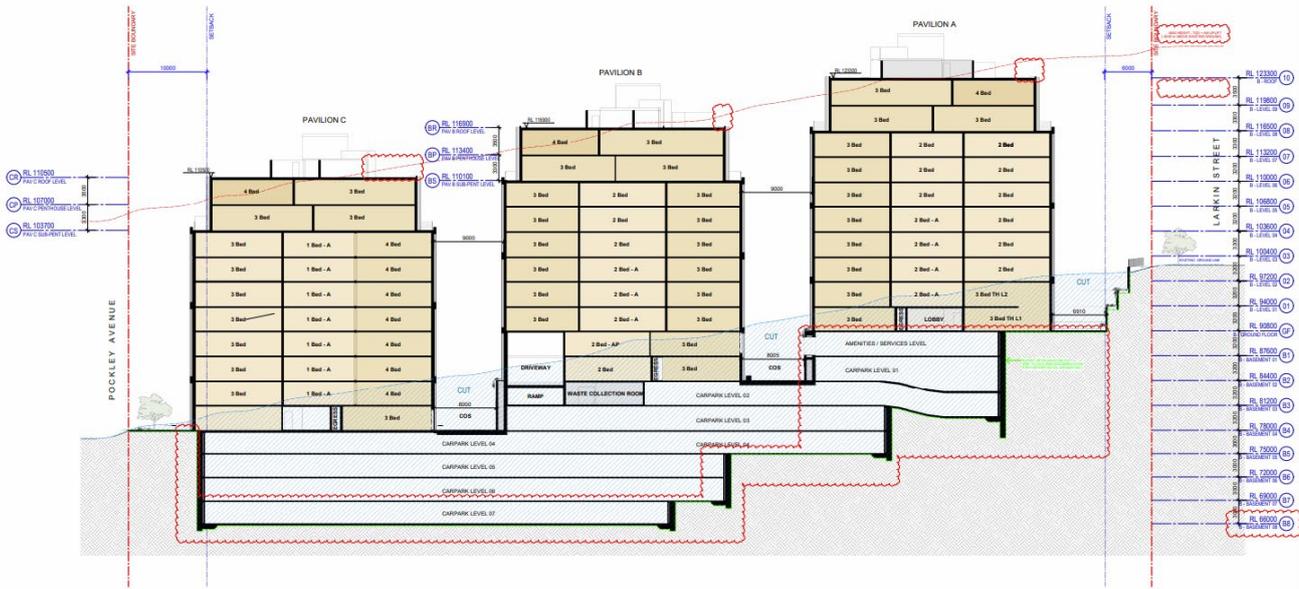


Figure 12: Revised Section A Plan
 Source: Woods Bagot

6.5 Consistency with the Objects of the Environmental Planning and Assessment Act 1979

In Initial Action, the Court stated that the phrase “environmental planning grounds” is not defined but can refer to grounds that relate to the subject matter, scope and purpose of the Environmental Planning & Assessment Act 1979 (**EP&A Act**), including the objects in Section 1.3 of the Act. Whilst this does not require that the proposed development be consistent with all of the objects of the Act, the proposed developments consistency with each object is considered in **Table 2**.

Table 2 Assessment of proposed development against the Objects of the EP&A Act

| Object | Assessment |
|---|---|
| (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources | <p>The proposed height exceedance is not anticipated to have any impact on the promotion of the social and economic welfare of the community or the development and conservation of the State’s natural and other resources.</p> <p>Rather, the minor height exceedance allows the delivery of affordable housing at a well located site that will allow key workers, amongst others, to live in the Roseville suburb with access to key public transport services.</p> |
| (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment | <p>The proposed development is supported by an ESD report and will incorporate ecologically sustainable development into the design, construction and ongoing use of the building.</p> <p>The proposed development meets or exceeds BASIX requirements and the additional proposed building height will have no unreasonable impact on environmental and social considerations.</p> |
| (c) to promote the orderly and economic use and development of land | <p>The proposed development including the proposed exceedance of height will facilitate the renewal of a large consolidated site identified within the surrounding Roseville area as suitable for greater density and more economic use of land.</p> |
| (d) to promote the delivery and maintenance of affordable housing, | <p>The proposed development promotes the delivery and maintenance of affordable housing, and provides a total of 17% of the total GFA as</p> |

| | |
|--|---|
| | affordable rental housing pursuant to Chapter 2 and 5 of the Housing SEPP. |
| <i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i> | The proposed building height will not impact on the conservation of threatened and other species or native animals and plants, ecological communities and their habitats. |
| <i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i> | The exceedance of the height standard will not negatively impact the proposed development's ability to promote the sustainable management of built and cultural heritage. |
| <i>(g) to promote good design and amenity of the built environment,</i> | <p>The proposed development has been designed by award winning architects Woods Bagot and has been refined through the SDRP process and again following the receipt of responses from key stakeholders in the exhibition period.</p> <p>The proposed development promotes good design and amenity by maximising internal and external amenity for residents and neighbouring development.</p> |
| <i>h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i> | The proposed building will meet all relevant Australian Standards and the BCA standards in order to protect the health and safety of construction staff and occupants. |
| <i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i> | This object is not relevant to this proposed development. |
| <i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i> | The proposed development including this Clause 4.6 Variation Request will be publicly notified in accordance with Council's requirements. |

7.0 CONCLUSION

This written variation request made under Clause 4.6 of the KLEP to vary the maximum permitted height pursuant to Section 16 of Chapter 2, Part 2 of the Housing SEPP has demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- There are sufficient environmental planning grounds to justify the contravention of the development standard.

This request has demonstrated that the proposed development, notwithstanding the variation to the maximum height of building standard, is consistent with the relevant aims and objectives of the Housing SEPP and the objects of the Act.