

Appendix 1

Clause 4.6 written request - Variation to Building Height Standard

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



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

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

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1 Introduction

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

The SSDA proposes an exceedance of the 28.6 metre building height development standard that applies to the site pursuant to section 155(2) of the Housing SEPP. Under the SEPP a maximum building height of 22 metres permitted for development in designated Transport Oriented Development (TOD) areas, which can be further lifted by 30% under the infill affordable housing provisions.

The proposed development includes variably sized breaches of the combined maximum building height development standards under the Housing SEPP - with a maximum proposed building height for part of the development being 30.35 metres. These variations primarily affect a portion of the north-western and south-western parts of Level 9 and other rooftop parts of the building including lift overruns, plant equipment and associated screens.

This written variation request has been prepared pursuant to Clause 4.6 of the *Ku-ring-gai Local Environmental Plan 2015* (KLEP 2015) and forms a written request that justifies the contravention of the building height development standard based upon specific circumstances of this proposal. It is submitted that permitting the proposed variation to Sections 18(2) and 155(2) of the Housing SEPP will allow for improved planning outcomes at the site.



2 Site description

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

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

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

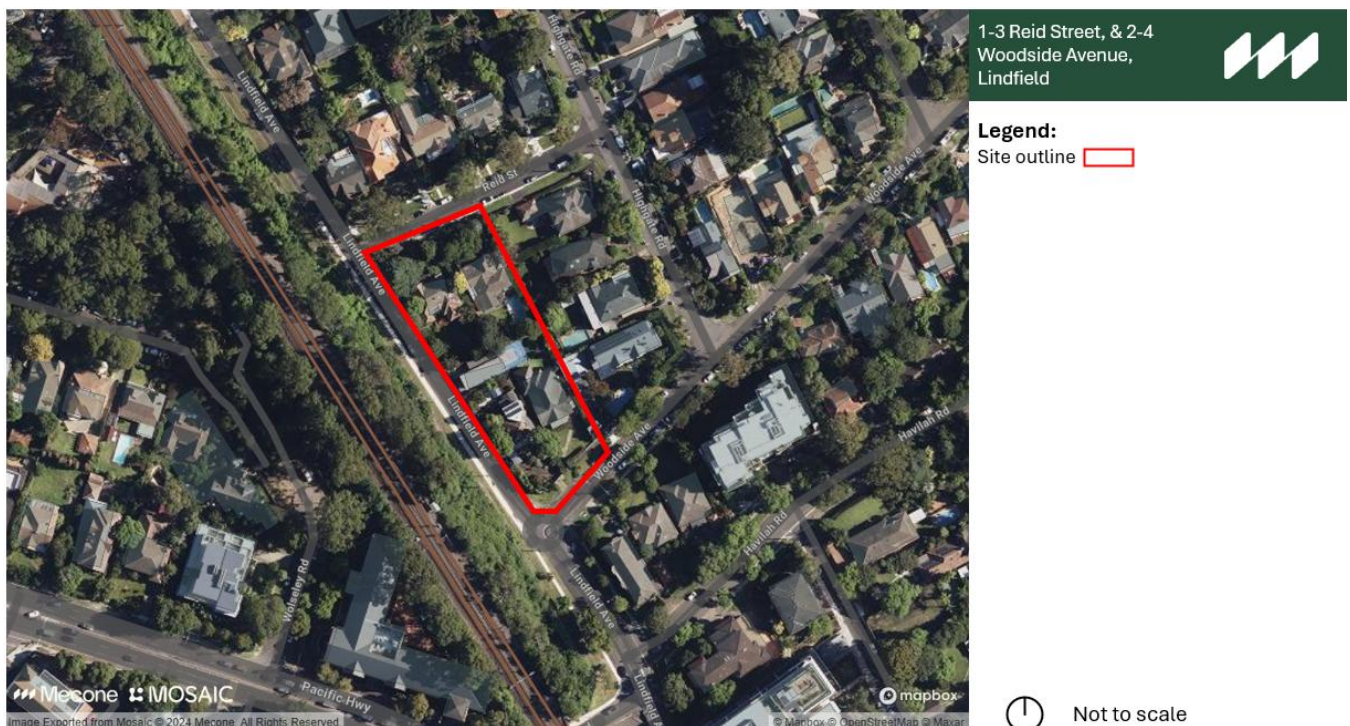


Figure 1: Aerial Image – Site is denoted by the red border

Source: Mecone Mosaic, 2024

3 Proposed development

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

An overview of the works being proposed is as follows:

- Site preparation works, including the demolition of existing site structures, tree removal, basement excavation and preparatory earthworks
- The construction of a nine-storey residential flat building, which is to contain:
 - 89 residential apartments (including twenty IAH apartments and 3 TOD apartments), including:
 - Five (5) one-bedroom apartments
 - Twenty-four (24) two-bedroom apartments
 - Fifty-six (56) three-bedroom apartments
 - Four (4) four-bedroom apartments
 - Two basement levels containing 127 parking spaces, residential storage, car wash bay, loading bay, bicycle parking areas, plant areas, an Onsite Stormwater Detention (OSD) tank and waste storage and collection facilities,
- Civil works (including stormwater and services),
- Landscape works (including the removal of 30 trees and planting for 40 new trees)
- The provision of new onsite utilities and connections



Figure 2: West Elevation Plan – Lindfield Avenue

Source: PBD Architects 2025



Figure 3: South Elevation Plan – Woodside Ave

Source: PBD Architects, 2025



4 Relevant planning instrument, development standard and proposed variations

4.1 Environmental Planning Instrument to be varied

The Environmental Planning Instrument (EPI) to be varied is *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

Chapter 5 (Transport-Oriented Development) of the Housing SEPP applies to the site. More specifically under Section 152 of the SEPP the site is located within a Transport Oriented Development area¹ and an LGA where this chapter is applicable. Additionally, Section 18 of Chapter 2 Division 1 In-fill affordable housing of the Housing SEPP also applies, which permits an additional height increase of 30%.

Following the 2023 planning reforms, Clause 4.6 of the relevant Local Environmental Plan (LEP) - in this case, the KLEP 2015 - must be used to vary development standards within Environmental Planning Instruments (EPIs), including any relevant SEPPs. Which in this case is the Housing SEPP.

The request is seeking to vary the maximum numeric height of building as it applies to the site and proposal.

¹ Under the Housing SEPP Transport Oriented Development Area means land identified as a "Transport Oriented Development Area" on the Transport Oriented Development Sites Map.



4.2 Site zoning

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



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

Source: Mecone Mosaic, 2024



4.3 Development standard to be varied

The Environmental Planning Instrument (EPI) to be varied is State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

Despite Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) permitting a maximum building height of a 9.5m for the site, the site is also identified as a TOD site. Therefore, the proposed height of the development has been determined through the combined application of Sections 155 and 18 of the Housing SEPP, as follows:

155 Maximum building height and maximum floor space ratio

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

Note—

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

- (2) **The maximum building height for a residential flat building in a Transport Oriented Development Area is 22m.**

- (3) *The maximum building height for a building containing shop top housing in a Transport Oriented Development Area is 24m.*

- (4) *The maximum floor space ratio for a residential flat building or a building containing shop top housing in a relevant residential zone or relevant employment zone in a Transport Oriented Development Area is 2.5:1.*

- (5) *This section does not apply to the extent a provision of another chapter of this policy or another environmental planning instrument permits a greater maximum building height or floor space ratio for a residential flat building or building containing shop top housing on the land.*

(UNDERLINED AND BOLD EMPHASIS ADDED ABOVE)

The provisions of section 155 of the Housing SEPP are satisfied for the purposes of the subject DA given that:

- The site located within the Ku-ring-gai LGA,
- The proposal is for a residential flat building, and
- The site is located within a Transport Oriented Development (TOD) area (refer to **Figure 4**).

The prescribed maximum permitted building height development standard that applies to the site pursuant to section 155(2) of the Housing SEPP is 22 metres.



Figure 5: Extract of the TOD site and area mapping under the Housing SEPP. The subject site is outlined in red, the TOD area is shown with a light green circle, and TOD sites are shaded in blue hatching.

Source: Mecone Mosaic, 2024

In addition, pursuant to Section 18 of the Housing SEPP, the proposal benefits from a 30% increase in building height above the base maximum height of 22 metres, as permitted under Chapter 5 (Transport-Oriented Development) and Clause 155(2) of the Housing SEPP. For reference, Section 18 provides the following:

18 Affordable housing requirements for additional building height

- (1) *This section applies to development that includes residential development to which this division applies if the development—*
 - (a) *includes residential flat buildings or shop top housing, and*
 - (b) *does not use the additional floor space ratio permitted under section 16.*
- (2) **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 of up to 30%, based on a minimum affordable housing component calculated in accordance with subsection (3).**
- (3) *The minimum affordable housing component, which must be at least 10%, is calculated as follows—*

$$\text{affordable housing component} = \frac{\text{additional building height}}{(\text{as a percentage})} \div 2$$

(UNDERLINED AND BOLD EMPHASIS ADDED ABOVE)



Under the KLEP 2015 the maximum permitted building height for the site is 9.5 metres. When the combined prescribed building height development standards for the site, pursuant to Sections 155(2) and 18(2) of the Housing SEPP is applied to the site the maximum HOB is 28.6 metres.

Therefore, the proposed variation relates to a numerical development standard as it applies to the site and proposal and seeks to vary the HOB of 28.6 metres.

4.4 Details of proposed building height development standard variation

Areas of the proposed development exceeding the 28.6-metre building height limit are at the northwest and southwest ends of Level 9 (see Figures 6 and 7). The elements breaching the height standard and their degree of variation are as follows:

- The north-western corner of the northern portion of the building (services area) Level 9 (550mm variation)
- The southern portion of apartment L8.03 Level 9 (730- 980mm variation)
- The western elevation of apartment L8.04 (510mm variation)
- The southern elevation of apartment L8.05 (550mm variation)
- Elements on the rooftop, including
 - Two lift overruns (1250mm variation), and
 - Partial sections of screening for rooftop plant equipment (1750mm variation)

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

As demonstrated by **Figures 6** and **7** below, the greatest point of non-compliance when measured from existing ground level is the lift overruns, with a maximum height of 30.35 metres.

The upper most height for only small parts of the building constitutes a 1.75 metre (or 6.1%) variation to the 28.6 metre building height development standard permitted by Sections 155(2) and 18(2) of the Housing SEPP.

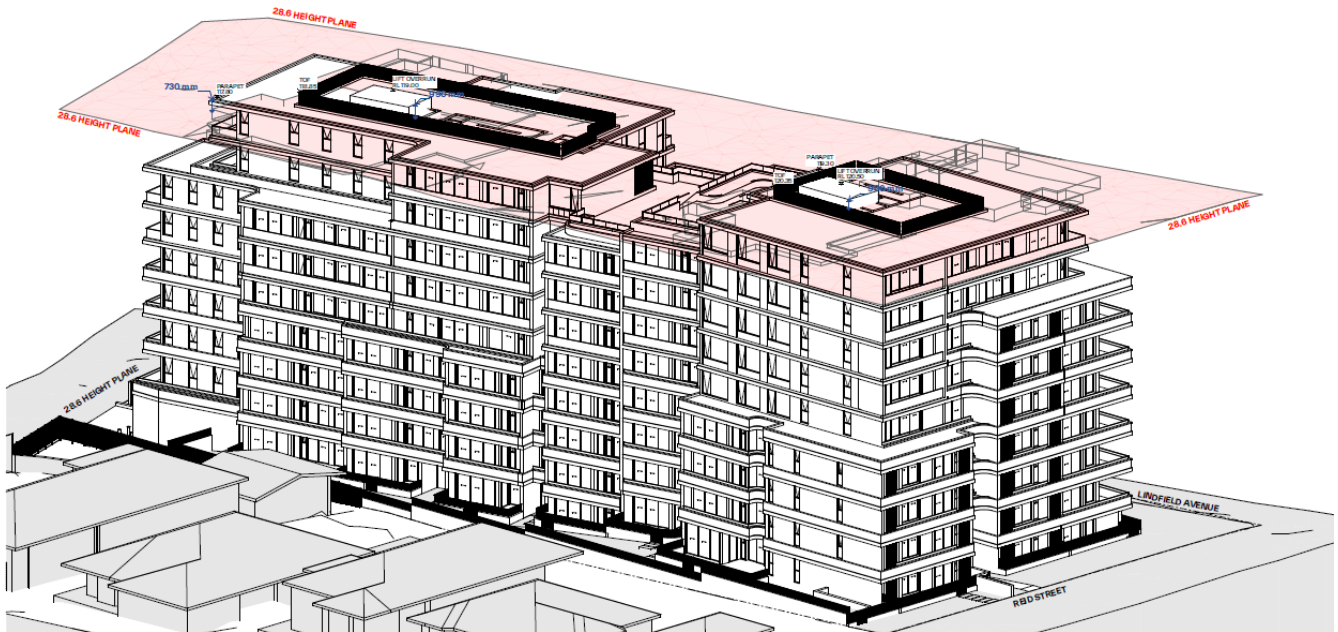


Figure 6: A 3D model of the development as viewed from the east, showing proposed elements that do not comply with the 28.6 metre building height overlay (denoted by the pink overlay)

Source: PBD Architects, 2025

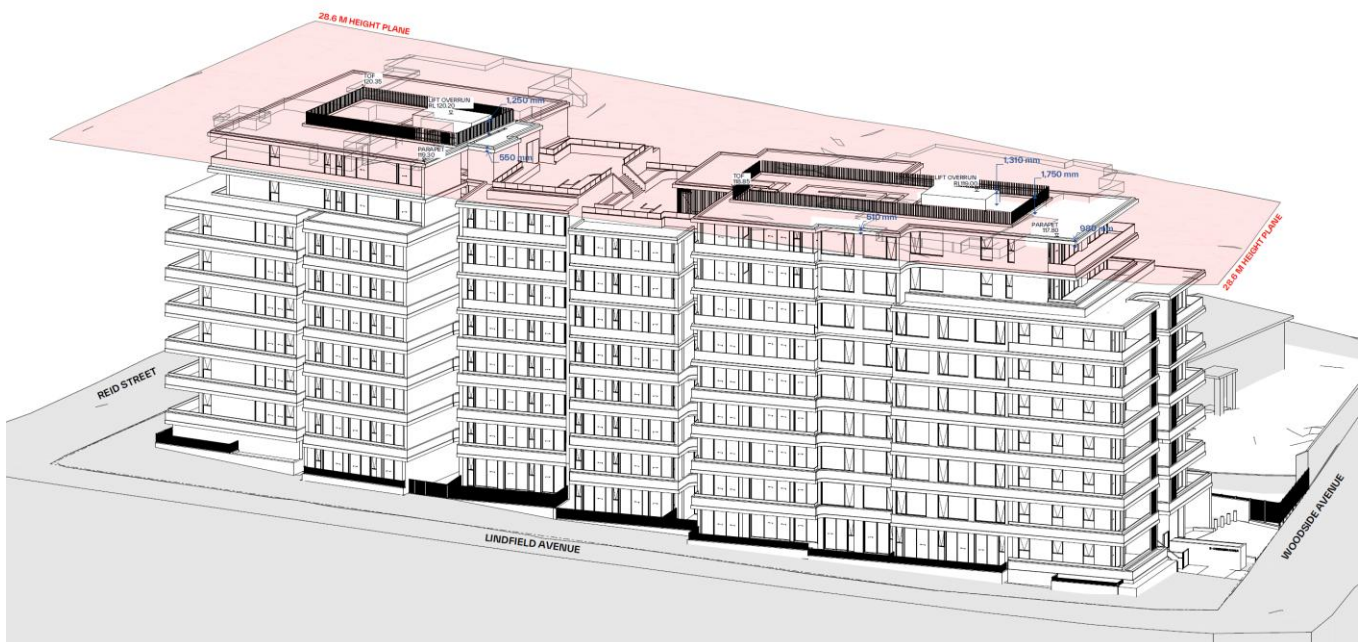


Figure 7: A 3D model of the development as viewed from the west, showing proposed elements that do not comply with the 28.6 metre building height overlay (denoted by the pink overlay)

Source: PBD Architects, 2025



5 Assessment

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

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

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

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

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

Chapter 2 of Housing SEPP – infill affordable housing

The objectives of the standard are achieved notwithstanding non-compliance with the standard
The first test of Wehbe requires demonstration that the objectives of a development standard can be achieved notwithstanding noncompliance with that particular standard.

Notwithstanding variation to the combined building height controls in the Housing SEPP, the objective and aims of the standards are achieved as outlined below.

The objectives and aims Division 1 of Chapter 2 of the Housing SEPP for In-fill affordable housing and Chapter 5 Transport Oriented Development are provided below, with a response as to how these have been met despite the variation to building height.

Section 15A Objective of Division 1 in Part 2 of the Housing SEPP for infill affordable housing states:

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.



Mecone's Assessment against Section 15A

The proposed development includes 19 apartments designated as affordable housing, to be managed by a registered community housing provider for at least 15 years, supporting the objective of delivering new in-fill affordable housing to meet the needs of very low, low, and moderate-income households. Additionally, 4 apartments will be managed by a registered provider in perpetuity, ensuring long-term affordable housing options for these income groups.

Chapter 5 of the Housing SEPP - TOD

Under Section 150 aims of Transport Oriented Development in the Housing SEPP are to:

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

Mecone's Assessment against Section 150(a)

The subject site is within 400 metres of Lindfield Station, being approximately:

- 260 metres walking distance north of Lindfield Railway Station, (as defined by the Housing SEPP) from the site to the nearest public access point to the station.

While the eligibility criteria relate to heavy rail stations, in addition to servicing the T1 and T9 railway lines, Lindfield Station also provides an interchange for numerous bus services that connect the station to surrounding local centres including Chatswood and Macquarie Park.

The 84 apartments contained within the proposed development will increase housing densities as follows:

- Compared to existing development (which comprises of four dwellings), the proposal will provide for 85 additional dwellings (i.e. a density increase of 2,125%), and

The proposal will therefore satisfy the NSW Government's aim, in that it will substantially increase housing density and supply on a site that is well within 400 metres of existing public transport that includes heavy rail services and other key services and facilities in Lindfield. To maximise housing density increases however, the constraints and context of the subject site requires a modest variation to the building height development standard.

The subject site is somewhat constrained, noting that the location of the building footprint is dictated by:

- The topography that slopes from the north to south,
- Varying dimensions and progressive narrowing of the site towards its southern end,
- The need to account for three frontages, and



- The existing locations of development on surrounding sites.

The proposed development addresses the site's constraints, including its sloping topography, tapering southern boundary, three street frontages, and surrounding built form. The design maximises the site's potential through a contextually responsive layout that ensures functional efficiency, integrates effective stormwater management, and delivers a positive interface with the streetscape.

As envisioned by Chapter 5 of the Housing SEPP and in satisfying the aim of the Housing SEPP, it is therefore submitted that the additional and minor proposed height and the subsequent height variations enable reasonable and modest increased dwelling densities for the provision of additional high quality and accessible dwellings in proximity to public transport.

Mecone's Assessment against Section 150(b)

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

- Responds to site-specific considerations and local development context and character (see below for further discussion regarding character),
- Provides appropriate building form, height, bulk and scale,
- Is consistent with housing density that are envisioned within TOD areas,
- Provides affordable housing for the locality
- Provides good landscape design,
- Provides for very high levels of internal residential amenity,
- Optimises residential safety (refer to Section 6.6 within **EIS**),
- Provides a range of apartment sizes and layouts, with flexible floor plans and choices for varying and changing residential demographics, and
- Provides a design and external appearance that responds to both the existing and future development context, while presenting a high-quality interface to the public domain.

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

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



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

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

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

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

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

Surrounding area:

- The area is predominantly characterised by low-density residential development, comprising mainly one to two-storey single dwellings. These include a mix of traditional Federation-style homes and contemporary bungalows featuring brick and rendered facades.

To the southeast, along Woodside Avenue, there is a noticeable shift in scale and density. This includes a six-storey residential flat building and an older two-storey brick building, which together provide a transition between the surrounding low-density dwellings and the emerging higher-density development.



This gradual increase in building height and intensity reflects the area's evolution toward the Lindfield Shopping Centre precinct. This precinct features several six-storey residential flat buildings and a nine-storey mixed-use development, indicating a shift toward a more urbanised character while retaining elements of the established residential identity.

The surrounding context is as follows:

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

Additionally, existing low-density residential sites within nearby R2 and R3 zones that have not yet been redeveloped may be eligible for development uplift and could be developed in accordance with the provisions of the Housing SEPP.

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

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

Table 1 - Other State Significant Development Application in Lindfield

Site number	Address	Reference number	Description and Status
1	1-3 Reid Street & 2-4 Woodside Avenue, Lindfield	SSD-79261463	• State Significant Development Application for in-fill affordable housing proximate to the site. • Demolition of existing structures and the construction of a 9 storey residential flat building with 89 apartments, including 23 affordable housing. • SEARs issued on 20 December 2024. • Status on the Major Projects tracker – Prepare EIS



Site number	Address	Reference number	Description and Status
2	27-29 Tryon Road, Lindfield	SSD-78669234	- State Significant Development Application for in-fill affordable housing proximate to the site. - Demolition of existing structures and the construction of a 9 storey residential flat building with 66 apartments, including affordable housing. - SEARs issued on 20 December 2024. - Status on the Major Projects tracker – Prepare EIS
3	12-16 Bent Street, Lindfield	SSD-78156462	- State Significant Development Application for in-fill affordable housing proximate to the site. 119 apartments including 29 affordable housing units - SEARs requested 29 November 2024. - Status on the Major Projects tracker – Prepare EIS
4	345 Pacific Highway, Lindfield	PP-2023-2371 RR-2024-9	- Planning proposal / rezoning review for 98 dwellings and 3,285m² of commercial floor space. - Rezoning review recommended the proposal should be submitted for a Gateway determination. - Rezoning review determination: 26 June 2024
5	59 – 63 Trafalgar Avenue and 1A and 1B Valley Road, Lindfield	SSD-79276958	- State Significant Development Application for in-fill affordable housing proximate to the site. 237 Apartments, including 48 affordable rental housing units - SEARs issued on 16 January 2025. - Status on the Major Projects tracker – Prepare EIS.

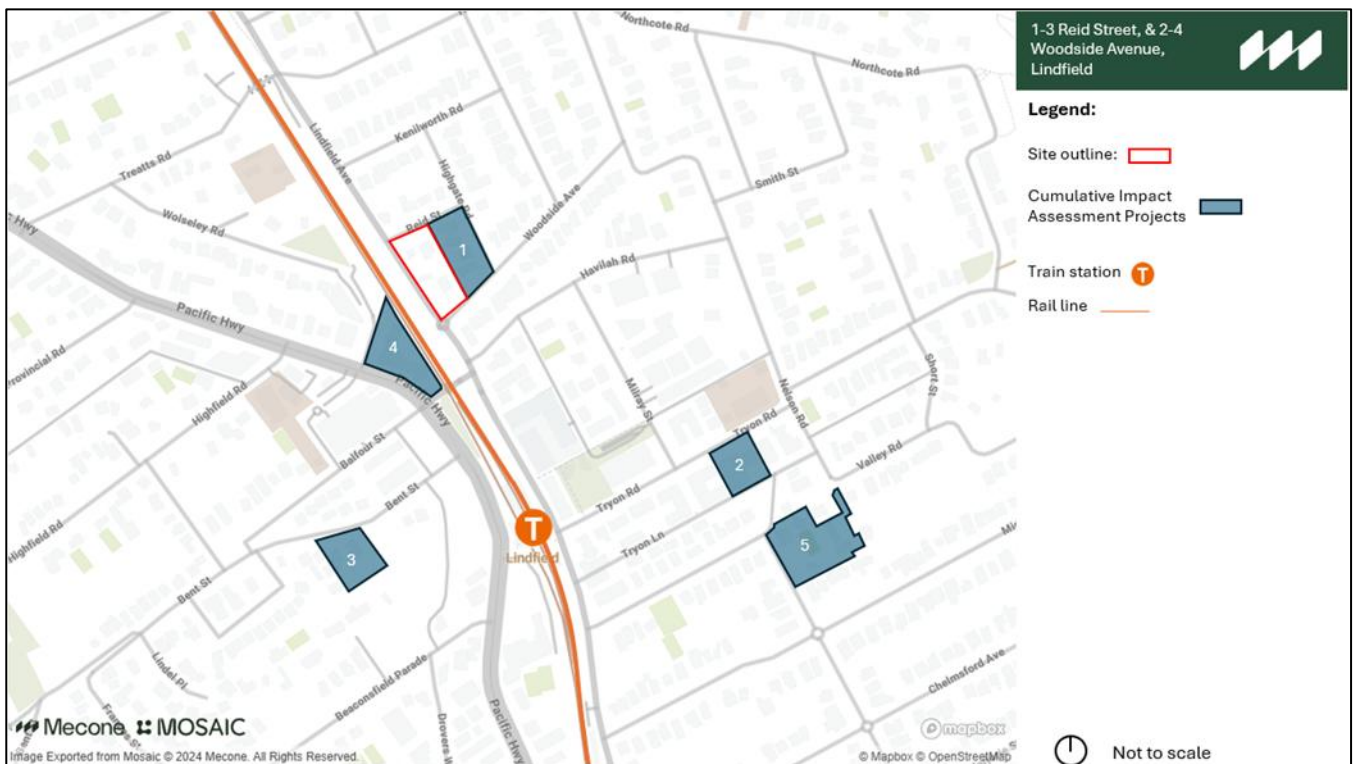


Figure 8: Other Residential Flat Building Projects in Proximity to the Site

Source: Mecone



Like the subject site, the Housing SEPP permits:

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

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

In summary, the area surrounding the site is anticipated to transition to a high-density residential character in the near to medium term, aligning with the scale and density proposed. The design and scale of the proposed residential flat building for the subject site is compatible with both the existing context and the future character envisioned under the Housing SEPP and LEP.

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

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

Overshadowing:

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

- **59 Lindfield Avenue:**
 - Overshadowing begins at 1:00pm, affecting only the front setback with no impact on the existing dwelling. By 2:00pm, shadows extend to the front part of the dwelling, and by 3:00pm, they move across the northeastern corner of the building.
- **1 Woodside Avenue:**
 - At 2:00 p.m., overshadowing is still minimal, affecting only the front setback and the northwestern corner of the dwelling. By 3:00 p.m., shadow covers the entire dwelling.
- **3 Wood side Avenue:**
 - At 3:00 p.m., overshadowing begins, with minimal impact limited to the northwestern corner of the dwelling and the western façade.

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

The minor wall height variations at Level 9 of the proposed development will not result in significant overshadowing of adjoining properties. Between 9:00 a.m. and 12:00 noon, shadows fall primarily over Lindfield Avenue. By 12:00 noon, a small portion of 59 Woodside Avenue and Lindfield Road is affected.



By 3:00 p.m. on June 21, shadow extends to 1 Woodside Avenue and a portion of 3 Woodside Avenue. The slight height exceedance at this level generates only a minimal additional shadow impact when compared to a development that fully complies with the maximum height control.

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

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

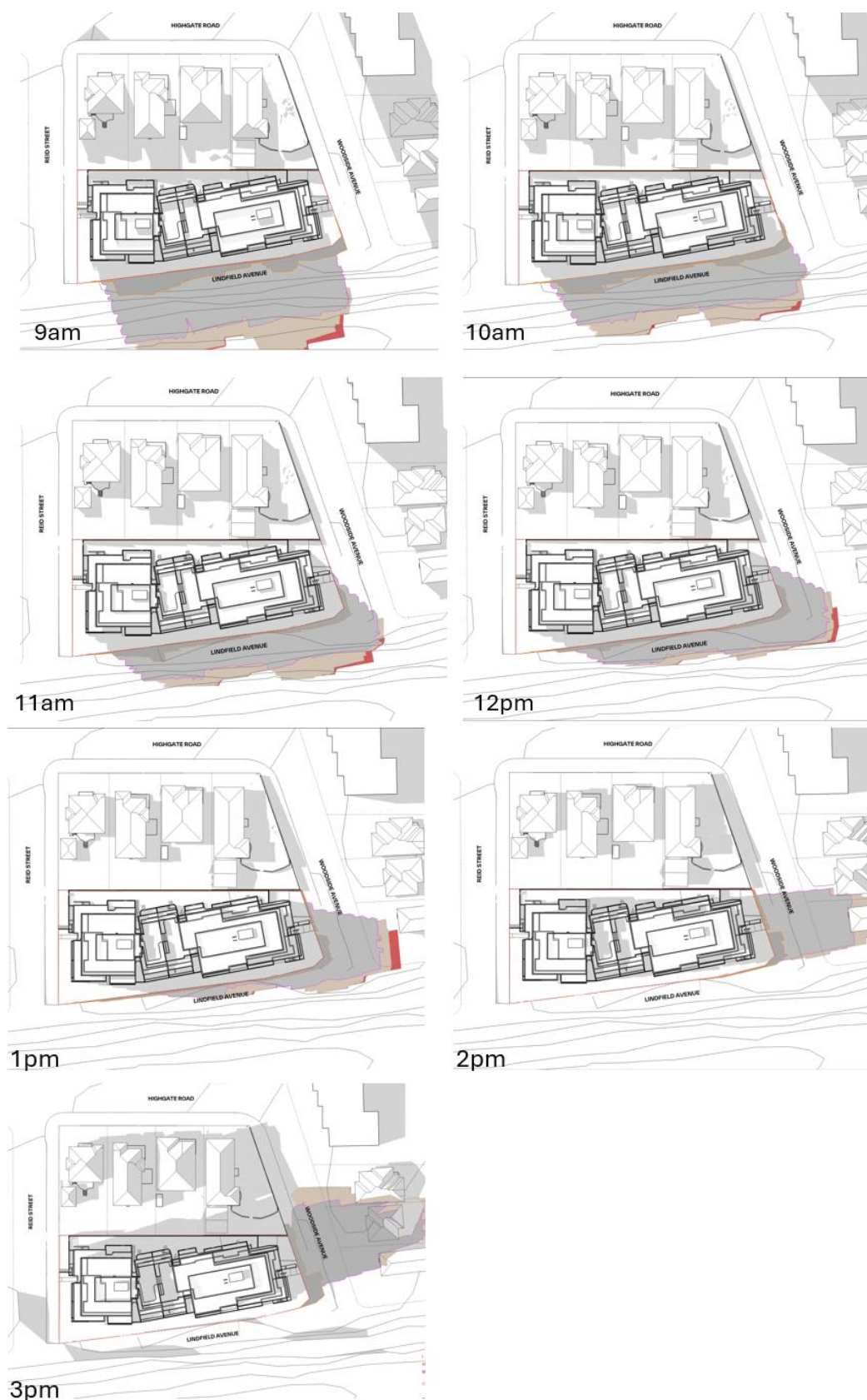


Figure 9: Overshadowing Impacts – additional shadowing created by breach of height control is shown Red

Source: Mecone



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

Visual privacy:

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

Views:

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

Visual impact:

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

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

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

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



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

Source: PBD Architects, 2025

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

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

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

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

In summary, despite the proposed building height variations, the aim of the Housing SEPP will be satisfied, as the proposal will result in the delivery of a residential flat building in proximity to heavy rail that is well designed, provides for appropriate height, bulk and scale that that will likely be consistent with



future development character within the local area, and will provide for suitable amenity and liveability, both on and around the subject site.

(a) Mecone's Assessment against Section 150(c):

The Ku-ring-gai Housing Strategy to 2036 provides a 20-year framework to guide future housing in the Ku-ring-gai LGA. It outlines the quantity, location, and type of future residential development, based on community engagement and analysis of key influencing factors.

The Strategy initially identified capacity for 3,000 to 3,600 additional dwellings between 2021 and 2026. However, since its endorsement by the Department of Planning, Housing and Infrastructure (DPHI), the NSW Government has significantly increased Ku-ring-gai's housing target to 7,600 new dwellings for the 2024–2029 period.

Despite this revised target, progress remains limited. According to the UDIA NSW Housing Accord Progress Report (March 2025), only 3,276 dwellings have been approved so far, and just 1,080 new dwellings have been completed. This equates to only 14% of the target being achieved to date.

The proposed development responds to the Housing Strategy by:

- Addressing the need for increased, diverse, and affordable housing in the Ku-ring-gai LGA.
- Delivering a mix of apartment sizes, with an emphasis on larger, family-friendly dwellings, supporting the demand for housing that accommodates a variety of household types.
- Contributing to housing affordability through the provision of:
 - 3 one-bedroom, 11 two-bedroom and 5 three-bedroom apartments dedicated as affordable housing, ensuring more spacious living options for key workers and low-to-moderate income households. These will be managed by a registered community housing provider for at least 15 years.
 - 2 one-bedroom and 2 two-bedroom apartments to be managed by a registered community housing provider in perpetuity, providing long-term affordable housing.
- Increasing the supply of both market and affordable housing, helping to create a more inclusive and sustainable housing mix that supports essential and vulnerable members of the community.
- Assisting Ku-ring-gai Council in meeting its updated housing targets by boosting local housing supply with well-designed, high-quality residences.

The proposal includes 23 two-bedroom affordable housing apartments designed to accommodate essential workers and vulnerable community members of the community. The proposal is therefore consistent with this aim.



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

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

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

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

Provision of additional housing density

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

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

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

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



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

Responsiveness to site constraints and provision of enhanced amenity

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

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

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

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

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

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

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

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

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

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

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



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

Provision of suitably sized and designed housing

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

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

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

The Department of Planning population projections released November 2024 projects:

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

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

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

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

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



6 Conclusion

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

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

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

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

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

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

