

# Clause 4.6 Variation Request

**Height of Building**







**59 - 63 Trafalgar Avenue, 1A & 1B Valley Road, Lindfield**

**SSD-79276958**

**6 May 2026**

**240137**

planning&co

Version	Issue Date	Prepared By	Approved By
Draft	17 November 2025	Sarah Lee	Tom Goode
Draft	30 January 2026	Sarah Lee	Tom Goode
Final	5 February 2026	Sarah Lee 	Tom Goode 
Final v2	30 March 2026	Jim Murray 	Tom Goode 
Final v3	6 May 2026	Jim Murray 	Tom Goode 

planning&co

ABN 53 669 617 770

80 William Street

Woolloomooloo NSW 2011

<https://planningandco.com/>

**Contact:**

Tom Goode - Director  
tgoode@planningandco.com

© Planning&Co

All Rights Reserved. No part of this document may be reproduced, transmitted, stored in a retrieval system, or translated into any language in any form by any means without the written permission of Planning&Co. All Rights Reserved. All methods, processes, commercial proposals, and other contents described in this document are the confidential intellectual property of Planning&Co and may not be used or disclosed to any party without the written permission of Planning&Co.

## TABLE OF CONTENTS

- 1.0 Introduction ..... 5**
- 1.1 Legal Guidance ..... 5
- 1.2 Overview..... 5
- 2.0 The Site and Context ..... 6**
- 2.1 Site Description..... 6
- 2.2 Planning Context..... 7
- 2.3 Relevant Height Controls applying to the Site ..... 8
- 3.0 Development Standard to be Varied ..... 8**
- 3.1 Relevant Development Standard applicable to the Site..... 8
- 4.0 Nature of the Variation Sought ..... 9**
- 5.0 Clause 4.6(3)(a) Compliance is unreasonable or unnecessary ..... 13**
- 5.1 Objective of Chapter 2, Part 2 of SEPP Housing ..... 13
- 5.2 Aims of Chapter 5 of SEPP Housing ..... 14
- 6.0 Clause 4.6(3)(b) Environmental planning grounds to justify the contravention ..... 15**
- 6.1 Bulk, Scale and Character..... 15
- 6.2 Overshadowing ..... 20
- 6.3 View Sharing ..... 22
- 6.4 Topography ..... 24
- 6.5 Consistency with the Objects of the Environmental Planning and Assessment Act 1979..... 24
- 7.0 Conclusion..... 25**

## FIGURES

- Figure 1: The Site ..... 6
- Figure 2: Building Height Plane 3D Diagram ..... 9
- Figure 3: Building Height Plane Overs and Unders ..... 10
- Figure 4: North Elevation – Valley Road ..... 10
- Figure 5: North Elevation – Valley Road ..... 11
- Figure 6: West Elevation - Trafalgar Avenue ..... 11
- Figure 7: South Elevation ..... 12
- Figure 8: Massing Evolution from SDRP ..... 16
- Figure 9: Proposed KLEP 2015 Amendment Map for Land Zoning ..... 17
- Figure 10: Proposed KLEP 2015 Amendment Map for Height of Buildings ..... 18
- Figure 11: Proposed KLEP 2015 Amendment Map for Floor Space Ratio ..... 18
- Figure 12: Future Built Form Context ..... 19
- Figure 13: Shadow Diagrams - Future Context ..... 21
- Figure 14: Camera Positions for Visual Impact Assessment ..... 22
- Figure 15: Additional Viewpoint from 32A and 34 Middle Harbour Road ..... 23

Figure 16: Additional Viewpoint from 1 and 3 Valley Road ..... 23

## **TABLES**

Table 1: Aims of Chapter 5 of the Housing SEPP..... 14  
Table 2: Assessment of proposed development against the Objects of the EP&A Act ..... 24

# 1.0 INTRODUCTION

This Clause 4.6 Variation Request has been prepared on behalf of Landmark Group Australia Pty Ltd (**Applicant**) to support the the State Significant Development Application (**SSDA**) SSD-79276958 at 59-63 Trafalgar Avenue, 1A & 1B Valley Road, Lindfield 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:

- Identifies the development standard to be varied (**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:

- 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,

- 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.

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 59-63 Trafalgar Avenue, 1A and 1B Valley Road, Lindfield in the Ku-ring-gai LGA. The Site has a primary frontage to Trafalgar Avenue, with secondary access from Valley Road. The Site consists of five allotments and has a total site area of 6,672 sqm. The site falls approximately 11.5 from the south-east down to the north-west.

Key to this Clause 4.6 request, the Site slopes significantly from Larkin Street down to the western and southern site boundaries. Refer to the site survey prepared by Norton Survey Partners as appended to the EIS.



Figure 1: The Site  
Source: SDT Explorer, Planning & Co

## 2.2 Planning Context

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

- **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 **Section 6.1**.
- **7 May 2025 – 3 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':
    - 59-63 Trafalgar Avenue, 1A & 1B Valley Road, Lindfield (SSD-79276958)
    - 16&18-20 Middle Harbour Road, Lindfield (SSD-83431958)
    - 11-19 Middle Harbour Road, Lindfield (SSD-82900461)
    - 24-28 Middle Harbour Road, Lindfield (SSD-82548708)
    - 27-29 Tryon Road, Lindfield (SSD-78669234)
    - 1-5 Nelson Road, Lindfield (SSD-82899468)
    - 5-7 Middle Harbour Road Lindfield (eDA0182/25)
    - 24-26 Russell Street, Lindfield (eDA0219/25)
- **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

As above, the site is an identified saved site which allows the continued application of TOD controls consistent with the EIS submission. Pursuant to section 155 of Chapter 5 of the Housing SEPP, development for the purposes of a residential flat building with a height of up to 22m is permitted with consent as the base height control.

The proposal provides 17.28% of total GFA as affordable housing GFA, consisting of 2.2% of GFA in perpetuity (Section 156, Housing SEPP) and 15.18% of GFA allocated as infill affordable housing for a minimum of 15 years. The 15.18% allocation of infill affordable GFA allows for the full application of 30% additional height to the base height control (Section 16 Housing SEPP). This results in a maximum permissible building height control of 28.6m.

## 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(3) 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. As a result of project refinements, the maximum building height was previously amended to 33.49m from 33.07m (as originally proposed). Further amendments, including the deletion of Level 9 has resulted in a reduction in the maximum building height to 31.78m. Therefore, the extent of the height variation has gone from 4.47m (15.6%, as originally proposed) to 4.89m (17.01%, as amended) to 3.18m (11.19%, as further amended). The figures below illustrate the proposed variations.

The project refinements have resulted in extensive amendments to the built form at the expense of market dwellings which demonstrates the applicant's dedication to producing a merit based built form outcome, and on balance, the resulting variations are justified.

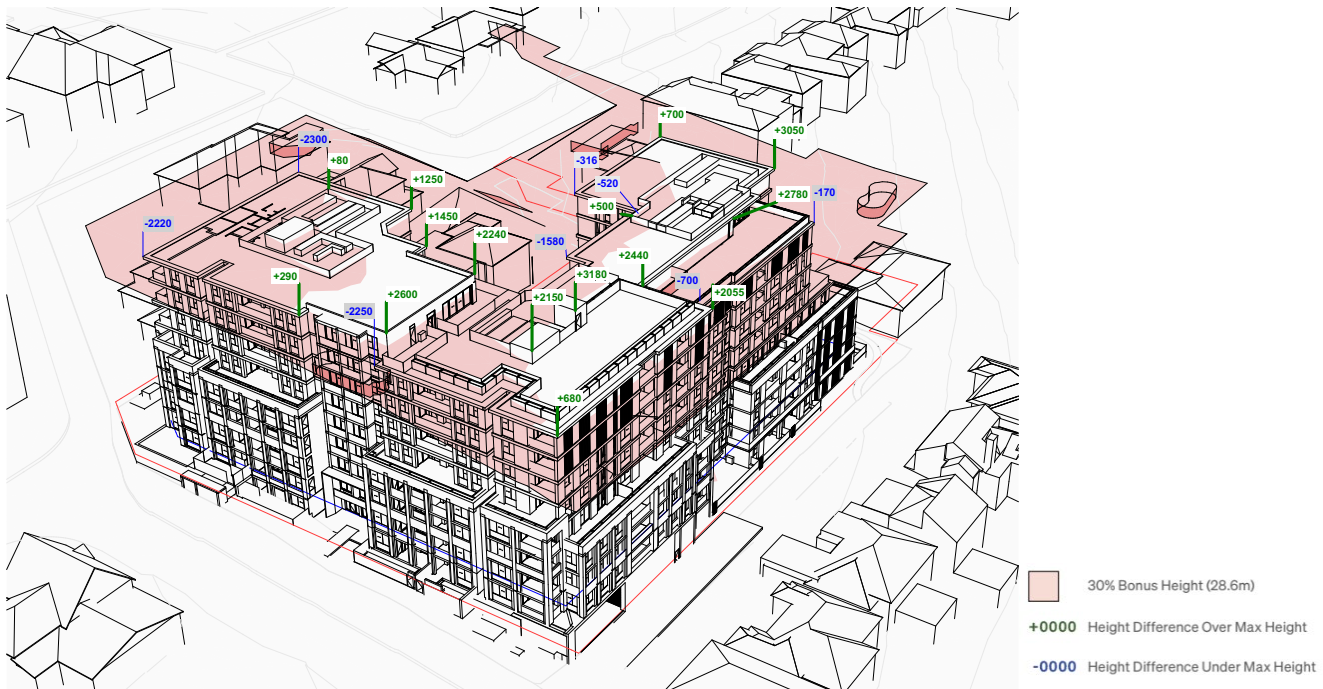


Figure 2: Building Height Plane 3D Diagram  
Source: DKO



Figure 3: Building Height Plane – Volume over and under maximum height control  
 Source: DKO



Figure 4: North Elevation – Valley Road  
 Source: DKO



Figure 5: East Elevation – Valley Road  
 Source: DKO



Figure 6: West Elevation - Trafalgar Avenue  
 Source: DKO

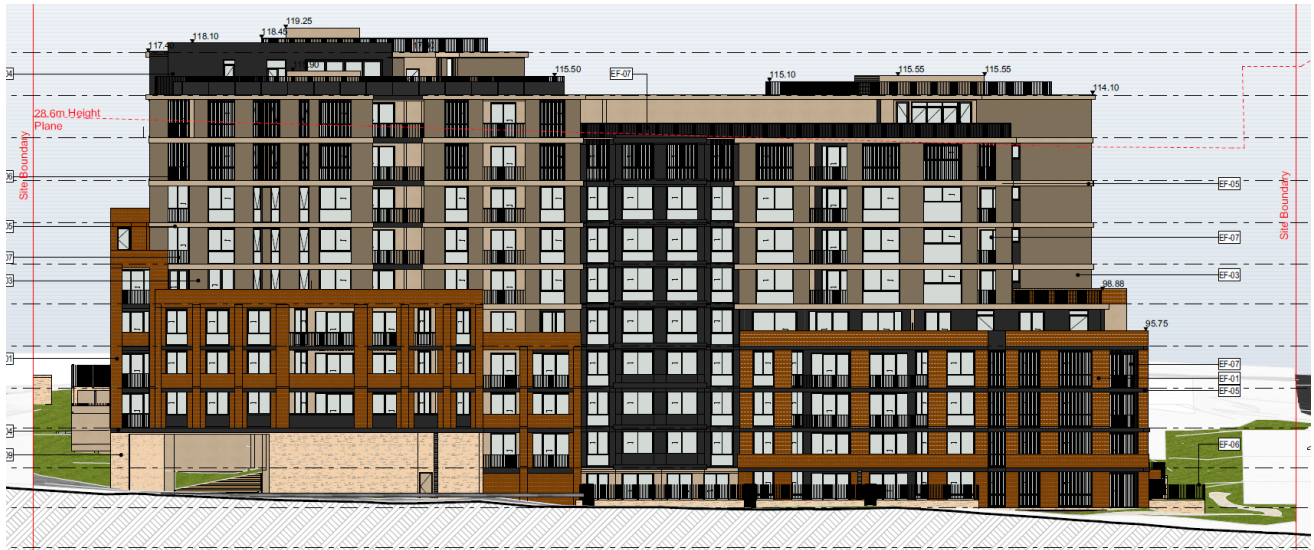


Figure 7: South Elevation  
Source: DKO

## 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 17.28% of the total gross floor area of the building as affordable housing, including 15.18% under Chapter 2 of the Housing SEPP, and an additional 2.2% under Chapter 5 of the Housing SEPP. Landmark Group Property Management Pty Ltd as the community housing provider (**CHP**) have provided a revised letter of support that confirms that the proposed affordable housing units comprised 37 in-fill affordable housing units managed for a period of at least 15 years and 5 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 approximately 400m walking distance of Lindfield 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 proposed height contravention will facilitate the delivery of mid-rise residential flat buildings around Lindfield rail station which was assessed and determined by DPHI as appropriate for increased density through their determination of TOD stations and catchments including the site within the previous Lindfield TOD catchment.</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 (<b>SDRP</b>) process. Refer to the updated Design Report prepared by DKO which provides detailed responses to SDRP items.</p> <p>The height exceedance is as a result of the steep terrain which cannot be feasibly mitigated with a hypothetical stepping of the floor plate as a result of accessibility and constructability challenges, as well as additional costs related resulting from more complex suspended slab elements and other structural implications.</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 <b>Section 6.1</b>) for this area of Lindfield notwithstanding the proposed height exceedance, which is a result of a significantly sloping site and irregular site configuration which constrain the site. The bulk and scale of the proposed development is considered further in <b>Section 6.0</b> below.</p>
<i>(iii) provide amenity and liveability,</i>	<p>The proposed development provides a high level of amenity and liveability to residents 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 compliant building separations and increased deep soil provision. Further, 129 of 205 (62.9%) apartments achieve a min 2hrs solar access between the hours of 9am and 3pm at midwinter. This increases to 156 of 205 (76.1%) apartments achieve 2hrs solar access between the hours of 9am and 4pm at midwinter.</p> <p>Importantly, the proposal has incorporated design elements to be sensitive to potential amenity and liveability impacts to surrounding sites.</p> <p>The environmental impacts of the height variation are minor as demonstrated in <b>Section 6.0</b>.</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 developments, 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. The distribution of building mass and the overall architectural approach, which has been supported by the SDRP, has further incorporated feedback and minimises environmental impacts to the surrounding area and residents on a site constrained by a steeply sloping topography and irregular configuration. Since public exhibition, the proposal has made significant changes to the massing for the refined scheme including additional setbacks to surrounding lower density to provide an improved transition between built form, a 2 storey reduction to the Trafalgar Avenue podium, preserve additional solar access to the southern neighbours and increased landscaping buffer to provide a greater 'garden setting' landscape response for the area. The revised massing evolution is provided in **Figure 8** and demonstrates the site-specific design decisions which have resulted in the revised scheme.

In addition, the proposed development does not seek to maximise 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 Lindfield as further discussed below.

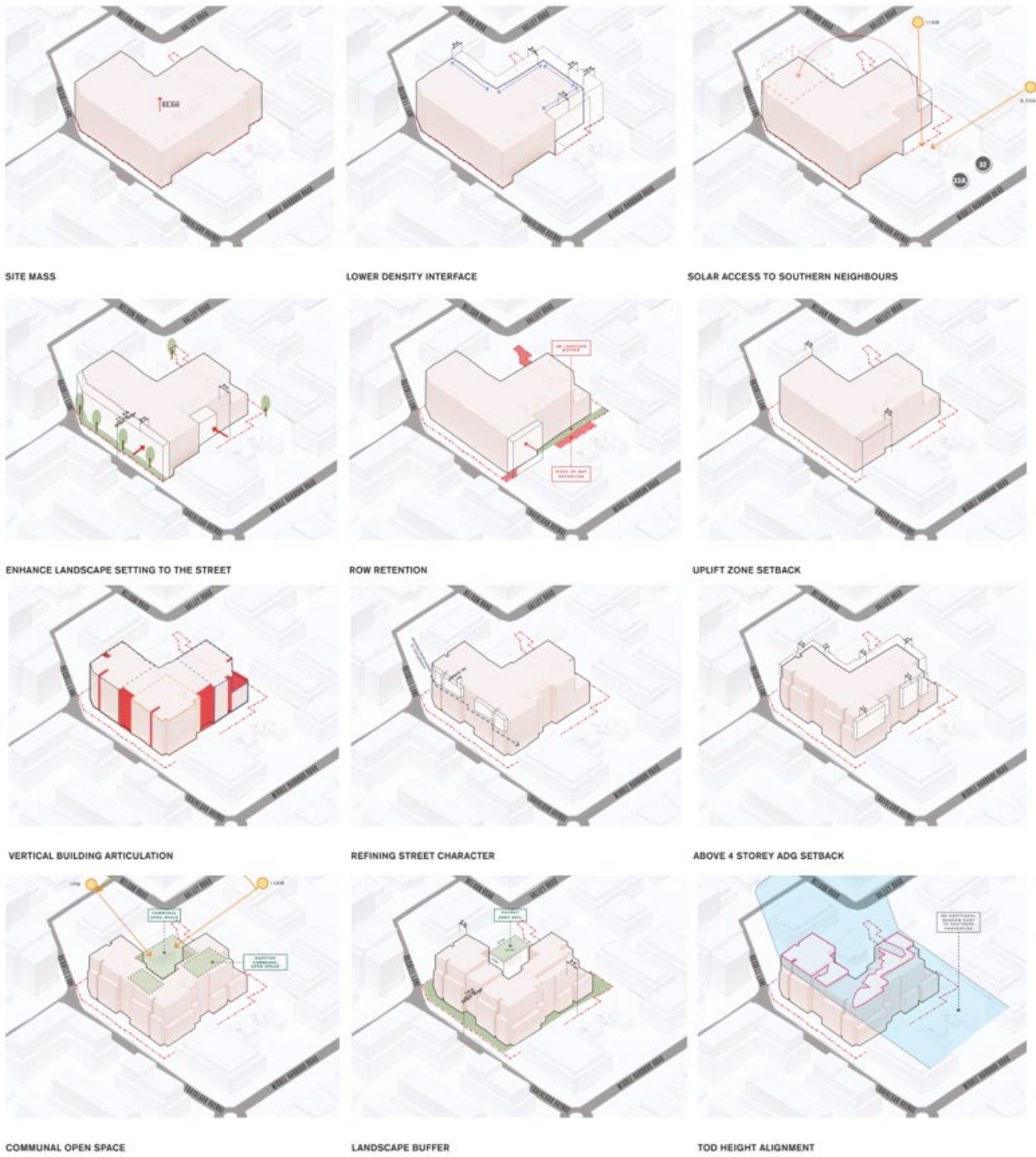


Figure 8: Massing Evolution from SDRP  
Source: DKO

The surrounding context has been a locality experiencing a transition to higher density over recent years with an emerging presence of medium density development in the area Lindfield Town Centre. This transition was further reinforced by the establishment of the TOD program by State Government. Notwithstanding the finalisation of the Ku-ring-gai Station Precinct SEPP Amendment from Council’s Preferred Scenario since the lodgement of this SSDA, the TOD provisions have been saved for the subject site, as well as others within walking distance in the precinct, as noted in **Section 2.2**.

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”.

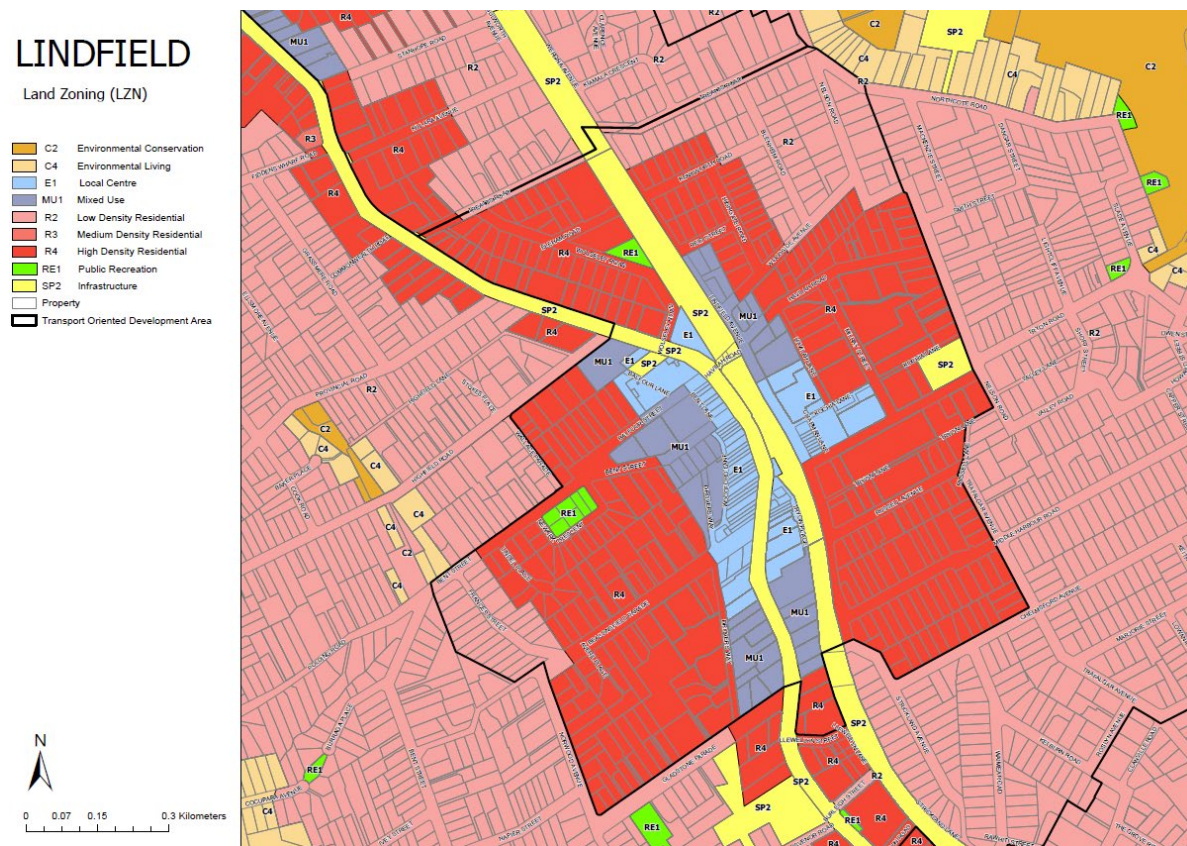
Desired future character is not a defined term in any relevant planning legislation however in the case *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115, Chief Justice Preston described "desired future

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** and illustrated further below in **Figure 12**.

The Council Preferred Scenario which has now been published as part of the Ku-ring-gai Station Precincts SEPP Amendment are considered in the future desired character. The proposed LEP amendments for zoning, height and FSR are provided in **Figure 9** to **Figure 11**.



**Figure 9: KLEP 2015 Amendment Map for Land Zoning**  
Source: Ku-ring-gai Council, *Adopted TOD Alternative LEP Maps*

# LINDFIELD

Height of Building (HOB)

- J 9.5
- L 11.5
- M 12
- P1 17.5
- P2 18.5
- R2 22.5
- T2 29
- Y1 51.5
- AA1 61
- RL6 100+
- Property
- Transport Oriented Development Area

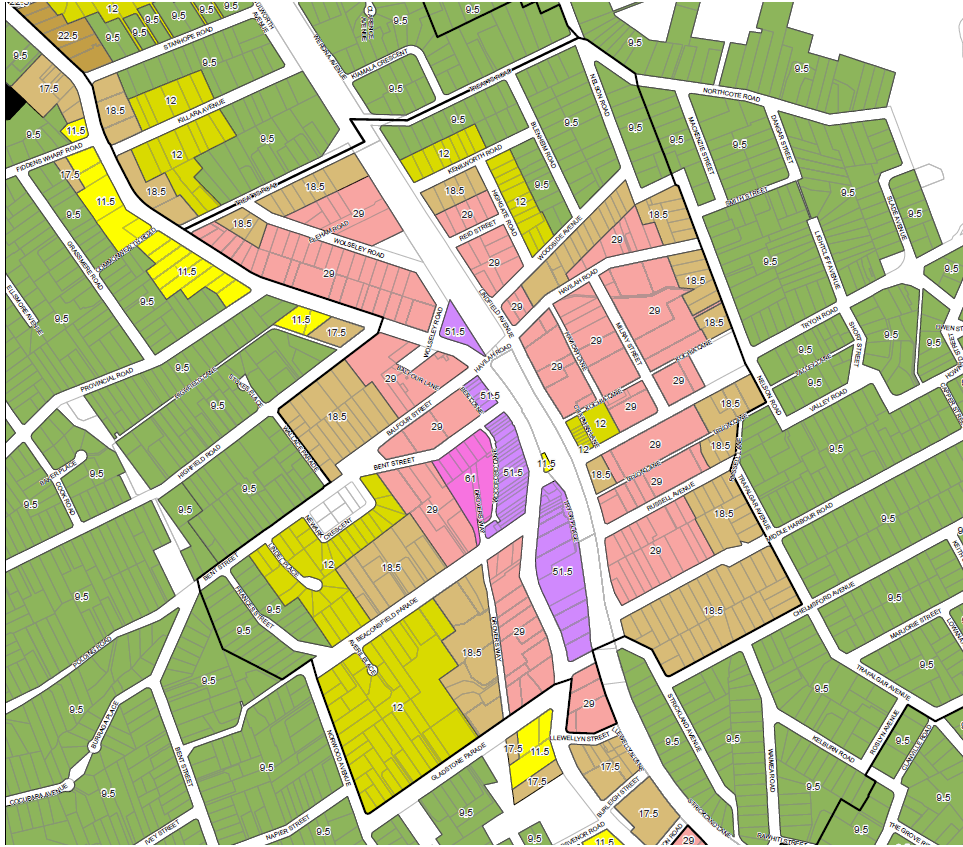


Figure 10: KLEP 2015 Amendment Map for Height of Buildings  
Source: Ku-ring-gai Council, Adopted TOD Alternative LEP Maps

# LINDFIELD

Floor Space Ratio (FSR)

- A1 0.2
- A3 0.3
- A4 0.36
- D 0.5
- J 0.8
- K 0.85
- N1 1
- Q 1.3
- S2 1.8
- T 2.0
- U 2.5
- V 3.0
- Y 4.5
- Z 5
- Property
- Transport Oriented Development Area

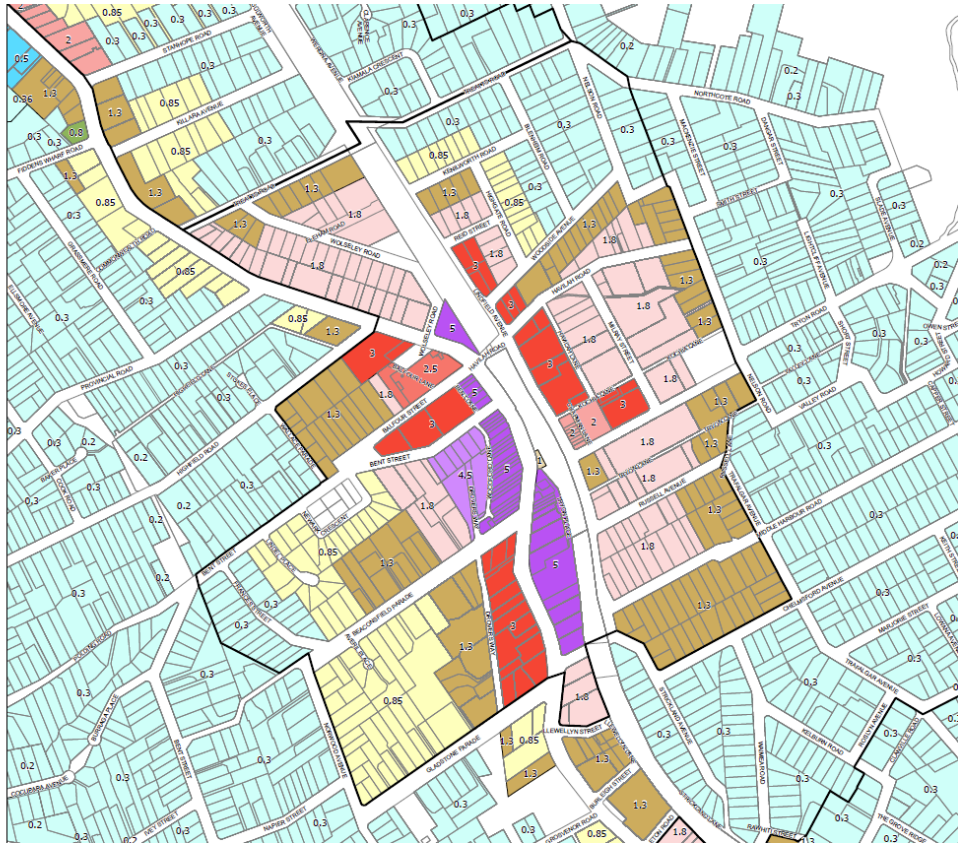


Figure 11: KLEP 2015 Amendment Map for Floor Space Ratio  
Source: Ku-ring-gai Council, Adopted TOD Alternative LEP Maps

It is noted that the Chapter 5 Housing SEPP provisions remain applicable to the site and in *Big Property Pty Ltd v Randwick City Council* [2021], Commissioner O’Neill held that the desired future character of an area is not determined solely by the development standards that control building envelopes for the area. The Commissioner, referencing *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 (SJD) stated:

*“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 amendments under 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)
- Application of Chapter 6 Low and Mid-Rise (LMR) Housing provisions of the Housing SEPP, which allows:
  - Residential flat buildings with building heights up to 22m and FSR of 2.2:1 for applicable R3 and R4 zoned land within 400m from Lindfield Station (‘low and mid rise housing inner area’), and
  - Residential flat buildings with building heights up to 9.5m and FSR of 0.8:1 for applicable R2 zoned land within 800m from Lindfield Station.
  - And noting that the LMR provisions do not apply to heritage items but may be applied to land in Heritage Conservation Areas (HCAs) that are not otherwise constrained, as identified under Section 164 of the Housing SEPP.
- Additional 30% infill bonuses for FSR and height may be applied to surrounding areas including sites that utilise Chapter 6 LMR provisions.
- Alignment of the Proposal with Chapter 5 TOD objectives.
- Heritage items.

The following **Figure 12** demonstrates the Future Character of the precinct and that the proposed development is compatible within the desired future character as considered above.



Figure 12: Future Built Form Context  
Source: DKO

The analysis undertaken by DKO shows that the proposed development is not inconsistent with the surrounding future context of the site, which also consists of a handful of development sites which are applicable to utilise TOD provisions.

The proposed development, therefore, is considered as appropriate to the character of the site in the context of an area undergoing transition.

## 6.2 Overshadowing

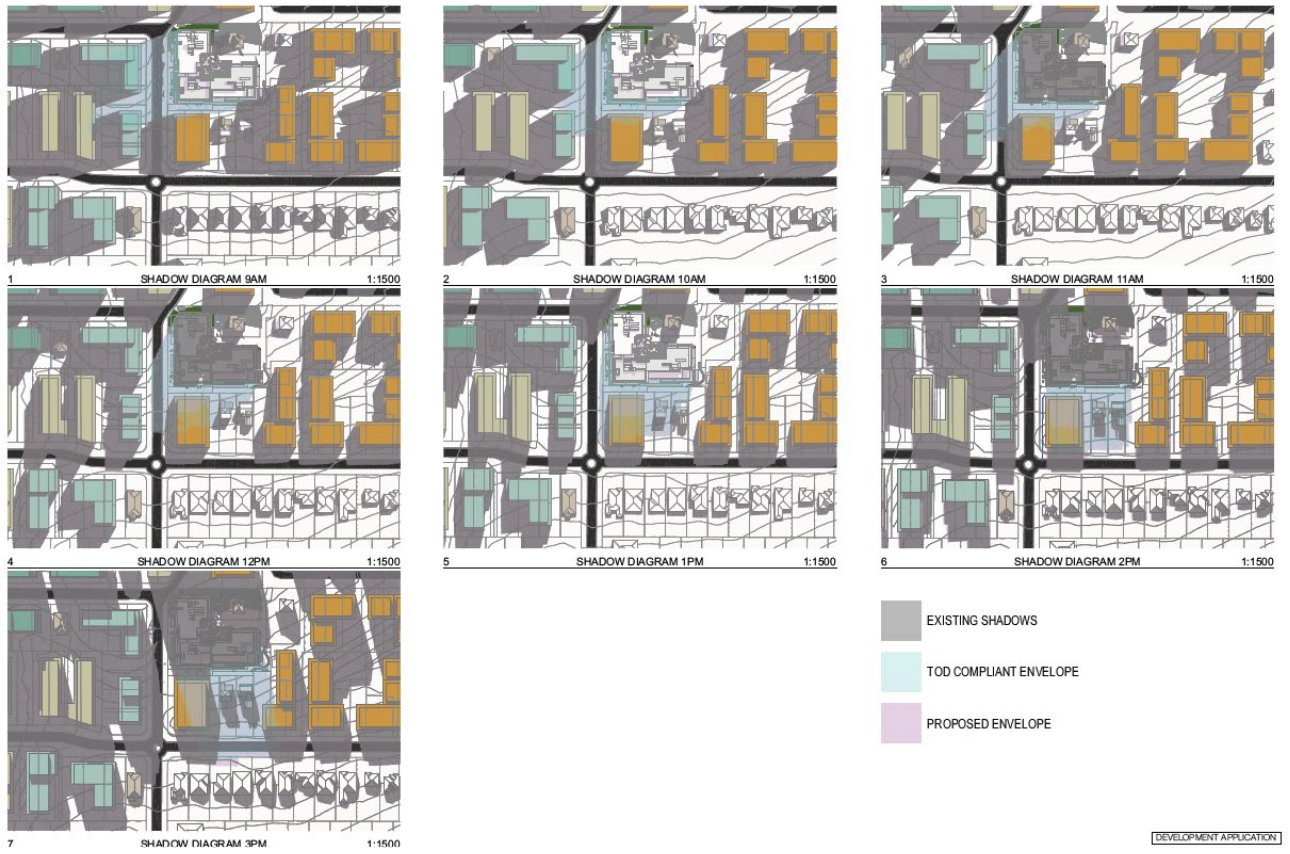
Updated sun eye view diagrams have been prepared to illustrate and compare the shadow impacts between the existing low-density context, Council's final scheme, and the LMR controls where relevant in the Updated Design Report (**Appendix B**) for both the existing and future context (refer to Pg 82-90) and shadow diagrams (refer to Pg 69-70).

The minor exceedance to the permitted Height of Buildings control of the proposed development does not create any unreasonable additional impact in terms of overshadowing compared to a compliant envelope.

The site is located in an urban catchment, identified by the State Government to undergo significant renewal which can expect continued development in the area through the LMR provisions or saved TOD provisions (for select nearby sites) and the Ku-ring-gai Station Precincts SEPP Amendment controls based on the site's accessible location.

Considering the future context over the 9am-3pm time period on 21 June, the shadow impacts indicate the following:

- Heritage item at 32A Middle Harbour Road, south of the site, is not affected by the proposed development until 11am. In addition, the proposed development has been setback further than ADG requirements to mitigate impact.
- Heritage item at 34 Middle Harbour Road, south of the site, is not affected by the proposed development until 12pm. As above, the proposed development has been setback further than ADG requirements to mitigate impact.
- The potential future development scenario that could be developed across 32, 30A Middle Harbour Road and 55 Trafalgar Road is not affected by the proposed development between 9am and 10am and then 2pm and 3pm indicating that a potential residential flat building is likely to achieve solar compliance.
- The solar access to potential future developments that could be developed on the western side of Trafalgar Avenue are not affected by the proposed development between 12pm and 3pm.



● Figure 13: Shadow Diagrams - Future Context

Source: DKO

## 6.3 View Sharing

The development has been set back an additional 3 metres from boundaries to reduce impacts on the heritage setting. The increased setbacks would be occupied by additional deep soil which will support significant tree planting, improving the privacy to adjoining properties and enhance the garden setting.

An updated Visual Impact Assessment has been prepared by Urbaine and has been incorporated into the Heritage Response to Submissions Letter (**Appendix G**) and considers additional viewpoints from 1 Valley Road and the 34 Middle Harbour Road. The detailed Response to Submission Letter and Updated HIS concludes the following.



**Figure 14: Camera Positions for Visual Impact Assessment**  
Source: Urbaine Response to Submissions Letter at Appendix G

While some visual impact is anticipated to the northern views from adjacent heritage items located at 32A and 34 Middle Harbour Road as a result of the proposal (**Figure 15**), the tower form of the development will feature lighter morning earthy tones which will appear recessive against the skyline. The development will additionally feature a 9m setback at the podium levels and 12m to the tower levels from the southern boundary to further reduce impacts to views north from Middle Harbour Road.



### *Viewpoint 1*

Figure 15: Additional Viewpoint from 32A and 34 Middle Harbour Road  
Source: Urbaine Response to Submissions Letter at Appendix G



### *Viewpoint 3*

Figure 16: Additional Viewpoint from 1 and 3 Valley Road  
Source: Urbaine Response to Submissions Letter at Appendix G

Views looking south from heritage items located at 1 and 3 Valley Road (**Figure 16**) will not be impacted as a result of the proposed development.

## 6.4 Topography

The site falls approximately 11.5 from the south-east down to the north-west.

The parts of the proposed development that exceed the maximum permitted height are limited to the ‘lower’ parts of each building, where the ground level (existing) falls away.

A compliant building height that stepped with the sloping terrain would result in significant accessibility and constructability challenges and additional costs related to more 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, and 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.

## 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
<i>(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</i>	<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 Lindfield suburb with access to key public transport services.</p>
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment</i>	<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>
<i>(c) to promote the orderly and economic use and development of land</i>	<p>The proposed development including the proposed exceedance of height will facilitate the renewal of a large consolidated site identified within the surrounding Lindfield area as suitable for greater density and more economic use of land.</p> <p>The delivery of 205 dwellings including 42 affordable housing dwellings close to public transport directly supports Council’s housing target for 7,600 homes by 2029.</p>
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	<p>The proposed development promotes the delivery and maintenance of affordable housing and provides a total of 17.28% of the total GFA as affordable rental housing which exceeds the requirements under Chapter 2 and 5 of the Housing SEPP.</p>
<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>	<p>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.</p>
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	<p>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.</p>
<i>(g) to promote good design and amenity of the built environment,</i>	<p>The proposed development has been designed by award winning architects DKO and has been refined through the SDRP process and again following the receipt of responses from key stakeholders in the exhibition period.</p>

	The proposed development promotes good design and amenity by maximising internal and external amenity for residents and neighbouring development.
<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 demonstrates 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.