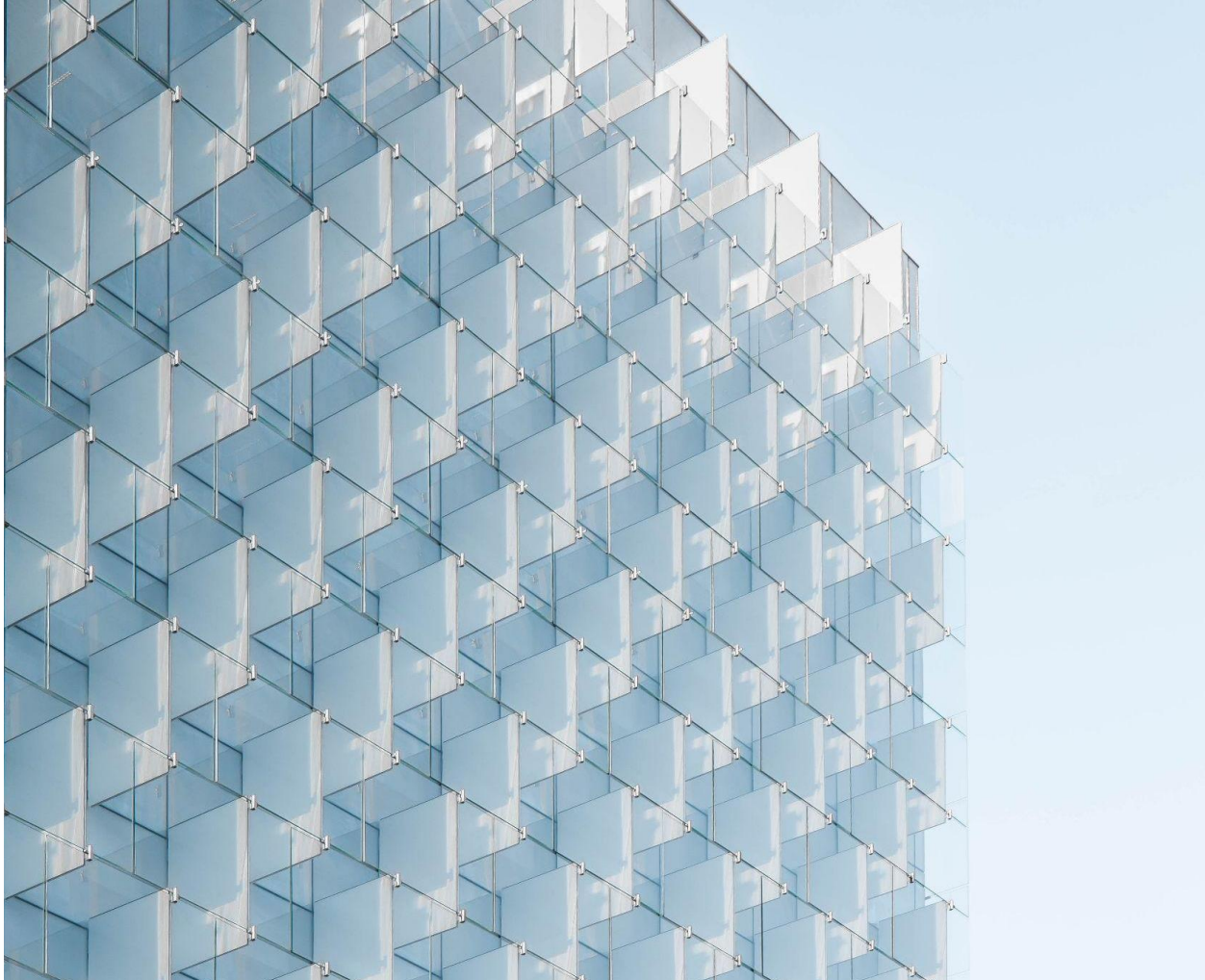


WILLOWTREE PLANNING



9 May 2025

Ref: WTJ25-073
Contact: Edward Nash



CLAUSE 4.6 VARIATION REQUEST HEIGHT OF BUILDINGS



PROPOSED RESIDENTIAL FLAT BUILDING INCLUDING IN-FILL AFFORDABLE HOUSING AND BUILD-TO RENT HOUSING

24, 26 and 28 Middle Harbour Road, Lindfield
Lot 13 DP5374, Lot 1 DP119944, Lot 14 DP5374, Lot 1 DP1192386, Lot 1
DP312386, Lot 16 DP5374 & Lot 768 DP752031

—
Prepared by Willowtree Planning Pty Ltd
on behalf of MHR Lindfield Investments Pty Ltd ATF MHR Lindfield Trust

Clause 4.6 Variation - Height of Buildings

Proposed Residential Flat Building including In-fill Affordable Housing and Build-to-Rent Housing
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In the spirit of reconciliation and recognition, Willowtree Planning acknowledges the Traditional Owners of this Country throughout Australia and their continuing and ongoing connections to land, waters and community. We show our respect to Elders - past and present. We acknowledge that we stand on this Country which was and always will be recognised as Aboriginal Land. We acknowledge the Traditional Owners of the Lands in this Local Government Area, belonging to the local Aboriginal People, where this proposal is located upon.

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PART A PRELIMINARY

1.1 INTRODUCTION

This Clause 4.6 variation request (Variation Request) has been prepared in support of a State Significant Development Application (SSDA) SSD-82548708 on behalf MHR Lindfield Investments Pty Ltd ATF MHR Lindfield Trust (the Applicant) for the proposed construction of a nine storey residential flat building with infill affordable housing and Build-to-Rent housing at 24-28 Middle Harbour Road, Lindfield (the Site), which captures the following land parcels:

- Lot 13 DP 5374
- Lot 1 DP 119944
- Lot 14 DP 5374
- Lot 1 DP 1192386
- Lot 1 DP 312386
- Lot 16 DP 5734
- Lot 768 DP 752031

The Site is zoned R2 Low Density Residential zone, pursuant to the *Ku-Ring-Gai Local Environmental Plan 2015* (KLEP 2015) and is located within the Ku-Ring-Gai Local Government Area (LGA). The proposed development is permissible with consent via the provisions of *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) and having regard for the recent changes in planning controls surrounding the Site, is considered contextually appropriate. The proposed development is generally consistent with the objectives and provisions of the KLEP 2015 and Housing SEPP, with the exception of the maximum building height provision prescribed by Clause 18 of the Housing SEPP, for which this Variation Request is sought.

This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 of the KLEP 2015 and the relevant development standards prescribed under the Housing SEPP. It considers various planning controls, strategic planning objectives and existing characteristics of the Site and concludes that the proposed non-compliance is the best means of achieving the objectives of encouraging orderly and economic use and development under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 RATIONALE OF VARIATION FROM DEVELOPMENT STANDARDS

This Variation Request has been submitted to assess the proposed non-compliance with Clause 155(2) of the Housing SEPP and has been prepared in accordance with the requirements of Clause 4.6 of KLEP 2015 which includes the following objectives:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,



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(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 155(2) of the Housing SEPP prescribes provisions for Transport Oriented Development (TOD) which are applicable to the proposed development. Under the provisions of Clause 155(2) of the Housing SEPP, the Site is subject to a maximum building height development standard of **22m**.

Clause 18 of the Housing SEPP provides non-discretionary development standards for In-fill affordable housing which allows for an additional building height of up to 30%, based on a minimum affordable housing component. The proposed development has a minimum affordable housing component of 17.29% allowing for a maximum building height of **28.6m**.

The maximum height of the proposed residential flat building is **33.07m** which would exceed the maximum height by **4.47m** or **15.62%**.

This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards prescribed by the Housing SEPP.

1.3 DEVELOPMENT STANDARD VARIATION

Under the provisions of Clause 155(2) of the Housing SEPP, the Site is subject to a maximum height development standard of **22m**. This is increased to **28.6m** pursuant to Clause 18 of the Housing SEPP. The majority of the proposed development complies with this height requirement. In parts of the proposed development, this height will be exceeded to a maximum height of **33.07m** - See Figure 1. **Table 1** below provides a summary of the variation.

TABLE 1: SECTION 155(2) HOUSING SEPP VARIATION SUMMARY					
Housing SEPP	Housing SEPP Development Standard	Maximum Proposed	Proposed Development	Non-Compliance	
Clause 155(2) Maximum building height and maximum floor space ratio	22m				
Clause 18 Affordable housing requirements for additional building height	28.6m (including 30% bonus)	33.07m		4.47m or 15.62% variation from the development standard.	



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The proposed height exceedance is largely due to the topography of the Site and redistribution of bulk to reflect the transitional nature of the Lindfield Railway Station TOD area, resulting in the upper elements of the building protruding through the height plane. The remainder of the built form remains below the 28.6m height limit.

Compliance with the building height development standard would be detrimental to the proposed development and not represent the most efficient use of the Site. The proposed development responds to the existing and future desired characteristics of the area, relocating bulk and scale of the building, resulting in no additional impact to the locality.

PART B THRESHOLDS THAT MUST BE MET

2.1 INTERPRETING CLAUSE 4.6

Clause 4.6 of KLEP 2015 facilitates exceptions to strict compliance with development standards in certain circumstances. Clause 4.6(3) states (our emphasis added):

Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied 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.*

*Note— The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be **accompanied by a document setting out the grounds** on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).*

Accordingly, a successful Clause 4.6 variation must satisfy the below:

First Limb – cl 4.6(3)

Clause 4.6(3) states that the consent authority must be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the following:

- a. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Cl 4.6(3)(a)); and
- b. that there are sufficient environmental planning grounds to justify contravening the development standard (Cl 4.6(3)(b)). To this end the environmental planning grounds advanced in the written



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request must justify the contravention, not simply promote the benefits of carrying out the development as a whole: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

In the decision of *Rebel MH v North Sydney Council* [2019] NSWCA 130 (**Rebel**) Payne JA held (our emphasis added):

*“Although it was unnecessary finally to decide the correct construction of cl 4.6(4) in Al Maha, I agree with the construction advanced in that case by Basten JA, with whom Leeming JA agreed, at [21]-[24]. **Properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).** Clause 4.6(3) requires the consent authority to have “considered” the written request and identifies the necessary evaluative elements to be satisfied. To comply with subcl (3), the request must demonstrate that compliance with the development standard is “unreasonable or unnecessary” and that “there are sufficient environmental planning grounds to justify” the contravention. It would give no work to subcl 4.6(4) simply to require the consent authority to be satisfied that an argument addressing the matters required to be addressed under subcl (3) has been advanced.”*

Accordingly, a consent authority must be satisfied:

- a) that the Clause 4.6 variation application addresses the matters in Clause 4.6(3); and
- b) of those matters itself which means that there is greater scope for a consent authority to refuse a Clause 4.6 variation.

These matters are addressed in **Sections 4.3** and **4.4** of this Variation Request.

This written request has been prepared under Clause 4.6 to request a variation to the “maximum building height” development standard applicable to the site as provided by Clause 18 and Clause 155(2) of the Housing SEPP.



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PART C STANDARDS BEING OBJECTED TO

3.1 OVERVIEW

The Site is subject to the underlying objectives of the varied standard as well as the R2 Low Density Residential zone under KLEP 2015.

3.2 CHAPTER 5 TRANSPORT ORIENTED DEVELOPMENT UNDER THE HOUSING SEPP

Clause 155 (2) of Chapter 5 of the Housing SEPP enables a building of 22m, as follows:
The maximum building height for a residential flat building in a Transport Oriented Development Area is 22m.

3.3 CHAPTER 2 AFFORDABLE HOUSING UNDER THE HOUSING SEPP

Clause 18 (2) of the Housing SEPP enables an additional height of up to 30%, as follows;

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).

Together, these clauses would enable a maximum building height of 28.6m.

3.4 PROPOSED VARIATION TO DEVELOPMENT STANDARDS

Pursuant to Clause 4.6, the proposed development seeks exception to the maximum building height of 28.6m.

The SSDA seeks approval for the purpose of a residential flat building with infill affordable housing. The Site is subject to a maximum building height of 28.6m. The development proposes a maximum height of **33.07m**. The proposed development would **exceed the building height applicable to the Site by a maximum of 4.47m, which represents a 15.62% variation**.

The proposed height exceedance is largely due to the topography and redistribution of bulk of the building to reduce visual amenity impacts on the surrounding R2 Low Density Residential zoned land. The height exceedance relates to plant and roof structure only, and does not include any habitable areas.

It is noted that the majority of the built form remains below the 28.6m height limit. Refer to **Figure 1** below for details.



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Figure 1. Height Plane (Source: DKO, 2025)

In its current form, the proposed development represents an orderly and efficient use of the Site which responds to the existing environmental constraints and the form and scale of the existing desired future development on the surrounding properties.

This Variation Request has been prepared in accordance with the objective of Chapter 2 and aims of Chapter 5 of the Housing SEPP, and the R2 Low Density Residential zone objectives of KLEP 2015.



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PART D PROPOSED VARIATION TO STANDARDS IN CLAUSE 4.3 OF KLEP 2015

Pursuant to Clause 4.6 of KLEP 2015 exception is sought from the height of buildings standard applicable to the Site pursuant to:

- Clause 18 of the Housing SEPP - Affordable housing requirements for additional building height (Chapter 2 Affordable Housing)
- Clause 155(2) of the Housing SEPP Maximum building height and maximum floor space ratio (Chapter 5 Transport Oriented Development)

4.1 OBJECTIVES OF THE STANDARD

Chapter 2 of the Housing SEPP - Affordable Housing

The objective of Division 1 In-fill affordable housing of the Housing SEPP 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 will provide 17% affordable housing is therefore consistent with this objective of this SEPP.

Chapter 5 of the Housing SEPP - Transport Oriented Development

There are no objectives of the standard. Notwithstanding, consideration of the proposal’s consistency with the aims of Chapter 5 of the Housing SEPP is provided in **Table 2** below:

TABLE 2: CONSISTENCY WITH THE AIMS OF CHAPTER 5 OF THE HOUSING SEPP	
Aim	Response
(a) To increase housing density within 400m of existing and planned public transport,	The proposed development will provide 94 units within 400m of Lindfield train station and is therefore consistent with this aim.
(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,	The proposed development will provide a residential flat building that provide an articulated building form that minimises perceived bulk and scale impacts when viewed from the surrounds of the site. The proposed height and scale of the development is generally consistent with the future character of the area as established by the new built form controls within Chapter 5 Transport Oriented Development in the Housing SEPP. The proposed height will not be responsible for any discernible impacts beyond that of a building with a compliant height in terms of visual bulk, privacy, solar access



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TABLE 2: CONSISTENCY WITH THE AIMS OF CHAPTER 5 OF THE HOUSING SEPP	
Aim	Response
	and views. The non-compliant components of the development will not result in any unreasonable overshadowing. As such, the proposed development is considered consistent with this aim.
<i>(c) to encourage the development of affordable housing to meet the needs of essential workers and vulnerable members of the community.</i>	The proposed development provides 17.29% of the gross floor area of the building for the purpose of affordable housing which will meet the needs of essential workers and vulnerable members of the community.



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4.2 OBJECTIVES OF THE ZONE

The Site is zoned R2 Low Density Residential pursuant to KLEP 2015. Therefore, consideration has been given to the R2 zone objectives in **Table 3** below:

TABLE 3: CONSISTENCY WITH THE R2 ZONE OBJECTIVES	
Objective	Response
<i>To provide for the housing needs of the community within a low density residential environment.</i>	The proposed development provides 94 units within the R2 Low Density Residential zone, which is permissible by the Housing SEPP.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The proposed development is for a residential flat building for the residents of the building.
<i>To provide for housing that is compatible with the existing environmental and built character of Kuring-gai.</i>	The proposed development does not provide a suitable density housing type within the R2 Low Density Residential zone, however is reflective of the Site's setting within a TOD area.

4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

Subclause 4.6(3)(a) (refer to **Section 2.1**) emphasises the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances.

The ways in which compliance with a development standard may be held to be “unreasonable or unnecessary” are well established. In *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), Preston CJ provided a non-exhaustive list through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), in *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*) the Court held that the common ways of demonstrating that compliance with a development standard is unreasonable or unnecessary as outlined in *Wehbe* are equally applicable to clause 4.6.

The five methods outlined in *Wehbe* include:

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).*
- *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).*



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- *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).*
- *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**).*
- *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**).*

It is sufficient to demonstrate only one of these methods to satisfy clause 4.6(3)(a) of LCLEP 2009 (*Wehbe, Initial Action* at [22], *Rebel* at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

In this case, it is demonstrated below that the First Method has been satisfied, and the objectives of Chapter 2 and aims of Chapter 5 of the Housing SEPP are achieved notwithstanding the non-compliance with the numerical standard (see also **Section 4.1** above).

When considering whether a development standard is appropriate and/or necessary, one must take into account:

- the nature of the proposed variation;
- the Site context; and
- the design of the proposed development.

Following the decision in *Initial Action*, it was established that Clause 4.6 does not require an applicant to demonstrate that a development which contravenes a development standard have a better (or neutral) environment planning outcome than a development that complies with the development standard.

The standard is unreasonable and unnecessary in the circumstances of the case on the following basis:

- The proposed development will provide a residential flat building that provides an articulated building form that minimises perceived bulk and scale impacts when viewed from the surrounds of the site. The proposed height and scale of the development is generally consistent with the future character of the area as established by the new built form controls within Chapter 5 Transport Oriented Development in the Housing SEPP.
- The proposed development will provide affordable housing in accordance with Chapter 2 Affordable Housing of the Housing SEPP. The purpose of the variation is to improve legibility in terms of the ratio of built form to open spaces, while ensuring that the proposed development will not dominate, or have an overbearing effect on, the surrounding streetscapes. The proposed height



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variation is consistent with the future intended height of the surrounding TOD area and no additional impacts to bulk and scale will result from the proposed variation.

- The proposed height will not result in any significant visual, privacy or overshadowing impacts to the adjoining properties.

The abovementioned justifications are considered valid, and in this instance the proposed Clause 4.6 Variation is considered to be acceptable. The proposed development represents a more efficient use of the Site and reduces bulk and scale impacts through the implementation of the height variation. The objectives of Chapter 2 and aims of Chapter 5 of the Housing SEPP and the R2 zone are considered upheld as a result of the proposed development. As such, the application of the height of building development standard is considered unreasonable and unnecessary for the proposed development.

4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

In *Initial Action*, Preston CJ observed that in order for there to be “sufficient” environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

The environmental planning grounds to justify the departure of the development building height development standard are as follows:

- The proposed development is entirely consistent with the underlying aims or purpose of Chapter 5 of the Housing SEPP, as demonstrated in Section 4.1.
- The proposed development is consistent with the requirement to provide at least 10% affordable housing component to achieve additional height, as required by Clause 18(3) of the SEPP.
- The proposed development largely achieves the objectives of the R2 Low Density Residential zone, as described in Section 4.2.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in Section 4.3.
- There would be no impacts on any sensitive receptors due to the proposed development in relation to solar access, privacy or visual bulk as the design assists in maximising solar access to surrounding residential buildings and reducing overshadowing.
- Compliance with the remaining development standards applicable to the Site is achieved. There would be no measurable environmental or amenity benefits in maintaining the standard.



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For the reasons outlined above, it is considered that the proposed variation to the building height under Section 155(2) is appropriate and can be clearly justified having regard to the matters listed within clause 4.6(3)(b) under KLEP 2015.

4.5 OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

All planning determinations made under the EP&A Act are required to be made with regard to the objects of the Act in accordance with section 1.3 of the EP&A Act. **Table 4** below assesses the proposed development against the objects of the EP&A Act.

TABLE 4: EP&A ACT OBJECTIVES	
Objective	Response
<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>	The proposed development is considered to be in the public interest as it would support the provision of much needed housing (including affordable housing) in a location close to public transport, services and facilities.
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i>	The proposed development allows for the provision of much needed housing in a location close to existing infrastructure, has minimal impact on the environment and includes the provision of affordable housing.
<i>(c) to promote the orderly and economic use and development of land,</i>	As outlined above, the proposed development allows for the provision of much needed housing in location close to public transport and an existing town centre and is therefore considered to promote the orderly and economic use and development of land.
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	The proposed development will provide at least 2% of the gross floor area of the building for the purpose of affordable housing in accordance with the provisions of Section 156 of the Housing SEPP.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	A detailed Biodiversity Development Assessment Report waiver is provided at Appendix 6 of the EIS that demonstrates that the proposed development will protect the environment. The proposed development would not impact on the conservation of biological diversity or the ecological integrity of the locality.



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TABLE 4: EP&A ACT OBJECTIVES

Objective	Response
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	<p>The Site is partially located within the Trafalgar Avenue Heritage Conservation Area (covering the eastern section of the Site, which extends around the Site to the north, east and south) while a Local Heritage Item is directly to the north (19 Russell Avenue - Item 149). The Middle Harbour Road Lindfield Conservation Area lies further to the east, along Trafalgar Avenue. Another Local Heritage Item is located approximately 33m to the south east of the Site on the opposite side of Middle Harbour Road (No. 31 Middle Harbour Road - Item 143)</p> <p>The Site is not listed on the State Heritage Register under the NSW Heritage Act 1977.</p> <p>A Statement of Heritage Impact (SOHI) has been prepared by Heritage21 (Appendix 9) and has determined that there will be no detrimental impact to the following items:</p> <ul style="list-style-type: none">▪ Trafalgar Avenue Heritage Conservation Area (C31)▪ Dwellinghouse, 19 Russell Avenue (Item 149)▪ Dwellinghouse, No. 31 Middle Harbour Road (Item 143) <p>Overall, the impacts are minor and acceptable, no mitigation measures are required, therefore the proposed development does not impact on the nearby built heritage.</p>
<i>(g) to promote good design and amenity of the built environment,</i>	<p>A Design Report by DKO is provided at Appendix 17 of the EIS. The Design Report identifies that the proposed development as a well-designed, multi-unit residential development that constitutes an exemplar development that embodies the aims and principles of the TOD SEPP, but it also responds well to the aims and objectives of the KLEP 2015.</p>
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	<p>The proposed development will be constructed to a high quality and achieve full compliance with relevant standards and controls.</p>
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment</i>	<p>The proposed development is considered to be a state significant development, for which the consent</p>



Clause 4.6 Variation - Height of Buildings

Proposed Residential Flat Building including In-fill Affordable Housing and Build-to-Rent Housing
24, 26 and 28 Middle Harbour Road, Lindfield
Lot 13 DP5374, Lot 1 DP119944, Lot 14 DP5374, Lot 1 DP1192386, Lot 1 DP312386, Lot 16 DP5374 & Lot 768
DP752031



TABLE 4: EP&A ACT OBJECTIVES

Objective	Response
<i>between the different levels of government in the State,</i>	authority is the Department of Planning, Housing and Infrastructure (DPHI)
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The SSDA is subject to the relevant public notification requirements.

4.6 MATTERS OF STATE AND REGIONAL SIGNIFICANCE

The proposed non-compliance with Clause 18 of the Housing SEPP will not give rise to any matters of significance for State or regional environmental planning. They will also not conflict with any State Environmental Planning Policy or Ministerial Directives under section 9.1 of the EP&A Act.

Planning Circular PS 08-014, issued by the former NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by full Council rather than under delegation. It is noted that this variation does exceed 10% and will be determined by the Department of Planning, Housing and Infrastructure (DPHI) as a SSDA.

4.7 SUMMARY

For the reasons outlined above, it is considered that the variation to Clause 18 of the Housing SEPP is well-founded in this instance and is appropriate in the circumstances. Furthermore, the Variation Request is considered to be well-founded for the following reasons as outlined in Clause 4.6 of KLEP2015, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*:

- The development is consistent with the objectives of the particular standard (refer to **Section 4.1**);
- The development is consistent with the objectives for development within the zone and long term strategic intentions to maintain and preserve employment land (refer to **Section 4.2**);
- Compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 4.3**);
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4**); and
- The development does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 4.5**);

Overall, it is considered that the proposed variation to the maximum building height control is entirely appropriate and can be clearly justified having regard to the matters listed within Clause 4.6 of KLEP 2015.



Clause 4.6 Variation – Height of Buildings

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PART E CONCLUSION

For the reasons outlined above, it is requested that Council support the Variation Request, which seeks approval for non-compliance with Section 155(2) of the Housing SEPP for the following reasons:

- The development is consistent with the objectives of the particular standard (refer to **Section 4.1**);
- The development is consistent with the objectives for development within the zone and long term strategic intentions to maintain and preserve employment land (refer to **Section 4.2**);
- Compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 4.3** as part of the First Limb satisfied);
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4** as part of the First Limb satisfied);
- The Proposed development is consistent with the objectives of the EP&A Act (refer to **Section 4.5**);
and
- The development does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 4.6**);

Given the justification provided above, the Variation Request is well founded and should be favourably considered by the Department of Planning, Housing and Infrastructure.

