

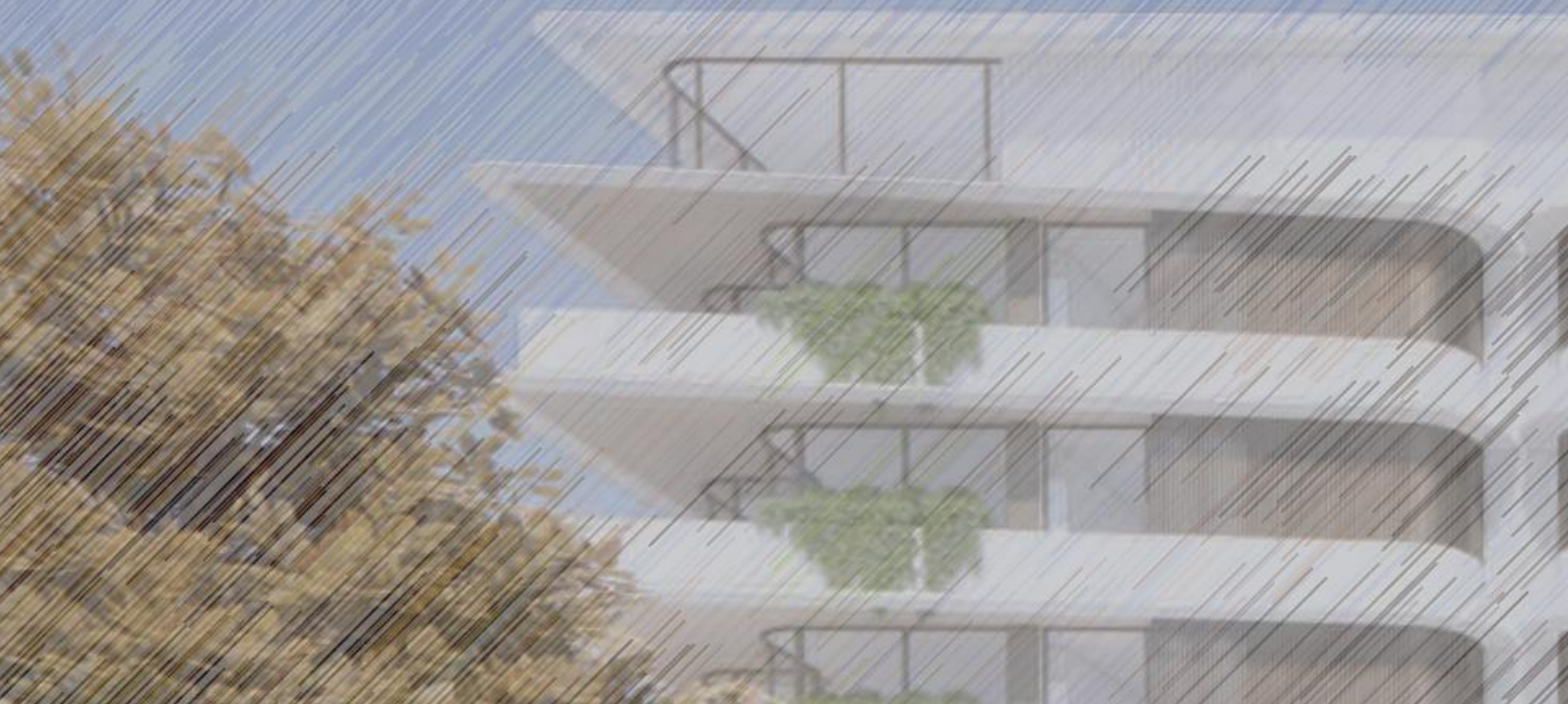
GYDE

Clause 4.6 Variation Request – Height

5-9 Nulla Nulla Street and 4-6 Ku-ring-gai
Avenue, Turramurra

Submitted to the Department of Planning, Housing and
Infrastructure on behalf of SRG Constructions Ptv Limited

23 November 2025



Acknowledgment of Country

Gyde Consulting acknowledges and pays respect to Aboriginal and Torres Strait Islander peoples past, present, Traditional Custodians and Elders of this nation and the cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander people. We recognise the deep and ongoing connections to Country – the land, water and sky – and the memories, knowledge and diverse values of past and contemporary Aboriginal and Torres Strait communities.

Gyde is committed to learning from Aboriginal and Torres Strait Islander people in the work we do across the country.



Towards Harmony by Aboriginal Artist Adam Laws

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Disclaimer

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1. Introduction

This Clause 4.6 Variation Request has been prepared by Gyde Consulting (**Gyde**) to accompany an Environmental Impact Statement (**EIS**) for a State Significant Development Application (**SSDA**) (SSD-94893958).

The SSDA seeks approval for two (2) residential flat buildings with an Affordable Housing Component at 5-9 Nulla Nulla Street and 4-6 Ku-ring-gai Avenue, Turramurra (**the site**). The buildings will share a common basement.

The proposed development will be constructed to a maximum height of 30.1m above natural ground level, which will exceed the maximum permitted building height (28.6m) under Clause 16(3) of the *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)* by 1.5m. This minor height exceedance equates to 5.3% of the standard to be varied (rounded to one decimal point).

In accordance with Clause 4.6 of the *Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015)* and established case law, this request demonstrates that compliance with the maximum permitted building height control would, in this case be unreasonable and unnecessary. There are sufficient environmental planning grounds for the proposed height variation. This Clause 4.6 Variation Request has demonstrated that:

- The proposed development is consistent with the aims, principles, objectives and underlying purpose of the Housing SEPP, notwithstanding the height variation.
- In this case, the proposed development achieves a better outcome than what would otherwise be achieved under a height-compliant development scenario, noting:
 - The proposed height variation enables appropriate arrangements for vertical circulation that enable access to communal open spaces on Level 8 of Building A and Building B. These communal open spaces contribute towards satisfying the required provision rate (25% of the site area) under the *NSW Apartment Design Guide (ADG)*.
 - The proposed height variation supports the accommodation of essential building services, along with acoustic screening that is recommended within the accompanying Noise and Vibration Impact Assessment.
 - The proposed height variation supports compliant floor-to-ceiling heights for habitable rooms in accordance with the ADG.
- The perceived bulk, height and scale of the proposed development has been softened by recessed upper levels, an ADG-compliant separation distance between Building A and Building B, and other interface treatments (refer to the EIS and the Architectural Design Report).
- The volume of building mass that is proposed above the maximum permitted building height (28.6m) is proportionately minor and does not include any habitable floorspace. The vast majority of proposed building mass is located below the maximum permitted building height.
- The proposed height variation has a direct association with the topography of the site.
- The proposed height variation will not result in any unacceptable adverse impacts to historic values, including in relation to the adjoining local heritage item at 8 Ku-ring-gai Avenue.
- The proposed development complies with the maximum permitted FSR control that applies to this SSDA under Clause 16 the Housing SEPP (2.86:1). The FSR of the proposal (2.3:1) will deliver a density of development that is reasonable to anticipate under the statutory planning framework that applies to this SSDA, which seeks to enable diverse, affordable housing options at accessible locations.

This Clause 4.6 Variation Request should be reviewed in conjunction with the EIS, Architectural Plans, Architectural Design Report and other technical documentation that have been prepared to support this SSDA.

2. Site Description

The site, which has a total area of 5,766m², is located at 5-9 Nulla Nulla Street and 4-6 Ku-ring-gai Avenue, Turramurra. The legal description for the site is provided in **Table 1**. As shown in the site aerial at **Figure 1**, the site currently accommodates 5 single-detached residential dwellings

Table 1 Legal Site Description and Boundary Interfaces

Legal Site Description	
Street Address	Lot and Deposited Plan (DP)
5 Nulla Nulla Street, Turramurra	Lot 4 in DP 17642
7 Nulla Nulla Street, Turramurra	Lot 2 in DP 17642
9 Nulla Nulla Street, Turramurra	Lot 3 in DP 17642
4 Ku-ring-gai Avenue, Turramurra	Lot 422 in DP 556058
6 Ku-ring-gai Avenue, Turramurra	Lot 423 in DP 556058
Total Site Area: 5,766m²	



Figure 1 Site Aerial (Source: Gyde, excl. Nearmap aerial underlay)

3. Proposed Development

The proposed development includes:

- **Building A:**

Building A will accommodate a total of 58 residential apartments, including:

- 3x studio apartments.
- 2x 1-bedroom apartments.
- 34x 2-bedroom apartments.
- 19x 3-bedroom apartments.

- **Building B:**

Building B will accommodate a total of 47 residential apartments, including:

- 2x 1-bedroom apartments.
- 8x 2-bedroom apartments.
- 36x 3-bedroom apartments.
- 1x 4-bedroom apartment.

- **Affordable Housing Component:**

The proposed development will deliver an Affordable Housing Component that equates to 15.4% of the total Gross Floor Area (**GFA**).

- **Vehicle Access Arrangements:**

Vehicle access arrangements include provision for:

- Two-way vehicle access (entry and exit) from Nulla Nulla Street
- One-way vehicle access (exit only) to Ku-ring-gai Avenue.
- Two-way connection between Building A basement and Building B basement.

- **Car Parking:**

146 car parking spaces are proposed, including:

- 127 car parking spaces for future residents.
- 17 visitor car parking spaces.
- 2 car share parking spaces.

- **Landscaping:**

The proposed landscape design includes:

- 90 trees, resulting in a significant net increase in the number of trees across the site.
- Removal of 51 trees, the majority of which are of low significance.
- 893.4m² of deep soil coverage, equating to 15.4% of the total site area.
- 1,975m² of tree canopy coverage, equating to 34% of the total site area.
- 1,764.5m² of communal open space, equating to 31% of the total site area.

The proposed development is shown overleaf. Further reference should be made to the detailed description of the proposed development that has been provided within Section 3 of the accompanying EIS.

4. Standard to be Varied

The development standard to be varied is the incentive (bonus) height limit that applies under Clause 16(3) of the Housing SEPP. This incentive height bonus applies in addition to the non-discretionary height standard allowable in Clause 180 (Chapter 6 – Low and mid-rise housing), which establishes a maximum permitted building height of 22m and FSR of 2.2:1 for Residential Flat Buildings at the site.

Following the recent (2025) amendment of the Housing SEPP, which included the insertion of Clause 12A, the in-fill affordable housing height/FSR bonus under Clause 16 is applicable to low and mid-rise housing areas. Under Clause 16(2), this SSDA is permitted to deliver up to 30% additional FSR and building height because it includes an Affordable Housing Component that equates to 15% of the total GFA. As such, the following development standards apply to this SSDA:

- Maximum permitted FSR = 2.2:1 + 30% bonus = 2.86:1 (complies)
- Maximum permitted building height = 22m + 30% bonus = 28.6m (variation sought)

In *Australian Unity Funds Management Ltd v Boston Nepean Pty Ltd & Penrith Council* [2023] NSWLEC 49, the NSW Land and Environment Court (**LEC**) confirmed that the maximum permitted building height under Clause 16(3) of the Housing SEPP is a development standard that is capable of being varied. It is further noted that:

- The applicable height standard under Clause 16(3) of the Housing SEPP (28.6m):
 - Is consistent with the definition for 'Development Standard' under Section 1.4 of the EP&A Act.
 - Is not excluded from the operation of Clause 4.6 in the KLEP 2015.
 - Is a numerical development standard that establishes a 'maximum' height limit in the context of this SSDA, based on the provision of an Affordable Housing Component that equates to 15% of the total GFA. The application of this 'bonus' height limit is not a discretionary matter – it is prescriptive. In this case, the maximum permitted building height control that applies to this SSDA is 28.6m because an Affordable Housing Component that equates to 15% of the total GFA is proposed.
 - Overrides the local height standard that is mapped in relation to the site under Clause 4.3 of the KLEP 2015, which does not apply to this SSDA.
- Under Clause 175(2) of the Housing SEPP, Residential Flat Buildings that are constructed to a height of 22m or less are not permitted to contain more than six storeys. Clause 175(2) does not apply to this SSDA because the proposed Residential Flat Buildings exceed 22m in height.

Accordingly, a variation is sought in relation to the maximum permitted building height development standard that applies to this SSDA (28.6m) under Clause 16(3) of the Housing SEPP.

5. Extent of Proposed Height Variation

The maximum extent of the height variation is based on the highest point of the proposed development above natural ground level (30.1m), which is 1.5m above the maximum permitted building height (28.6m). This equates to 5.3% of the standard to be varied (rounded to one decimal place).

Table 2 provides a variable breakdown of the proposed height variation with reference to each built form element that exceeds the applicable height control. Further reference should be made to the isometric height plane diagram at **Figure 4** (overleaf).

Table 2 Breakdown of Proposed Height Variation

Point <i>Refer to Figure 4</i>	Built Form Element	Maximum Height of Built Form Element	Numerical Extent of Height Variation
Building A			
1 RL 199.49m	Lift Overrun Required to support functional vertical circulation arrangements that enable access to communal open space on Level 8.	29.3m (above natural GL) The lift overrun will be constructed to a maximum height of 29.3m above natural ground level (rounded to one decimal).	0.73m The height projection (0.73m) equates to 2.6% of the standard to be varied (rounded to one decimal).
2 RL 200.79m	Acoustic Screening Recommended by the Noise and Vibration Impact Assessment to minimise noise emissions from mechanical plant services.	29.4m (above natural GL) The screening will be constructed to a maximum height of 29.4m above natural ground level (rounded to one decimal).	0.78m The height projection (0.78m) equates to 2.7% of the standard to be varied (rounded to one decimal).
N/A	Habitable Floorspace No habitable floorspace is proposed above the height limit.	< 28.6m (above natural GL)	N/A
Building B			
3 RL 205.43m	Lift Overrun Required to support functional vertical circulation arrangements that enable access to communal open space on Level 8.	30.1m (above natural GL) The lift overrun will be constructed to a maximum height of 30.1m above natural ground level (rounded to one decimal).	1.5m (highest overall) The height projection (1.5m) equates to 5.3% of the standard to be varied (rounded to one decimal).
4 RL 206.33m	Acoustic Screening Recommended by the Noise and Vibration Impact Assessment to minimise noise emissions from mechanical plant services.	28.7m (above natural GL) The screening will be constructed to a maximum height of 28.7m above natural ground level (rounded to one decimal).	0.13m The height projection (0.13m) equates to 0.5% of the standard to be varied (rounded to one decimal).
N/A	Habitable Floorspace No habitable floorspace is proposed above the height limit.	< 28.6m (above natural GL)	N/A

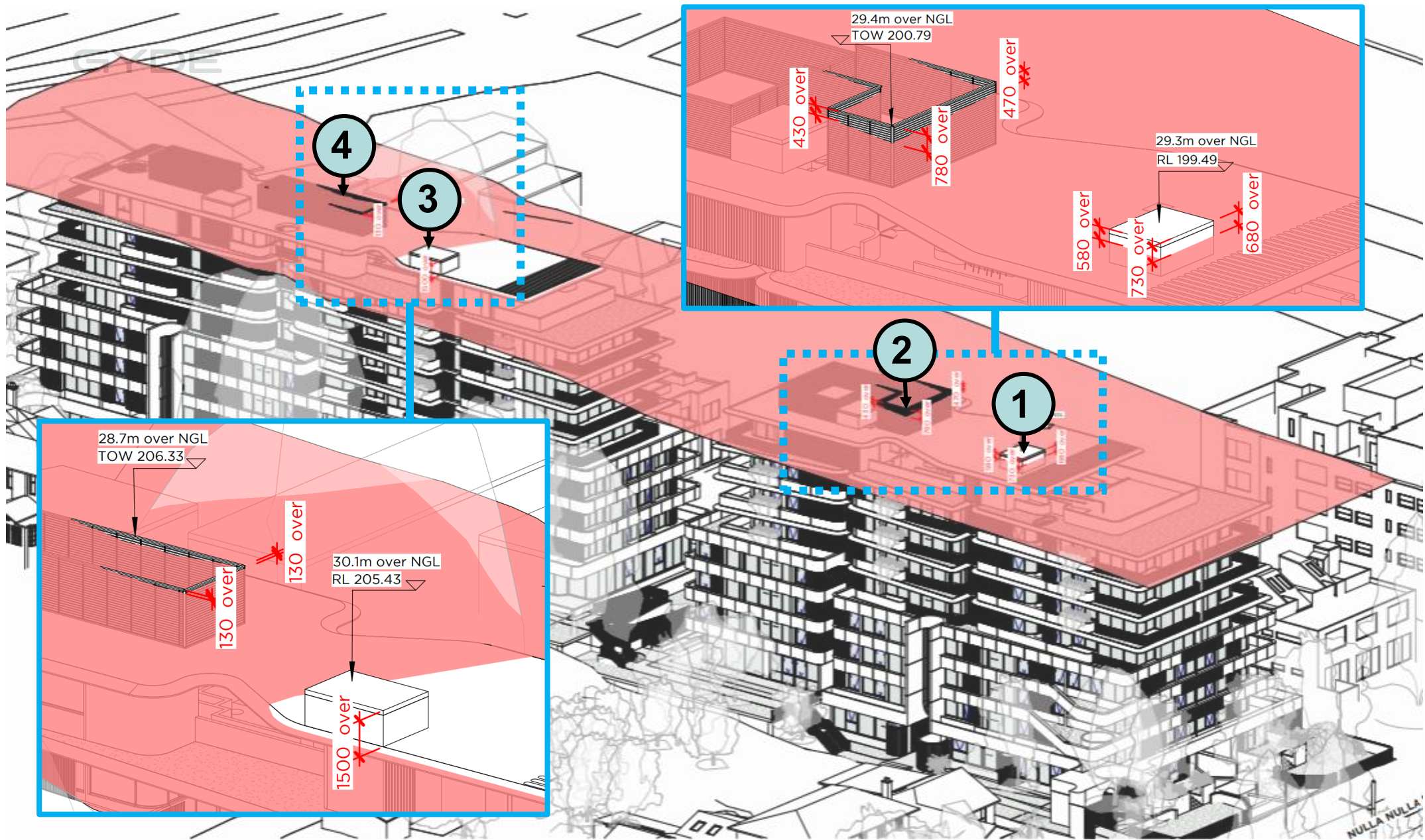


Figure 4 Isometric Height Plane Diagram

Source: PMDL (annotated and formatted above by Gyde)

6. Unreasonable or Unnecessary

In this section it is demonstrated why compliance with the development standard is unreasonable and unnecessary in the circumstances of this case as required by Clause 4.6(3)(a) of the KLEP 2015.

The Court held that there are at least five (5) different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. See *Wehbe v Pittwater Council [2007] NSWLEC 827 (Wehbe)*.

The five (5) ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard (First Test). The First Test is relied upon to support the proposed height variation.
2. The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary (Second Test). The Second Test is not relevant and would conflict with the correct application of the First Test (above).
3. The objectives would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (Third Test). There are also valid grounds for the proposed height variation under the Third Test.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granted consents departing from the standard hence the standard is unreasonable and unnecessary (Fourth Test). The Fourth Test is not applicable.
5. The zoning of the land is unreasonable or inappropriate (Fifth Test). The Fifth Test is not relied upon because the proposed development is permissible within (and appropriate to) the R3 Zone.

It is sufficient to demonstrate only one of these ways to satisfy Clause 4.6(3)(a) of the KLEP 2015. In this case, the First Test (**Section 6.1**) and Third Test (**Section 6.2**) are relied upon in relation to demonstrating Clause 4.6(3)(a) of the KLEP 2015. The First Test and the Third Test are addressed below.

6.1 First Test

The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The proposed development relies on Clause 180 (Chapter 6) of the Housing SEPP, which prescribes a maximum building height of 22 metres and an FSR of 2.2:1 for sites within the Low and Mid-Rise Housing Inner Area, in conjunction with the in-fill affordable housing provisions at Chapter 2, Part 2, Division 1, which allow up to 30% additional height and FSR, subject to the requisite affordable housing contribution being satisfied.

Pursuant to Clause 16(3) of the Housing SEPP, the maximum permissible building height for the subject site is 28.6 metres above natural ground level. There are no specific objectives that are stated in relation to this Development Standard within the Housing SEPP.

Where development standard objectives are absent, ambiguous, or permit multiple interpretations, their underlying purpose may be derived on a first-principles planning basis, having regard to the broader aims and policy intent of the relevant environmental planning instrument.

In this regard, it is acknowledged that the NSW Land and Environment Court (**LEC**) has confirmed that development standards must be construed as part of the Environmental Planning Instrument (**EPI**) as a whole (see *Strathfield Municipal Council v Poynting [2001] NSWCA 270* at [94]).

Accordingly, in the absence of explicit objectives for the standard to be varied, the proposed variation is properly assessed against the overarching aims and principles of the Housing SEPP, which provide the relevant policy context and intent. The aims, principles and underlying purpose and objectives of the Housing

SEPP relevant to the height standard and the objectives of Clause 4.3 of the KLEP 2015 have also been assessed for completeness.

6.1.1 State Environmental Planning Policy (Housing) 2021

6.1.1.1 Chapter 1, Section 3 – Principles of Policy

The proposed development is consistent with each principle of the Housing SEPP, as demonstrated within **Table 3** (below).

Table 3 Consistency with Housing SEPP Principles

Principle	Consistency
<p>(a) <i>Enabling the development of diverse housing types, including purpose-built rental housing.</i></p>	<p>Consistent.</p> <p><u>Diverse Housing:</u></p> <p>The proposed development will deliver a diverse mix of apartment typologies, including:</p> <ul style="list-style-type: none"> • The following apartment typologies within Building A: <ul style="list-style-type: none"> - 3x studio apartments. - 2x 1-bedroom apartments. - 34x 2-bedroom apartments. - 19x 3-bedroom apartments. • The following apartment typologies within Building B: <ul style="list-style-type: none"> - 2x 1-bedroom apartments. - 8x 2-bedroom apartments. - 36x 3-bedroom apartments. - 1x 4-bedroom apartment. <p><u>Affordable Rental Housing:</u></p> <p>An Affordable Housing Component that equates to 15% of the total GFA (1,995.1m²) has been nominated.</p> <p>The proposed Affordable Housing Component will offer 21 purpose-built residential apartments as affordable rental housing for a minimum of 15 years.</p> <p>The site does not currently accommodate any affordable housing.</p>
<p>(b) <i>Encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability.</i></p>	<p>Consistent.</p> <p><u>Affordable Housing for Very Low, Low and Moderate Income Households</u></p> <p>Existing development at the site does not contribute towards the provision of diverse, affordable housing options in the local area. The proposed Affordable Housing Component is proportionate to the site’s development capacity in accordance with the required provision rate under the Housing SEPP.</p> <p><u>Diverse, Affordable Housing:</u></p> <p>The proposed Affordable Housing Component will consist of the following apartment typologies (refer overleaf):</p>

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	<div style="display: flex; justify-content: space-around;"> <table border="1" style="width: 45%; text-align: center;"> <thead> <tr> <th colspan="3" style="background-color: #808080; color: white;">Affordable Housing</th> </tr> <tr> <th style="background-color: #d3d3d3;">Number</th> <th style="background-color: #d3d3d3;">Type</th> <th style="background-color: #d3d3d3;">Area (m²)</th> </tr> </thead> <tbody> <tr><td>A.L0.U2</td><td>3B + 2BTH</td><td>138.5 m²</td></tr> <tr><td>A.L0.U3</td><td>1B + 1BTH</td><td>74.9 m²</td></tr> <tr><td>A.L0.U4</td><td>1B + 1BTH</td><td>59.0 m²</td></tr> <tr><td>A.L0.U5</td><td>2B + 2BTH</td><td>109.8 m²</td></tr> <tr><td>A.L0.U6</td><td>2B + 2BTH</td><td>108.8 m²</td></tr> <tr><td>A.L1.U4</td><td>Studio</td><td>54.2 m²</td></tr> <tr><td>A.L1.U5</td><td>2B + 2BTH</td><td>94.2 m²</td></tr> <tr><td>A.L1.U6</td><td>2B + 2BTH</td><td>94.1 m²</td></tr> <tr><td>A.L1.U8</td><td>3B + 2.5BTH</td><td>142.6 m²</td></tr> <tr><td>A.L2.U4</td><td>Studio</td><td>54.2 m²</td></tr> <tr><td>A.L2.U5</td><td>2B + 2BTH</td><td>94.1 m²</td></tr> <tr><td>A.L2.U6</td><td>2B + 2BTH</td><td>94.1 m²</td></tr> <tr><td>A.L3.U4</td><td>Studio</td><td>54.2 m²</td></tr> <tr><td>A.L3.U5</td><td>2B + 2BTH</td><td>94.2 m²</td></tr> </tbody> </table> <table border="1" style="width: 45%; text-align: center;"> <thead> <tr> <th colspan="3" style="background-color: #808080; color: white;">Affordable Housing</th> </tr> <tr> <th style="background-color: #d3d3d3;">Number</th> <th style="background-color: #d3d3d3;">Type</th> <th style="background-color: #d3d3d3;">Area (m²)</th> </tr> </thead> <tbody> <tr><td>B.L0.U1</td><td>3B + 2BTH</td><td>131.3 m²</td></tr> <tr><td>B.L0.U2</td><td>2B + 2BTH</td><td>111.4 m²</td></tr> <tr><td>B.L0.U4</td><td>1B + 1BTH</td><td>84.1 m²</td></tr> <tr><td>B.L1.U6</td><td>1B + 1.5BTH</td><td>88.2 m²</td></tr> <tr><td>B.L1.U8</td><td>2B + 2BTH</td><td>111.4 m²</td></tr> <tr><td>B.L2.U4</td><td>2B + 2.5BTH</td><td>100.3 m²</td></tr> <tr><td>B.L2.U6</td><td>2B + 2.5BTH</td><td>101.2 m²</td></tr> <tr> <td colspan="2">Grand total: 21</td> <td>1995.1 m²</td> </tr> </tbody> </table> </div> <p>The proposed Affordable Housing Component is capable of accommodating a diverse range of residents, including singles, couples, small to medium families and downsizers.</p> <p>In this regard, the proposal meets the needs of vulnerable community members.</p>	Affordable Housing			Number	Type	Area (m ²)	A.L0.U2	3B + 2BTH	138.5 m ²	A.L0.U3	1B + 1BTH	74.9 m ²	A.L0.U4	1B + 1BTH	59.0 m ²	A.L0.U5	2B + 2BTH	109.8 m ²	A.L0.U6	2B + 2BTH	108.8 m ²	A.L1.U4	Studio	54.2 m ²	A.L1.U5	2B + 2BTH	94.2 m ²	A.L1.U6	2B + 2BTH	94.1 m ²	A.L1.U8	3B + 2.5BTH	142.6 m ²	A.L2.U4	Studio	54.2 m ²	A.L2.U5	2B + 2BTH	94.1 m ²	A.L2.U6	2B + 2BTH	94.1 m ²	A.L3.U4	Studio	54.2 m ²	A.L3.U5	2B + 2BTH	94.2 m ²	Affordable Housing			Number	Type	Area (m ²)	B.L0.U1	3B + 2BTH	131.3 m ²	B.L0.U2	2B + 2BTH	111.4 m ²	B.L0.U4	1B + 1BTH	84.1 m ²	B.L1.U6	1B + 1.5BTH	88.2 m ²	B.L1.U8	2B + 2BTH	111.4 m ²	B.L2.U4	2B + 2.5BTH	100.3 m ²	B.L2.U6	2B + 2.5BTH	101.2 m ²	Grand total: 21		1995.1 m ²
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B.L2.U6	2B + 2.5BTH	101.2 m ²																																																																													
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<p>(c) <i>Ensuring new housing development provides residents with a reasonable level of amenity.</i></p>	<p>Consistent.</p> <p><u>Optimised Internal Amenity (ADG Compliance):</u></p> <p>Principle (c) provides a direction to ensure ‘reasonable’ residential amenity. In the context of this project, this direction has been implemented over and above what would simply be ‘reasonable’ in amenity terms, noting:</p> <ul style="list-style-type: none"> • The combined area of communal open spaces equates to 31% of the total site area. This exceeds the minimum requirement of 25% under Objective 3D-1 of the ADG. • 96% of the proposed apartments will receive at least 2 hours of direct sunlight to living rooms/private open spaces between 9:00 AM and 3:00 PM during Winter Solstice (21 June). This exceeds the minimum requirement of 70% under Objective 4A-1 of the ADG. Relevantly, 18 of the 21 designated infill affordable units obtain complaint solar access • 64% of the proposed apartments are naturally cross ventilated. This exceeds the minimum requirement of 60% under Objective 4B-3 of the ADG. • All of the proposed apartments exceed the minimum area (m²) requirement under Objective 4D-1 of the ADG. • All private balconies, terraces and courtyard spaces either meet or exceed the minimum area (m²) and depth (m) requirements under Objective 4E-1 of the ADG. <p>The above-listed outcomes provide a quantifiable demonstration that residential amenity has been optimised beyond what would simply be ‘reasonable’. The intended effect of Principle (c) has been achieved and surpassed.</p> <p><u>Maintaining Reasonable Residential Amenity:</u></p> <p>As outlined within Section 7.5.1 and Section 7.5.2, the proposed height variation supports the achievement of acceptable floor-to-ceiling heights and communal open space provision in accordance with the ADG.</p> <p>The above-mentioned sections of this report demonstrate that residential amenity could be compromised if compliance with the standard to be varied was strictly enforced.</p>																																																																														

Principle	Consistency
	<p><u>Overshadowing:</u> The proposed development will not result in any reduction to the level of solar amenity that is afforded to surrounding properties that would not be reasonable to anticipate under the applicable built form controls, including the maximum permitted building height (28.6m) under the Housing SEPP. As outlined within Section 7.1, overshadowing effects arising from the proposed height variation are negligible, highly localised, and confined to an immaterial footprint.</p>
<p>(d) <i>Promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services.</i></p>	<p>Consistent. The Low and Mid Rise Housing Policy, which is embedded under Chapter 6 of the Housing SEPP, identifies the site as a suitable location for increased residential density. The site is located within the Low and Mid-Rise Housing Inner Area and is within 85m-175m walking distance of Turrumurra Town Centre and public transport (as defined in Clause 163 of the Housing SEPP). The site benefits from ready access to retail, employment, education, recreation and established infrastructure networks, consistent with the intent of the Housing SEPP and the National Housing Accord. The proposed development complies with the maximum permitted FSR control that applies to this SSDA under the Housing SEPP (2.86:1). The FSR of the proposal (2.3:1) will provide for a density of development that is reasonable to anticipate at the site.</p>
<p>(e) <i>Minimising adverse climate and environmental impacts of new housing development.</i></p>	<p>Consistent. <u>Environmental Impact Statement</u> The accompanying EIS has demonstrated that the proposed development will not result in any unacceptable adverse environmental impacts. Further reference should be made to Section 7 of this report, which addresses matters that have direct relevance to the proposed height variation. <u>Sustainable Design Interventions:</u> As outlined within the Ecologically Sustainable Development (ESD) Report that accompanies the EIS:</p> <ul style="list-style-type: none"> • The proposed development will comply with the Sustainable Buildings SEPP (supported by BASIX certification). • Passive design features, water-efficient fixtures, sustainable materials and other sustainable design interventions will be incorporated. • Design provision has been made for the placement of photo voltaic (PV) solar panels on the rooftop of Building A and Building B. <p><u>Deep Soil Planting and Tree Canopy Coverage:</u> Deep soil zones and tree canopy coverage have been maximised beyond what would typically be required in accordance with 'enhanced' provision rates under the <i>Tree Canopy Guide for Low and Mid Rise Housing</i>. As outlined within Section 7, a height-compliant development scenario could incentivise the horizontal expansion of built form. This could result in a reduction to the extent of deep soil planting zones.</p>

Principle	Consistency
<p>(f) <i>Reinforcing the importance of designing housing in a way that reflects and enhances its locality.</i></p>	<p>Consistent.</p> <p><u>Anticipated Density of Development:</u></p> <p>The proposed maximum height variation, which equates to 5.3% of the standard to be varied, relates to isolated built form elements on the roof levels of Building A and Building B.</p> <p>The subsequent height exceedances are minor and do not relate to any building levels that accommodate habitable floorspace. In terms of bulk, height and scale, the proposed development is reasonable to anticipate under the statutory built form controls that apply under the Housing SEPP.</p> <p><u>'Green' / 'Leafy' Streetscape Character:</u></p> <p>The 'green' / 'leafy' profile of local streetscapes is a defining characteristic that has informed a landscape design outcome where tree canopy coverage has been maximised across the site.</p> <p>Cascading vegetation across the building façade and the 'earthy' tones that feature throughout the external materials palette form part of a coordinated design response that will enhance local character.</p> <p><u>Historic Character:</u></p> <p>The accompanying Heritage Impact Statement has demonstrated that the proposed development will not result in any unacceptable impacts to local heritage values, including in relation (but not limited) to the adjoining heritage-listed property at 8 Ku-ring-gai Avenue.</p> <p>The bulk, height and scale of the proposed development, which is anticipated under the Low and Mid Rise Housing Policy, has been carefully considered. Appropriate massing refinements, including recessed upper level setbacks, have been implemented.</p> <p>The existing single-detached residential dwellings at the site, which will be demolished, do not make a meaningful contribution towards historic character values that are associated with the Ku-ring-gai Heritage Conservation Area (HCA).</p>
<p>(g) <i>Supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use.</i></p>	<p>Consistent.</p> <p>The proposal delivers private dwellings that may be utilised for various tenure arrangements, including long-term rental and home-sharing.</p> <p>Any short-term rental accommodation (STRA) use will be regulated through existing planning, strata and building management frameworks.</p> <p>It is expected that a body corporate structure will be established after the completion of works. Negative social impacts like noise, anti-social behaviour, and loss of community feelings are generally managed by a body corporate structure.</p>
<p>(h) <i>Mitigate loss of existing affordable housing.</i></p>	<p>Consistent.</p> <p>As noted in relation to Principle (a) above, the proposed development will replace 5 existing single-detached dwellings, which are not consistent with the definition of 'Affordable Housing' under the EP&A Act, with two Residential Flat Buildings that include a compliant Affordable Housing Component.</p>

Principle	Consistency
	The Affordable Housing Component will offer 21 apartments as affordable rental housing for a minimum period of 15 years, as required under the Housing SEPP.

6.1.1.2 Chapter 2, Part 2, Division 1, Section 15A – Infill Affordable Housing Objective

The proposed development is consistent with the objective for infill affordable housing, as listed within Section 15A of the Housing SEPP, which 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.

Existing development at the site does not contribute towards the provision of diverse, affordable housing options in the local area. The proposed Affordable Housing Component is proportionate to the site’s development capacity in accordance with the required provision rate under the Housing SEPP. The proposed Affordable Housing Component will consist of the following apartment typologies:

Affordable Housing		
Number	Type	Area (m ²)
A.L0.U2	3B + 2BTH	138.5 m ²
A.L0.U3	1B + 1BTH	74.9 m ²
A.L0.U4	1B + 1BTH	59.0 m ²
A.L0.U5	2B + 2BTH	109.8 m ²
A.L0.U6	2B + 2BTH	108.8 m ²
A.L1.U4	Studio	54.2 m ²
A.L1.U5	2B + 2BTH	94.2 m ²
A.L1.U6	2B + 2BTH	94.1 m ²
A.L1.U8	3B + 2.5BTH	142.6 m ²
A.L2.U4	Studio	54.2 m ²
A.L2.U5	2B + 2BTH	94.1 m ²
A.L2.U6	2B + 2BTH	94.1 m ²
A.L3.U4	Studio	54.2 m ²
A.L3.U5	2B + 2BTH	94.2 m ²

Affordable Housing		
Number	Type	Area (m ²)
B. L0.U1	3B + 2BTH	131.3 m ²
B. L0.U2	2B + 2BTH	111.4 m ²
B. L0.U4	1B + 1BTH	84.1 m ²
B. L1.U6	1B + 1.5BTH	88.2 m ²
B. L1.U8	2B + 2BTH	111.4 m ²
B. L2.U4	2B + 2.5BTH	100.3 m ²
B. L2.U6	2B + 2.5BTH	101.2 m ²
Grand total: 21		1995.1 m ²

The proposed Affordable Housing Component is capable of accommodating a diverse range of residents, including singles, couples, small to medium families and downsizers. In this regard, the proposal meets the needs of vulnerable community members, including very low, low and moderate income households.

6.1.1.3 Chapter 6, Part 1, Section 162 – Aim for Low and Mid Rise Housing

The proposed development is consistent with the aim for low and mid rise housing that is delivered under Chapter 6 of the Housing SEPP, which states:

The aim of this chapter is to encourage the development of low and mid rise housing in areas that are well located with regard to goods, services and public transport.

The site is located within the Low and Mid-Rise Housing Inner Area and is within 85m-175m walking distance of Turrumurra Town Centre and a range of public transport options (as defined in Clause 163 of the Housing SEPP), including:

- High-frequency bus services that are routed through and around the Turrumurra Town Centre.

- Rapid rail transit services along the T1 North Shore Line. Turrumurra Train Station is sited within walking distance from the site.


The site benefits ready access to retail, employment, education, recreation and established infrastructure networks, consistent with the intent of the Housing SEPP and the National Housing Accord.

6.1.2 Ku-ring-gai Local Environmental Plan 2015 – Objectives of Clause 4.3

The relevant principles and objectives of the Housing SEPP, as addressed within **Section 6.1.1**, prevail over the objectives of Clause 4.3 in the KLEP 2015, which relate to a height standard that does not apply to this SSDA.

For completeness, the objectives of Clause 4.3 are addressed in the table below on a first principles basis. The assessment in **Table 4** demonstrates that the proposed development is consistent with each objective of Clause 4.3, insofar as they relate to this SSDA and the relevant principles/objects of the Housing SEPP.

Table 4 Consistency with Clause 4.3 Objectives

Objective	Consistency
<p>(a) <i>Ensure that the height of buildings is appropriate for the scale of the different centres within the hierarchy of Ku-ring-gai centres.</i></p>	<p>Consistent.</p> <p><u>Low and Mid Rise Housing Policy:</u></p> <p>The proposed development is not located within the Turrumurra Local Centre, however Objective (a) provides a direction for development to be “<i>appropriate for the scale of different centres</i>” that does not apply exclusively to land within local centres.</p> <p>This is relevant to the Low and Mid Rise Housing Policy, which incentivises appropriate residential densities within the vicinity of centres (in accordance with the Housing SEPP), as indicated below in relation to Turrumurra Local Centre:</p> <p><u>Turrumurra Local Centre and Associated LMR Housing Area</u></p>  <p><i>Source: Department of Planning, Housing and Infrastructure</i></p> <p><u>Anticipated Bulk, Height and Scale of Development:</u></p> <p>The proposed height variation, which equates to 5.3% of the standard to be varied, relates to isolated built form elements on the roof levels of Building A and Building B.</p> <p>The subsequent height exceedance is minor and does not include any building levels that accommodate habitable floorspace. In terms of bulk, height and scale, the proposed development is reasonable to anticipate under the statutory built form controls that apply under the Housing SEPP, inclusive of Chapter 6 (the statutory vehicle for the Low and Mid Rise Housing Policy).</p> <p><u>Environmental Impacts:</u></p>

Objective	Consistency
	<p>As outlined within Section 7 of this report, the proposed height variation will not result in any greater environmental impacts in comparison to a complaint design expected under statutory built form controls for LMR and IAH that apply to this SSDA, including in relation to:</p> <ul style="list-style-type: none"> • Overshadowing to surrounding properties. • Built heritage values. • The visual presentation of the proposed development. • Residential amenity, including the level of privacy that is afforded to surrounding properties. <p>Further reference should be made to the EIS, which has demonstrated that the proposal (as a whole) will not result in any unacceptable environmental impacts.</p>
<p>(b) <i>Establish a transition in scale between the centres and the adjoining lower density residential and open space zones to protect local amenity.</i></p>	<p>Consistent.</p> <p><u>Density in Transition:</u></p> <p>The site forms part of a transitional interface between Zone R4 – High Density Residential (immediately west of 1–3 Nulla Nulla Street) and Zone R2 – Low Density Residential. This interface forms part of a broader transition between envisaged densities as distance increases from the Turrumurra Local Centre.</p> <p>The envisaged density of development in each of these land use zones warrants carefully balanced consideration with regard for the Low and Mid-Rise Housing Policy. In this respect, it is noted that Residential Flat Buildings are permissible with Development Consent across residential land that adjoins the site (R3 and R2).</p> <p>The proposed massing strategy—retaining all habitable floorspace below the height control and integrating recessed upper levels with planted edges—ensures reasonable visual privacy and outlook, while maintaining an appropriate transition to neighbouring lower-scale buildings.</p> <p>In accordance with the planning principle in <i>Project Venture Developments v Pittwater Council</i> [2005] NSWLEC 191, the proposal is compatible with surrounding development, noting that compatibility does not require sameness.</p> <p><u>Land Use Permissibility:</u></p> <p>Residential Flat Buildings are a permitted land use within the R3 Zone (applicable to the site) and R2 Zone (applicable to east-adjointing land) under the Clause 174 of the Housing SEPP, noting the site and its immediate surrounds are subject to the Low and Mid Rise Housing Policy.</p> <p>This SSDA seeks approval to deliver a built form typology (Residential Flat Buildings) that is permitted on the site and adjoining residential land.</p> <p>The proposed development enables an outcome that is consistent with the envisaged character of development in the local area, which is supported by State policy.</p> <p><u>Desired Future Character</u></p> <p>The Architectural Design Report contemplates the density of development around the site under the Low and Mid Rise Housing Policy, which is envisaged to accommodate a diverse mix of residential typologies.</p> <p>Future development around the site can, where applicable, leverage the same non-discretionary height and FSR bonuses under Clause 16 of the Housing SEPP, which apply to this SSDA. These bonus provisions are intended to establish baseline height standards, subject to the delivery of affordable housing.</p> <p><u>Indicative Representation of Potential Development Scenarios</u></p>

Objective	Consistency
	<p>The surrounding built form context consists of terraces and Residential Flat Buildings (west) and lower-scale typologies within Zone R2 – Low Density Residential.</p> <p>The existing built form context was established before the Low and Mid Rise Housing Policy came into effect.</p> <p>The future built form context, as outlined in the Architectural Design Report, is based on a scenario that assumes:</p> <p>Reasonable amalgamation of some sites to accommodate 1-4 storey forms to the east (R2).</p> <p>6-8 storey forms to the west (R3/R4) in line with the Low and Mid Rise Housing Policy.</p> <p>A separate SSDA will soon be progressed by CPDM in relation to 6-12 Nulla Nulla Street. SEARs have not been requested at the time of writing this EIS.</p> <p>Source: PMDL</p>
<p>(c) <i>Enable development with a built form that is compatible with the size of the land to be developed.</i></p>	<p>Consistent.</p> <p><u>Site Area and Dimensions</u></p> <p>The site occupies a substantial area of land (5,766m²) within walking distance of Turrumurra Train Station and local centre. The width (>30m) and depth (>150m) of the site exceed the dimensional requirements for Residential Flat Buildings under Clause 6.6 of the KLEP 2015.</p> <p>The site is dimensioned to accommodate Residential Flat Buildings under the Low and Mid Rise Housing Policy, and local provisions complement this State-led directive.</p> <p><u>Built Form Response:</u></p>

Objective	Consistency
	<p>As outlined within the accompanying Architectural Design Report, the proposal has been designed to reinforce the relevant principles and objectives within the ADG and Schedule 9 of the Housing SEPP.</p> <p>Appropriate setbacks have been employed along with sensitive landscaped interface treatments to ensure a balanced relationship between building height, built form and site proportions.</p> <p><u>Floor Space Ratio (FSR):</u></p> <p>The proposed development complies with the maximum permitted FSR control that applies to this SSDA under Clause 16 the Housing SEPP (2.86:1). The FSR of the proposal (2.3:1) will deliver a density of development that is reasonable to anticipate at the site with respect to envisaged land use intensity provided by the Housing SEPP.</p>

6.2 Third Test

The objectives would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

Although not strictly required in this case, the Third Test is applicable in relation to demonstrating the reasonableness of the proposed height variation. Specifically, strict adherence to the maximum building height control would frustrate the achievement of Principle (c) in Section 3, Chapter 1 of the Housing SEPP, which states:

The principles of this Policy are as follows:

.....

(c) ensuring new housing development provides residents with a reasonable level of amenity,

The application of this principle seeks to ensure that a “reasonable level of amenity” is achieved for specific development types permitted under the Housing SEPP. In a facilitative sense this principle must be interpreted as offering flexibility to a particular development standard if it can be demonstrated that its purpose is achieved notwithstanding the variation and that it would result in an improved outcome in the circumstances of the case. The following justification is relied upon to justify the requirements of this test along with the specific environmental planning grounds that are outlined throughout **Section 7** of this report:

- **Section 7.5.1** confirms that the proposed height variation is necessary to accommodate functional vertical circulation arrangements and to enable access to communal open space that has been provided in accordance with Objective 3D-1 of the ADG.
- **Section 7.5.2** has established that the height variation contributes towards the achievement of suitable floor-to-ceiling heights for habitable rooms and building services in line with Objective 4C-1 of the ADG.
- **Section 7.5.3** has established that rigid enforcement of the height limit could result in poorer privacy outcomes and reduced built form performance by incentivising reduced internal and external building separation distances and boundary setbacks.

The above-listed sections demonstrate that strict compliance with the height standard would frustrate the attainment and intent of Principle (c) by compromising reasonable residential amenity. As outlined in **Section 6.1**, the proposed development (including the height variation) is consistent with the relevant aims’ principles and objectives relevant to the standard to be varied. Accordingly, as compliance with the height standard would diminish the provision of reasonable amenity expectations for a contemporary residential development without being strictly required to satisfy any other objective, the Third Test is relied upon to support the height variation.

7. Sufficient Environmental Planning Grounds

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ held that, to demonstrate sufficient environmental planning grounds under Clause 4.6, the focus must be directed to the specific aspect of the development that contravenes the development standard, rather than the proposal as a whole.

Similarly, in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J affirmed that it lies within the consent authority’s discretion to determine whether the environmental planning grounds relied upon are particular to the circumstances of the proposed development on the subject site. The following sections demonstrate that there are sufficient environmental planning grounds for the proposed height variation.

7.1 Topography

The site slopes from south to north from Ku-ring-gai Avenue to Nulla Nulla Street. The site contains an undulating fall in topography of approximately 11 metres.

The overall development is substantially compliant with the maximum permitted building height (28.6m). However, minor exceedances occur at two lift overruns, mechanical plant screening and leading roof edges, largely due to topography and the inclusion of communal open spaces on Level 8. Due to this, the volume of building mass that is proposed above the maximum permitted building height is visually negligible.

The elevation extracts below show the relationship between topography and built form elements that project above the maximum permitted building height, noting the standard to be varied (28.6m) is based on natural ground level.



Figure 5 Architectural extracts illustrating site topography and height variations

Source: PMDL

7.2 Overshadowing

Elements that are proposed above the maximum permitted building height will not result in any unacceptable overshadowing impacts. This is demonstrated by the Shadow Diagrams that accompany the Architectural Plans. In summary:

- 9:00 AM / 10:00 AM (Winter Solstice):**
 Shadowing that is attributed to the height variation is confined to a negligible area of adjoining land that is subject to Zone SP2 – Infrastructure (Electricity Transmission and Distribution).
- 11:00 AM / 12:00 PM (Winter Solstice):**
 No overshadowing is attributed to the height variation.
- 1:00 PM (Winter Solstice):**
 Shadowing that is attributed to the height variation is isolated to a minor portion of the roof of an adjoining outbuilding, with no effect on solar access or amenity.
- 2:00 PM (Winter Solstice):**
 Shadowing that is attributed to the height variation affects a small, non-visible section of roof of the heritage item at 8 Ku-ring-gai Avenue (“Mildura”). The area of shadowing caused by the height variation is isolated to part of the roof that, due to roof slope and geometry, would not be perceivable from ground level. This minor impact will have no bearing on the heritage significance or presentation of the item.
- 3:00 PM (Winter Solstice):**
 Overshadowing that is attributed to the proposed height variation is generally isolated to a small area of land on Ku-ring-gai Avenue and driveway/existing tree canopy within 12 Ku-ring-gai Avenue. As discussed in further detail (overleaf), this will have no material impact on solar amenity.

Overall, overshadowing effects arising from the proposed height variation are negligible, highly localised, and confined to an immaterial footprint. The proposed height variation will not result in any shadowing that is not reasonable to anticipate under the standard to be varied.

Extracts from the Shadow Diagrams that were generated in relation to the proposed height variation are provided at **Figure 6** (below) and **Figure 7** (overleaf).



Figure 6 Shadow Diagram Extract – 3:00 PM (Winter Solstice)
 Source: PMDL (annotated by Gyde)

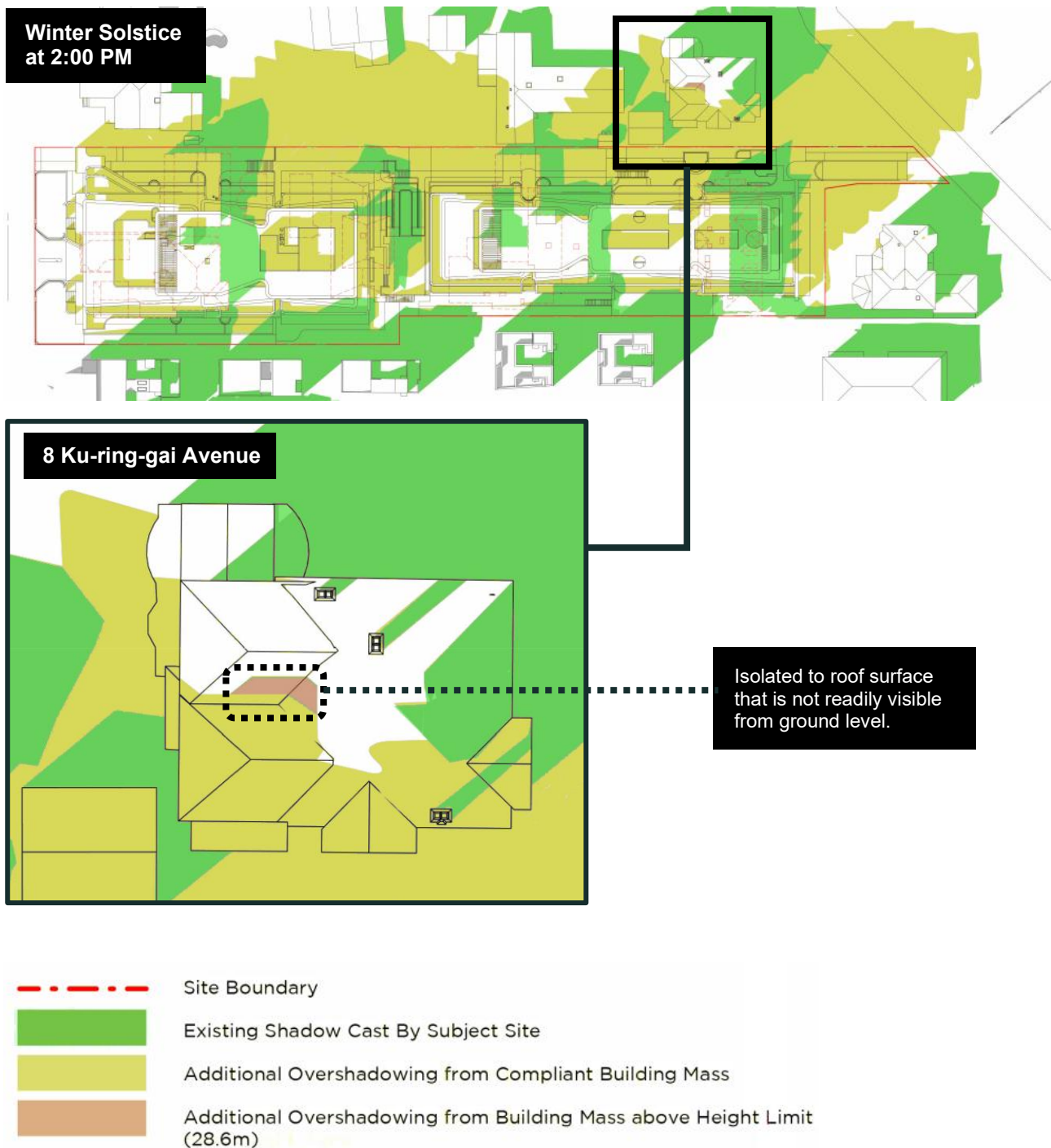


Figure 7 Shadow Diagram Extract – 2:00 PM (Winter Solstice)
 Source: PMDL

The additional overshadowing identified above affects the Ku-ring-gai Avenue road reserve and a small portion of the frontage zone within 12 Ku-ring-gai Avenue. Review of aerial imagery and cadastral alignment confirms that the affected portion within 12 Ku-ring-gai Avenue comprises the driveway / vehicle crossover, which already appears to experience seasonal shading from existing tree canopy (refer to **Figure 6**).

Accordingly, the marginal increase in shadowing attributable to the height variation will not result in any material diminution of solar access or affect the level of solar amenity that is afforded to the property at 12 Ku-ring-gai Avenue beyond what would be reasonable to anticipate under the standard to be varied.

7.3 Built Heritage

The Heritage Impact Statement (HIS) that accompanies the EIS has considered potential impacts to historic values that could arise as a result of the proposed height variation, including in relation to the adjoining local heritage item at 8 Ku-ring-gai Avenue. The HIS concludes:

“In principle, the proposed built form is contained beneath the maximum permitted building height, and the extent of the proposed height variation is isolated to a minor element of the development that is not essential to its overall visual character. On this basis, the proposed height variation is not considered to compromise the achievement of an acceptable design outcome in heritage impact terms.”

The heritage-sensitive interface with the property at 8 Ku-ring-gai Avenue relates to the south-eastern portion of the site, which includes the eastern aspect of Building B. The roof level of Building B will accommodate two lift overruns:

- One lift overrun complies with the height limit and is located closer to the heritage interface than the other. This lift overrun is not relevant to the assessment of the proposed height variation.
- The other lift overrun exceeds the height limit by 1.5m (5.3%) and is positioned further from, and not directly adjacent to, the heritage-sensitive interface.

As illustrated below, the subject lift overrun is set back from the heritage item by incremental upper-level setbacks. While the roof level presents a 12m setback to 8 Ku-ring-gai Avenue, the subject lift overrun is positioned at a greater diagonal separation distance, further reducing its presence (refer to **Figure 7**). The non compliance results from the existing fall of the land in this location.

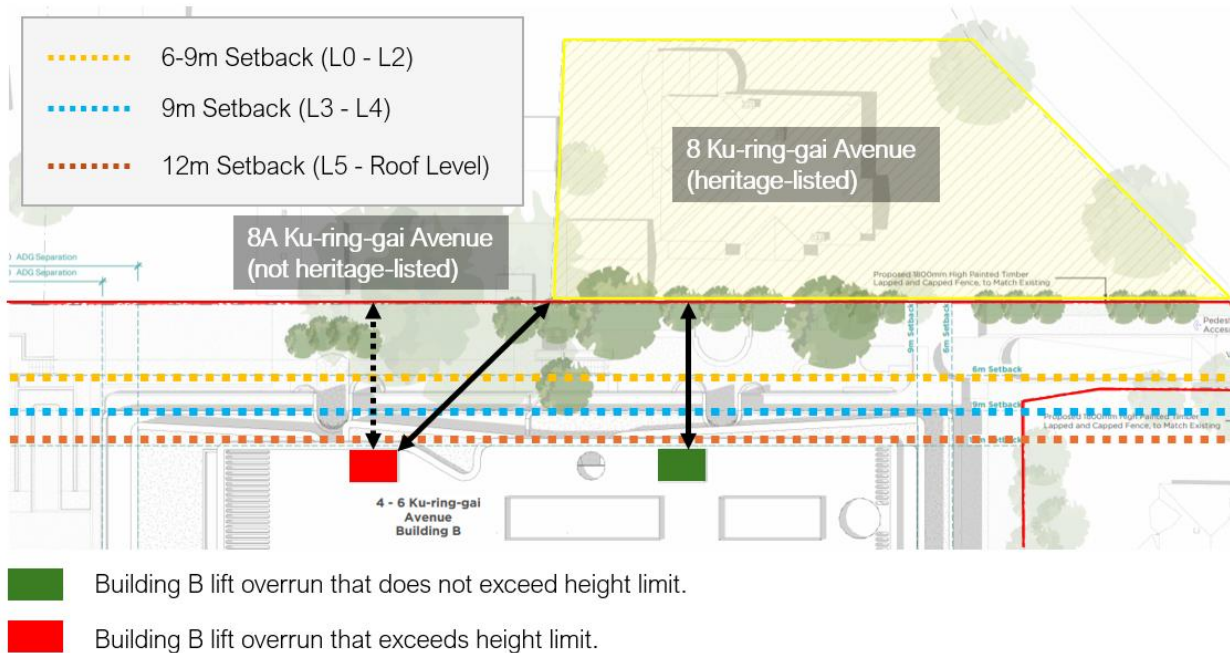


Figure 8 Extract: Privacy / Massing Measures

Source: PMDL (annotated by Gyde)

As outlined in **Section 7.1** of this report, shadowing that is attributed to the height variation affects a small, non-visible section of the roof of the heritage-listed building at 8 Ku-ring-gai Avenue.

The affected area is confined to part of the roof form that, due to roof slope and geometry, would not be readily visible from ground level. The extent of shadowing that is associated with the proposed height variation will not impact the historic value or presentation of the heritage item.

7.4 Visual Impact

The Architectural Design Report includes a Visual Analysis that is based on a 3D architectural model and LiDAR-derived digital terrain data. This material demonstrates that the volume of building mass above the maximum permitted building height does not result in a material increase in visual bulk, apparent scale, or open sky encroachment.

The surrounding landform relevant to the subject site and adjoining Heritage item is characterised by relatively uniform ground elevations with shallow undulations. Due to this, the volume of building mass that exceeds the maximum permitted building height will not impact:

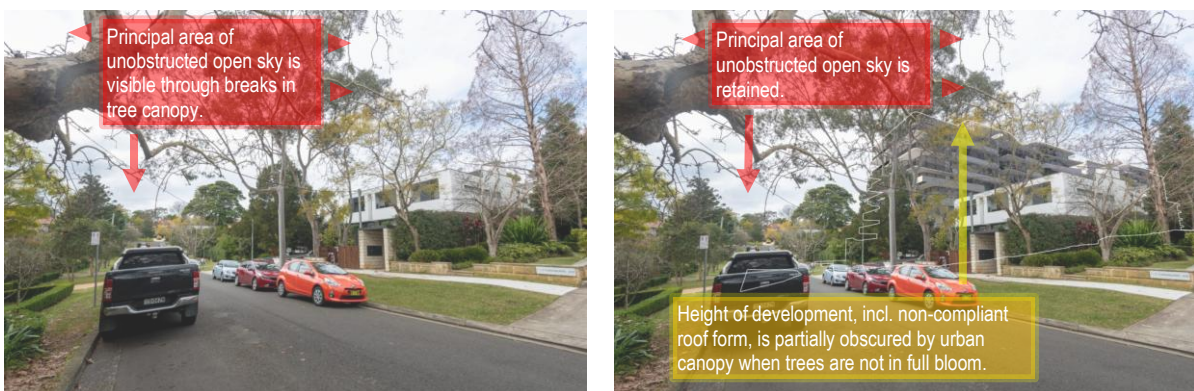
- Sightlines to heritage items (including the adjacent local heritage item at 8 Ku-ring-gai Avenue) from public domain viewpoints within and external to the Ku-ring-gai Avenue Heritage Conservation Area.
- Outlook from residential properties towards any land within Zone RE1 – Public Recreation or scenic landscapes.

At select locations, the height variation will result in a negligible reduction to the proportion of open sky (refer to **Figure 8**). However, all assessed viewpoints retain a reasonable ratio of unobstructed open sky to built form, noting the viewpoints below were captured while canopy trees were not in full bloom.

The proposed height variation will not result in any visual change that is not reasonable to anticipate under the applicable built form controls.



Above: Facing north-west towards site from Ku-ring-gai Avenue Heritage Conservation Area.



Above: Facing south-east towards site from Nulla Nulla Street.

Figure 9 Extract: Visual Analysis Diagrams
 Source: Modata (annotated by Gyde)

7.5 Residential Amenity

7.5.1 Access to Communal Open Space and Vertical Circulation

The volume of built form that exceeds the maximum permitted building height includes two lift overruns, which enable vertical circulation and facilitate access to 560.6m² of communal open space on Level 8 of Building A and Building B. This communal open space includes:

- **Building A Level 8 Terrace:**

Outdoor terrace that provides 349.8m² of communal open space below the maximum permitted building height control.

The associated lift overrun exceeds the maximum permitted building height by 0.73m, equating to 2.7% of the standard to be varied. This height projection is extremely minor.

- **Building B Level 8 Terrace:**

Outdoor terrace that provides 210.8m² of communal open space below the maximum permitted building height control.

The associated lift overrun exceeds the maximum permitted building height by 1.5m, equating to 5.3% of the standard to be varied. This height projection is minor.

The proposed variation to the standard relates to the provision of communal open space (CoS) located on the roof of the building and providing for equitable access (including disabled persons) to this area of the building. This arrangement of communal open space is encouraged in the Apartment Design Guidelines (ADG) where it achieves higher levels of amenity for residents, and where it is more accessible to all residents of the building and is a better planning outcome than if compliance were to be achieved and this area to be removed/deleted.

Inclusive of the communal terraces on Level 8, the proposal provides 1,764.5m² of communal open space in total, equating to 31% of the site area, thereby exceeding the ADG requirement. As noted in Section 9 of the accompanying Architectural Design Report, the provision of communal open spaces on Level 8 also “provides a more equitable proximity [to communal open space] for residents living at higher levels” (sic). The proposed height variation is therefore necessary to:

- Support functional arrangements for vertical circulation that are appropriate to the scale of the proposal, which does not include any habitable spaces above the maximum permitted building height.
- Satisfy Objective 3D-1 of the ADG, which is intended to ensure that “an adequate area of communal open space is provided”.

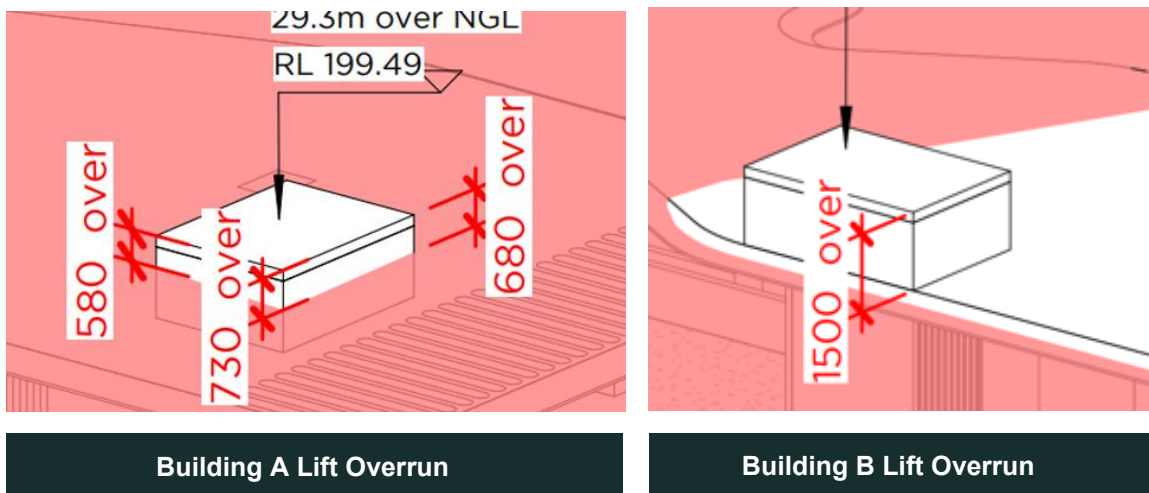


Figure 10 Lift Overruns

Source: PMDL

7.5.2 Floor to Ceiling Heights

Objective 4C-1 of the ADG requires a minimum 2.7m finished floor-to-ceiling height in habitable rooms to ensure adequate daylight access and natural ventilation. Figure 4C.5 further requires spatial allowance for building services without encroachment into this airspace (refer to the extract at **Figure 10**).

The proposal provides 2.7m floor-to-ceiling heights to habitable rooms and a 3.2m slab-to-slab separation, consistent with Objective 4C-1 of the ADG (refer to **Figure 11**). Strict compliance with the maximum permitted building height would result in reduced floor-to-ceiling heights (below 2.7m). This could compromise amenity and ventilation performance.

The proposed height variation is therefore necessary and reasonable to support compliant floor-to-ceiling heights for habitable rooms and building services in alignment with Objective 4C-1. Strict compliance with the height control would result in a functional and amenity deficit.

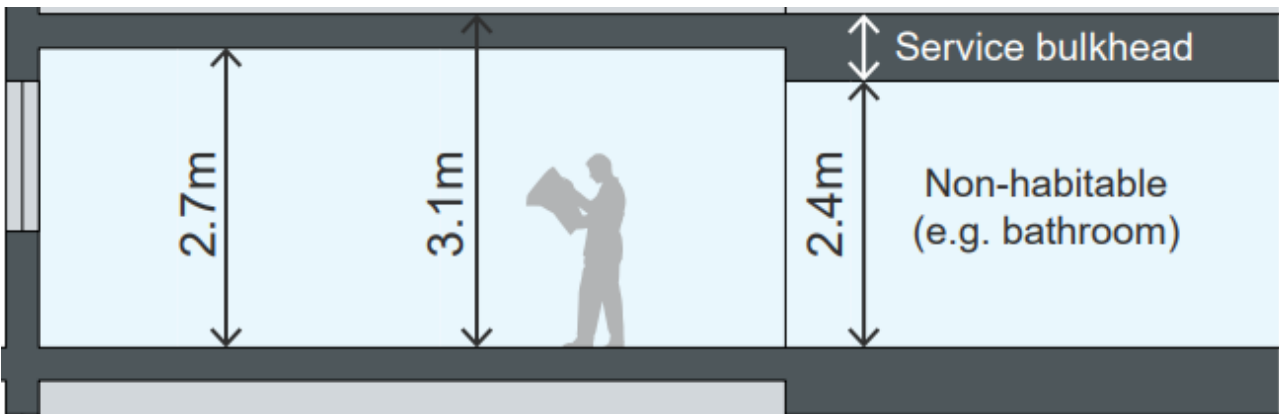


Figure 11 Extract: ADG – Figure 4C.5

Source: NSW Apartment Design Guide



Figure 12 Extract: Proposed Slab Separation and Floor-to-Ceiling Heights

Source: PMDL (annotated by Gyde)

7.5.3 Upper-Level Setbacks, Building Separation and Privacy

Building mass that is proposed above the maximum permitted building height will consist of non-habitable roof-level elements. No habitable floorspace is proposed above the maximum permitted building height.

Outlook from the proposed residential apartments does not introduce any additional or elevated viewing opportunities toward adjoining properties that are not reasonable to anticipate.

If compliance with the maximum building height was enforced, the building envelope would be required to shift downward to accommodate roof services below the height plane. This would likely involve the removal of residential floorspace on Level 8, even though it is located below the height plane. To maintain yield, this could motivate the horizontal expansion of building mass. Potential implications of this could include:

- **Reduced Upper Level Boundary Setbacks:**

Reduced upper-level boundary setbacks, which presently recede to mitigate perceived bulk and appropriately transition to adjoining built form.

- **Reduced Internal Building Separation Distances:**

Reduced separation distances between Buildings A and Building B, which currently satisfy Objective 3F-1 of the ADG. This objective exists for the stated purpose of supporting “adequate building separation distances” that “achieve reasonable levels of external and internal visual privacy”.

The proposed massing strategy—retaining habitable rooms below the height limit and integrating recessed upper levels with planted edges—ensures reasonable visual privacy and outlook, while maintaining an appropriate transition to neighbouring lower-scale buildings (refer to **Figure 12**). Rigid enforcement of the height limit would motivate horizontal expansion and reduce built form performance if the adopted setbacks and internal building separation distances were to be encroached upon.

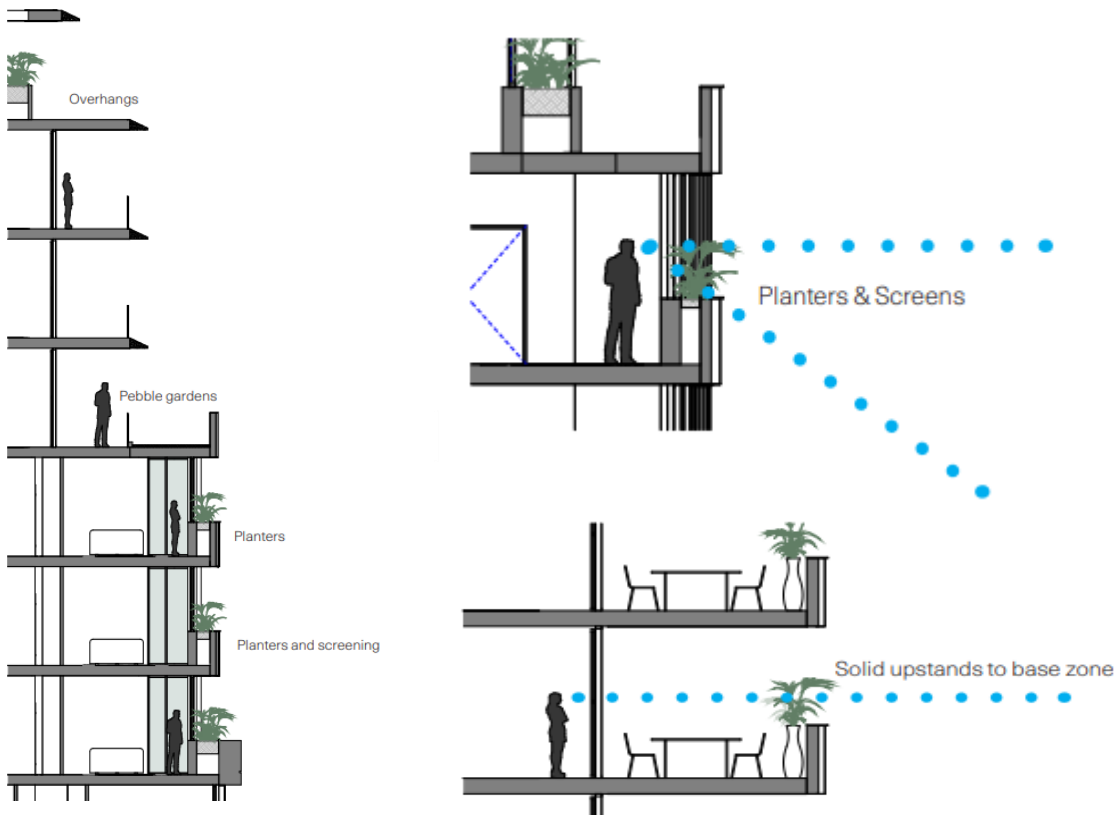


Figure 13 Extract: Privacy / Massing Measures

Source: PMDL (annotated by Gyde)

8. Conclusion

This Clause 4.6 Variation seeks to vary the maximum permitted building height control (28.6m) that applies to this SSSA under the Housing SEPP. The following is noted in summary of this report:

- The proposed development is consistent with the aims, principles, objectives and underlying purpose of the Housing SEPP, notwithstanding the height variation.
- In this case, the proposed development achieves a better outcome than what would otherwise be achieved under a height-compliant development scenario, noting:
 - The proposed height variation enables appropriate arrangements for vertical circulation that enable access to communal open spaces on Level 8 of Building A and Building B. These communal open spaces contribute towards satisfying the required provision rate (25% of the site area) under the *NSW Apartment Design Guide (ADG)*.
 - The proposed height variation supports the accommodation of essential building services, along with acoustic screening that is recommended within the accompanying Noise and Vibration Impact Assessment.
 - The proposed height variation supports compliant floor-to-ceiling heights for habitable rooms in accordance with the ADG.
- The perceived bulk, height and scale of the proposed development has been softened by recessed upper levels, an ADG-compliant separation distance between Building A and Building B, and other interface treatments (refer to the EIS and the Architectural Design Report).
- The volume of building mass that is proposed above the maximum permitted building height (28.6m) is proportionately minor and does not include any habitable floorspace. The vast majority of proposed building mass is located below the maximum permitted building height.
- The proposed height variation has a direct association with the topography of the site.
- The proposed height variation will not result in any unacceptable adverse impacts to historic values, including in relation to the adjoining local heritage item at 8 Ku-ring-gai Avenue.
- The proposed development complies with the maximum permitted FSR control that applies to this SSSA under Clause 16 the Housing SEPP (2.86:1). The FSR of the proposal (2.3:1) will deliver a density of development that is reasonable to anticipate under the statutory planning framework that applies to this SSSA, which seeks to enable diverse, affordable housing options at accessible locations.

For the reasons set out in this Clause 4.6 Variation Request, it is appropriate to exercise the flexibility provided by Clause 4.6 in the in relation to this SSSA.



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