

**CLAUSE 4.6 VARIATION
REQUEST**

**KIAMA LOCAL
ENVIRONMENTAL PLAN
2011**

**CLAUSE 4.3 HEIGHT OF
BUILDINGS**

**23 MEARES PLACE AND
33 COLLIN STREET
KIAMA**

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

Director	Clare Brown
Project Code	SA6168
Report Number	Final

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1. EXECUTIVE SUMMARY

The variation to the height of buildings development standard as proposed will result in better planning and urban design outcomes for the site, the community and future residents of the proposed development, for the following reasons:

1. The amended proposal will deliver high quality, seniors' housing project that meets a recognised sectoral housing need in the Kiama local government area (**LGA**).
2. The proposal will provide high quality independent livings units (ILUs) in an attractive landscaped setting, in proximity to services, public transport and recreational opportunities, with a built form that responds to the surrounding character of the area.
3. The proposal responds to the site constraints and is a respectful design which results in minor height non-compliances. The non-compliances are a result of:
 - a. The desire to reduce visual impacts and view loss to neighbouring dwellings, this has meant shifting building mass from the north-eastern corner of the site to the south- western side with accompanying minor height non-compliances;
 - b. The noticeable change in levels across the site and the varying and undulating topography of site; and
 - c. The distribution of lift towers and roof top communal open space throughout the development, in combination with the undulating site, has meant some of the lift over-runs exceed the height of buildings standard.
4. The design of the proposal as now amended means that any potential impacts of the non-compliance are mitigated as follows:
 - a. The elements of the building that exceed the height control are generally not visible external to the site and will not add to the perceived scale of the development.
 - b. The amended proposal is 20% below the permitted floor space ratio (**FSR**) control for the site, and the proposed height of building variation does not result in a building of increased bulk and scale.
 - c. The proposed variations are numerically minor and minor in scale, and are the direct result of the varying and undulating topography of the site.
 - d. The buildings substantially comply with the height of buildings development standard prescribed within clause 4.3 of *Kiama Local Environmental Plan 2011*.
 - e. There will be no unacceptable environmental impacts, including overshadowing or visual amenity impacts, arising from the proposed variations to the height of buildings development standard.
5. Overall, it is considered that strict compliance with the development standard is unreasonable and unnecessary, as an alternate scheme which complied with the height of buildings development standard could result in an inferior outcome for the site and increased visual impacts to adjoining residents. The variation will not result in any unacceptable environmental impacts on the site or the adjoining residential or commercial properties.

The amended design addresses the issues raised in Council's Statement of Facts and Contentions (**SOFACs**) and has resulted in a superior development which will provide high quality amenity to future residents and limited impacts to neighbouring properties. The amended proposal is a superior design outcome that warrants the minor variance from the height of buildings development standard. This clause 4.6 variation request demonstrates exceptional circumstances where flexibility in the application of a numerical development standard is warranted.

2. INTRODUCTION

2.1. PRELIMINARY

This clause 4.6 variation request has been prepared by Urbis Pty Ltd (**Urbis**) on behalf of Kiama Shores, in relation to amended plans prepared for development application DA 10.2016.286.1. An appeal has been filed against the deemed refusal of DA No. 10.2016.286.1 by the Joint Regional Planning Panel to the Land and Environment Court (Land & Environment Court case number 2017/00352423).

This clause 4.6 variation request seeks to vary the maximum height of building development standard prescribed for the site under clause 4.3 of the Kiama Local Environmental Plan 2011 (KLEP 2011). This variation request is made pursuant to clause 4.6 of the KLEP 2011.

In response to the SOFACs dated 6 February 2018 filed in the proceedings and the matters agreed between the parties during the section.34 conference held on 28 June 2018 the proposal has been reviewed and amended plans prepared. This clause 4.6 variation has been prepared in relation to amended plans prepared by Kennedy and Associates Architects.

2.2. THE SITE

The site as shown in **Figure 1** below is located at 23 Meares Place and 33 Collins Street, Kiama and is legally described as Lot 202 in DP1054190 and Lot 1 in DP473509. The site has a total area of 5,579m² and is located within the Kiama Town Centre.

The site is generally cleared, with a retail/commercial building located on 33 Collins Street which is presently occupied by a furniture and bedding shop. There is a steep fall of approximately 18.5 metres from north to south across 23 Meares Place, with 33 Collins Street having relatively flat topography.

Adjoining the site on the north-eastern boundary is a row of single storey dwellings facing Minnamurra Street. Adjacent to the site's north-western boundary are several residential apartment buildings. These sites are zoned R3- Medium Density.

Adjoining the site to the south -west is the Kiama Shores Motel and to the south the Kiama Leagues Club including an at grade car park with capacity for approximately 110 vehicles. To the south east at 35-41 Collins Street is an older service station, mechanic workshop and retail shop. These sites are within the B2 - Local Centre zone under KLEP 2011.

The site has a street frontage and vehicular access to Collins Street, with access available to Meares Place via a nine-metre wide right of way. The site is located 100 metres walking distance from the closest bus stop on Collins Street and 650 metres from Kiama Train Station. There are a wide variety of shops, services and recreational facilities located in proximity to the site.

Figure 1 - Aerial Photograph of the Site



Source: NearMap. Note site is outlined in red.

2.3. THE PROPOSED DEVELOPMENT

The proposed development comprises:

- demolition of the existing commercial building at 33 Collins Street
- the construction on site of a two-to-five storey mixed use seniors living development including:
 - Fifty-five independent living units;
 - Three caretaker apartments for a facility manager and caretakers;
 - 157m² retail tenancy;
 - Two levels of basement car parking for 78 vehicles;
 - Recreational, amenity and administration facilities; and

The proposal is 'seniors housing' as defined under State environmental planning policy (Housing for Seniors or People with a Disability) 2004 (**Seniors SEPP**) and is permissible with consent on the site under clause 4 of the Seniors SEPP. The site is 'land zoned primarily for urban purposes' and 'hospitals' are permissible with consent within the B2 Local Centre zone.

3. RELEVANT ASSESSMENT FRAMEWORK

The environmental planning instruments relevant to the proposed development, including the aims and objectives, maximum building height control and the assessment framework for seeking a variation to a development standard are discussed below.

A summary of relevant planning principles and judgments of the Land and Environment Court (**LEC**) regarding the assessment of developments seeking exceptions to development standards is also provided.

3.1. KIAMA LOCAL ENVIRONMENTAL PLAN 2011

Clause 4.6 of KLEP 2011 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 are listed within KLEP 2011 as:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard clause 4.6 requires that the consent authority consider a written request from the applicant, which demonstrates that:

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

Furthermore, the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and the concurrence of the Secretary has been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

1. *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
2. *The public benefit of maintaining the development standard, and*
3. *Any other matters required to be taken into consideration by the Secretary before granting concurrence.*

3.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW (TESTS)

Several key Land and Environment Court (**LEC**) planning principles and judgments have refined the manner in which variations to development standards are required to be approached. The key findings and directions of each of these matters are outlined in the following discussion.

Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46 (Winten)

The decision of Justice Lloyd in *Winten* established the basis on which the former Department of Planning and Infrastructure's Guidelines for varying development standards was formulated. Initially this applied to State Environmental Planning Policy – Development Standards (SEPP 1) and was subsequently updated to address clause 4.6 of the *Standard Instrument templates*.

These principles for assessment and determination of applications to vary development standards are relevant and include:

- Is the planning control in question a development standard?

- What is the underlying object or purpose of the standard?
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979* (EP&A Act)?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)? and
- Is the objection well founded?

Wehbe v Pittwater [2007] NSW LEC 827 (Wehbe)

The decision of Justice Preston in *Wehbe* expanded on the findings in *Winten* and established the five (5) part test to determine whether compliance with a development standard is unreasonable or unnecessary considering the following questions:

- Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives;
- Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard is unnecessary;
- Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;
- Has Council by its own actions, abandoned or destroyed the development standard, by granting consents that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or
- Is the “*zoning of particular land*” unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.

Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC 1009 (Four2Five)

More recently in the matter of *Four2Five*, initially heard by Commissioner Pearson and upheld on appeal by Justice Pain, it was found that an application under clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe* and demonstrate the following:

- Compliance with the particular requirements of clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
- That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
- That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs; and
- All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

Randwick City Council v Micaul Holdings Pty Ltd [2016] NSW LEC 7

In *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSW LEC 7* Preston CJ noted at paragraph 7 that development consent cannot be granted for development that contravenes a development standard unless the consent authority:

- “*Considers the cl 4.6 objections (the requirement in cl 4.6(3)); and*
- *Was satisfied that, first, the cl 4.6 objections adequately addressed the matters required to be demonstrated by cl 4.6(3) (the requirement in cl 4.6(4)(a)(i)) and, second, the development will be in the public interest because it is consistent with the objectives of the height standard and the FSR standard*

and the objectives for development within the R3 zone in which the development is proposed to be carried out (the requirement in cl 4.6(4)(a)(ii))”.

Preston CJ noted at paragraph 39 that *“the [consent authority] does not have to be directly satisfied that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant’s written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary”.* In this respect, he also noted that in assessing whether compliance with the development standards was unreasonable or unnecessary an established test is consistency with the objectives of the standard and the absence of environmental harm.

Moskovich v Waverley Council [2016] NSWLEC 1015

Commissioner Tour reflected on the recent decisions considering Four2Five and said:

- *“Clause 4.6(3)(a) is similar to clause 6 of SEPP 1 and the Wehbe ways of establishing compliance are equally appropriate [at 50]. One of the most common ways is because the objectives of the development standard are achieved – as per Preston CJ in Wehbe at 42-43.*
- *Whereas clause 4.6(4)(a)(ii) has different wording and is focused on consistency with objectives of a standard. One is achieving, the other is consistency. Consequently, a consideration of consistency with the objectives of the standard required under clause 4.6(4)(a)(ii) to determine whether non-compliance with the standard would be in the public interest is different to consideration of achievement of the objectives of the standard under clause 4.6(3). The latter being more onerous requires additional considerations such as the matters outlined in Wehbe at 70-76. Such as consideration of whether the proposed development would achieve the objectives of the standard to an equal or better degree than a development that complied with the standard.*
- *Establishing compliance with the standard is unnecessary or unreasonable in 4.6(3)(a) may also be based on “tests” 2-5 in Wehbe either instead of achieving the objectives of the standard (Wehbe test 1) or in addition to that test. The list in Wehbe is not exhaustive but is a summary of the case law as to how “unreasonable or unnecessary” has been addressed to the meet the requirements of SEPP 1.*
- *It is best if the written request also addresses the considerations in the granting of concurrence under clause 4.6(5)”.*

4. POTENTIAL 'ALTERNATIVE DESIGN SOLUTIONS' AND EXTENT OF NON COMPLIANCE

Set out below is the design rationale for the proposed seniors' housing development. It includes a holistic overview of the proposal, as well as a detailed list of considerations that were addressed in the siting and design of the proposal, focusing on building height.

The proposed variation to the height of building standard is necessary in this instance due to the sloping nature of the site and the objective to develop the site while minimising visual impacts to neighbouring dwellings.

The following alternative design outcomes explored:

- The site is zoned B2 Local Centre under KLEP 2011 and this zoning permits commercial buildings up to a maximum height of 11m with a zero setback to the north-eastern boundary. An alternative compliant commercial scheme on the site could be built to the boundary with a uniform height of 11m. This would be permissible yet it would have considerably greater impacts on adjoining residential properties than the proposed development. In contrast, the amended proposal is generally within the 11m height control and provides 6m landscaped setbacks to the north-eastern boundary;
- An alternative scheme that involved the loss of up to four or five ILUs could be delivered so that the lift overruns and south western edges of the apartments did not exceed the height of buildings development standard. Given the size of the site and the allowable FSR this alternative is not considered to be a balanced or good planning outcome. This would further reduce the proposed FSR from 1.2:1 which is presently below the permitted FSR of 1.5:1; and
- While the originally submitted and previously revised proposals for seniors' housing on the site complied with the height of building standard, the development did not satisfy a number of the design criteria established under *State Environmental Planning Policy 65- Design Quality of Residential Flat Buildings (SEPP 65)* and the Apartment Design Guide (**ADG**). The amended proposal will deliver far superior internal amenity for future residents compared to the earlier designs

Strict compliance with the development standard is unreasonable and unnecessary, as an alternate scheme compliant with the height of buildings development standard (commercial or senior living) would likely result in an inferior outcome for the site, increased impacts to neighbours and/or result in the loss of high amenity seniors housing within the locality.

The following section includes an assessment of the proposed development in accordance with KLEP 2011 height of buildings development standard. A detailed numeric table, and building plane diagrams are provided which clearly show the areas of variation having regard to the prescribed control.

4.1. BUILT FORM AND DESIGN

The design rationale for the proposed development is to deliver high quality independent living accommodation that meets the needs of the community, while minimising the potential impact on the scale and character of the locality.

The design of the amended proposal has been influenced by the significant level change across the site, with an 18.5m fall from Meares Place to Collins Street. The amended proposal benches the building form into this slope, stepping the buildings down the site. In addition to this slope, there is varying and undulating topography which has contributed to minor elements of the proposal being non-compliant with the height of buildings development standard at specific points across the site.

The amended proposal minimises the overall built form impacts by locating the multi-storey buildings towards the south western side of the site, away from the residential interface to the north- eastern boundary. Building mass has been shifted to this location to enable increased view retention from the neighbouring residential properties in Meares Place. The amended proposal provides a maximum two-storey built form adjacent to the Collins Street commercial boundary consistent with the scale and character of the streetscape.

The amended proposal incorporates a substantial green edge, screening the building form from neighbouring properties.

4.2. VARIATIONS TO MAXIMUM HEIGHT OF BUILDINGS

The buildings within the proposed development substantially comply with the height of buildings development standard prescribed within clause 4.3 of KLEP 2011. However, the varying and sloping topography and other site constraints have resulted in variations to the maximum 11m height at certain points of the amended proposal.

A Height Plane Diagram has been prepared by Kennedy and Associates Architects to clearly identify the specific parts of the buildings which exceed the development standard (refer to **Appendix A**). The figure below shows the points of variation to the maximum 11m height of buildings development standard measured in accordance with the KLEP 2011 definition:

building height (or **height of building**) means:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The height encroachments are directly relative to the locations of the lifts and ground level variations. As shown in **Figure 2**, the height non-compliance is part of the top storey of the south-western edge of the building, the central lift over run and two lift overruns on the south eastern side of the site. The sections at **Figure 3**, **Figure 4** and **Figure 5** illustrate the extent of height variation from the different aspects of the proposal.

Figure 2 – KLEP 2011 Height Plane (11m)



Source: Kennedy and Associates Architects

5. CLAUSE 4.3: HEIGHT OF BUILDINGS

The following discussion provides a comprehensive assessment of the request to vary the height of buildings development standard.

Detailed consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgments issued by the Land and Environment Court.

The following sections provide detailed responses to the key questions required to be addressed arising from the above documents.

Is the Planning Control a Development Standard?

The maximum height of buildings development standard prescribed under clause 4.3 of the KLEP 2011 is a development standard capable of being varied under clause 4.6 of KLEP 2011.

Is the Development Standard Excluded from the Operation of Clause 4.6?

The development standard is not excluded from the operation of clause 4.6 as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of KLEP 2011.

What is the Underlying Object or Purpose of the Standard?

The underlying object or purpose of the development standard is to provide a built form that is compatible with the scale and character of surrounding locality and avoids detrimental impacts on the amenity of the locality.

5.1. CONSIDERATION

5.1.1. Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

The amended proposal has been designed to be compatible with the residential scale and character of the locality. The siting and design of the amended proposal has sought to provide an improved distribution of building mass over the site to reduce visual impacts to neighbouring properties and present a built form to Collins Street and Meares Place that is compatible with the surrounding area. The amended proposal is below the maximum FSR permissible for the site, and is of a bulk and scale consistent with that anticipated by the planning controls for the site.

The elements of the building that exceed the height of buildings development standard are generally not visible external to the site, and will not impact on the perceived scale of the development. The elements of the built form that exceed the height of building control do not give rise to any view loss to adjoining or adjacent residential properties, and are distant from dwellings in Minnamurra Street and Meares Place.

The proposed variations are directly relative to the variable and undulating topography of the site. Strict compliance with clause 4.3 is unreasonable and unnecessary in this circumstance. The proposed variation is relatively minor both numerically and in scale of area resulting in the non-compliance.

The proposed development will provide additional high-quality housing stock for seniors living with a high level of amenity. Strict compliance with the development standard would have no benefit other than to achieve compliance with a technical requirement arising from inconsistent existing ground levels and a design response aimed at reducing the external impacts of the proposed development.

The proposed variation will not result in unacceptable environmental impacts on the site or the adjoining properties.

The proposed variation will facilitate a development that will provide a high level of residential amenity, is liveable and is consistent with the design objectives of SEPP 65 and Kiama Development Control Plan 2012 (KDCP 2012).

Each of the matters listed within the 'five-part test' outlined in *Wehbe* and "Varying development standards: A Guide" are listed and responded to as follows:

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

The underlying objectives of the height of buildings development standard as listed within clause 4.3 of the KLEP 2011 have been achieved as the proposed development has been designed to be compatible with the scale and character of the locality. The proposed non-compliances are generally limited to parts of the site away from the primary street frontages. The proposed variation to the height of buildings development standard will not impact upon the underlying objectives being achieved as the additional height will not result in any additional impacts that would affect the amenity of the neighbourhood, streetscape, or character of the locality.

- ***The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary***

The underlying objectives of the height of buildings development standard remain relevant and have been achieved as the proposed development has been designed to be compatible with the scale and character of the locality and maintain a reasonable level of neighbourhood amenity as outlined above.

- ***The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable***

The objectives of the B2 Local Centres zone in KLEP 2011 are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*

Strict compliance with the height of buildings development standard could defeat or thwart the achievement of underlying objectives of the zone by resulting in the loss of high amenity seniors' housing in a highly accessible location. The amended proposal has been sensitively located and designed to optimise the compatibility of development with the established character of the locality and capitalise on the proximity of the site to services and public transport.

The amended proposal incorporates a commercial tenancy and design elements that will provide an active street frontage on Collins Street, and contribute to service provision for people who live work and visit the Kiama town centre. Overall, it is considered that strict compliance with the development standard is unreasonable in this instance as the non-compliance is a direct result in localised anomalies of existing ground levels that are the direct result of the varying and undulating topography of the site, and is limited to small elements of the buildings.

Strict compliance with the development standards is unreasonable as an alternate scheme which complied with the height standards would result in an inferior outcome for the site and/or result in the significant loss of accommodation for seniors within the locality.

- ***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***

The development standard remains valid and so this consideration is not relevant.

- ***The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.***

The above consideration is not relevant to the circumstances of this case.

5.1.2. Clause 4.6(3)(b) - Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

There are sufficient environmental planning grounds to justify the proposed variations to the development standard, including:

- The proposed variations to the height of the buildings development standard are located away from the interface shared with adjacent residential development in Meares Place and Minnamurra Street and as such reduces the potential for external impacts of the proposal;
- The proposed development will facilitate greater housing choice within the Kiama LGA. The proposal will provide high quality seniors housing in the form of independent living units within an attractive landscaped setting and proximate to public transport and services that responds to the surrounding character of the area;
- The amended proposal is consistent with the design objectives of SEPP 65 and KDCP 2012;
- The proposed variation will not result in any unacceptable environmental impacts on the site or the adjoining residential properties:
 - The amended proposal will result in reduced visual impacts when compared to the original DA and those parts of the built form that exceed the height of building development standard will not result in the loss of view to or overshadowing of adjoining residential premises.
 - No additional shadow impacts will occur on the adjoining and surrounding residential properties between the hours of 12:00pm to 3:00pm June 21st.
 - The two-storey building height proposed to Collins Street is consistent with the streetscape and maintains compatibility with the surrounding area.
- The elements of the amended proposal that exceed the height of building control are limited to elements of the parapet and lift overrun. The elements are minor in scale and are localised non-compliances that are the result of the sloping and undulating topography of the site and will not result in any increased perception of building bulk;
- Exceedances to the building height control are numerically minor and minor in area.

Overall, it is considered that strict compliance with the development standard in this instance is unreasonable and unnecessary, as an alternate scheme which complied with the height of buildings development standard would result in an inferior outcome for the site and/or result in the loss of high amenity seniors' housing within the locality.

Based on the above, it is considered appropriate to relax the strict application of the development standard in this instance.

5.1.3. Clause 4.6(4)(a)(ii) – Will the Proposed Development be in the Public Interest Because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?

The proposal is consistent with the objectives of the height of buildings development standard under KLEP 2011 as discussed in **Table 1** below. The proposed variation to the development standard will result in a proposal that is consistent with the zone objectives as outlined within **Table 1** below.

Table 1 – Assessment of Compliance with Height of Buildings Development Standard Objectives

Objective	Assessment
Height of buildings	
<i>(a) to ensure future development is in keeping with the desired scale and character of the street and local area,</i>	The proposal seeks to develop the site to a scale that is appropriate for its size and location. The amended proposal is for a development consistent with the FSR controls of KLEP 2011, and thus is of a density, bulk and scale anticipated by the planning controls for the site. The proposal has been designed with a 2-5 storey

Objective	Assessment
	built form, with a two-storey elevation provided to Collins Street to maintain consistency with the streetscape.
<i>(b) to allow reasonable daylight access to all developments and the public domain.</i>	The amended proposal achieves ADG compliant solar access to living rooms and private open space areas, providing future residents with a high degree of access to sunlight and residential amenity. The amended proposal allows reasonable daylight access to the adjacent public domain and is consistent with the objectives of the control.

The proposal is consistent with the objectives of the B2 Local Centre zone that apply to the site under KLEP 2011 as discussed in **Table 4** below.

Table 2 – Assessment of Compliance with Land Use Zone Objectives

Objective	Assessment
B2 Local Centre Zone	
<i>To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.</i>	<ul style="list-style-type: none"> • The proposal positively contributes to the range of retail and business uses in the local area by providing a retail tenancy at the ground floor level; • The site is located within the Kiama Town Centre, providing future residents with excellent access to local facilities and services;
<i>To encourage employment opportunities in accessible locations.</i>	<ul style="list-style-type: none"> • The proposal will provide additional jobs through the construction and operation phases of the development in an accessible location.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	

The proposal is considered to be in the public interest as the proposed development is consistent with the land use objectives for B2 Local Centre zone, and the objectives of the height of buildings development standard under KLEP 2011.

5.1.4. Clause 4.6(5)(a) - Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?

The proposed non-compliance with the maximum height of buildings development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variations are appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

5.1.5. Clause 4.6(5)(b) - Is There a Public Benefit of Maintaining the Planning Control Standard?

The proposed development achieves the objectives of the height of buildings development standard and the land use zoning objectives despite the minor numerical non-compliance.

It has been demonstrated that the proposed variation will not result in an adverse environmental impact on the neighbourhood amenity and streetscape. The height of the individual buildings is largely compliant, with the minor localised non-compliances the direct result of changing ground levels which are the product of the varying and undulating topography of the site. The elements of the buildings that exceed the height of buildings development standard will not have an adverse impact on the adjoining and surrounding properties, with the proposal maintaining the scale and character development to Collins Street, and respecting the residential character of Meares Avenue.

Overall, it is considered that the proposal will result in a high quality built form on the site and there would be no public benefit in maintaining the development standard.

5.1.6. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

There are no additional matters to be considered.

5.2. CONSIDERATION OF PLANNING MERIT

The proposed development in its current form has been demonstrated to be a better development than that which could be achieved through strict compliance with the development standard for the following reasons:

- The development in its current form is able to provide 55 ILUs, which will contribute to the overall seniors housing stock of the locality within close proximity to public transport. The variation required to do this is limited to minor elements of the development. The quantum of variation is minor with a maximum exceedance of 1700mm over a small corner of the proposed built form representing an insignificant percentage of the proposed development.
- Strict compliance would not result in a better planning outcome and would reduce the quantum of seniors' accommodation to be delivered on site.
- The site is zoned B2 Local Centre under KLEP 2011 and the proposal is compliant with the objectives of this zone, specifically:
 - *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
 - *To encourage employment opportunities in accessible locations.*
 - *To maximise public transport patronage and encourage walking and cycling.*
- The exceedance is a result of the site-specific constraints including a varying and undulating topography.
- There are no adverse environmental impacts that will result from the proposed variation to the height of building control.

6. CONCLUSION

This request is made pursuant to clause 4.6 of KLEP 2011 and seeks to vary the maximum height of buildings development standard in clause 4.3 of the KLEP 2011 as it relates to the development under DA No. 10.2016.286.1

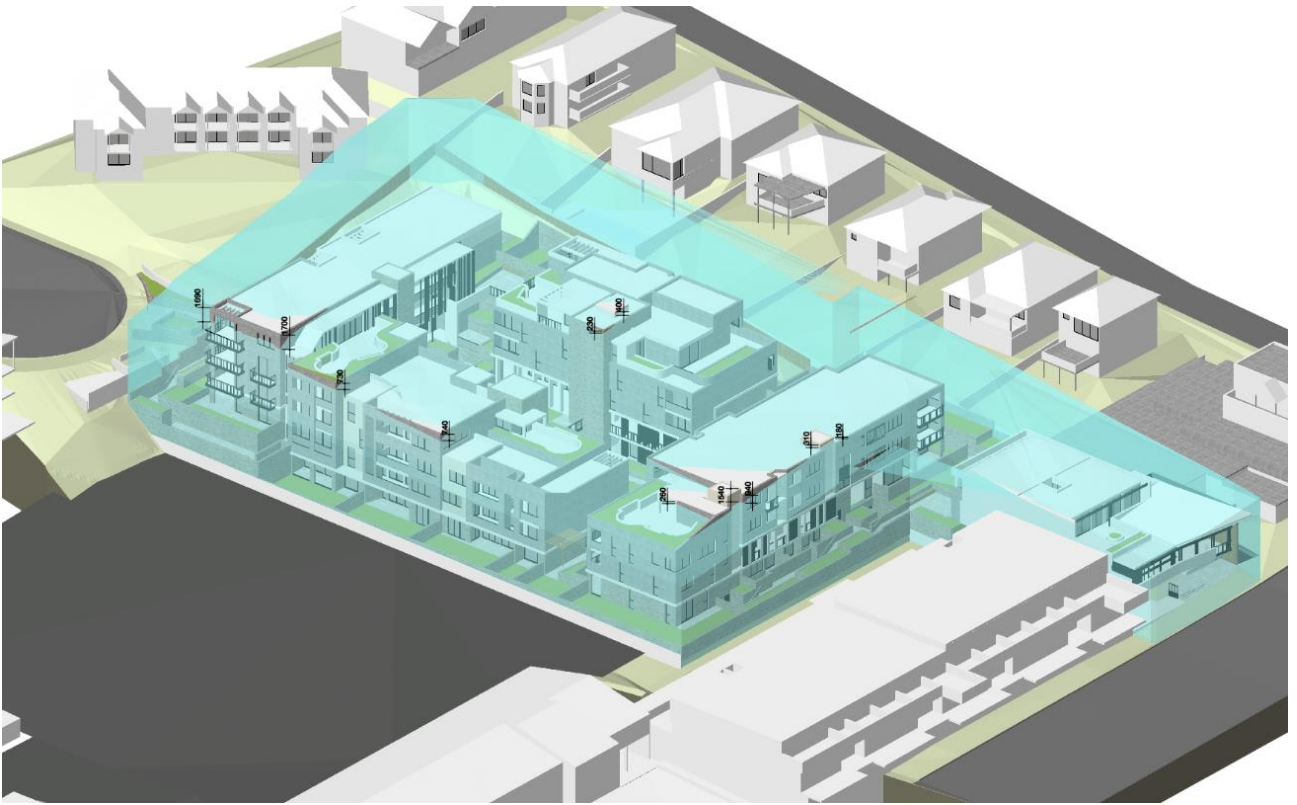
This submission has demonstrated that strict compliance with the numerical standard in relation to the current proposal is both unreasonable and unnecessary for the following reasons:

- The proposed development achieves the objectives of the height of buildings development standard and the land use zoning objectives despite the minor numerical non-compliance in some localised areas of the buildings as a direct result of the varying and undulating topography of the site. The majority of the built form proposed is compliant with the height of buildings development standard;
- The proposed development has been designed to be compatible with the scale and character of the locality and complies with the KLEP 2011 FSR control for the site. The proposed variations will not add to the perceived scale of the development;
- There will be no environmental impact on the adjoining and surrounding properties;
- The height of the individual buildings is largely compliant, with the elements of the amended proposal that exceed the height of building control limited to elements of the parapet and lift overrun. These minor localised non-compliances are the direct result of the varying and undulating topography of the site; and do not impact in any way the perceived bulk of the development;
- The amended proposal will provide high quality seniors ILUs within an attractive landscaped setting and proximity to public transport and services that responds to the surrounding character of the area; and
- The proposed variation is relatively minor both numerically and in the quantum of the proposed building that will exceed the height control.

Overall, it is considered that strict compliance with the development standard is unreasonable in this instance. An alternate scheme that was fully compliant with the height of buildings development standard would result in an inferior outcome for the site and/or result in the loss of high amenity seniors' housing within the locality.

The proposed variation to the height of buildings development standard under Clause 4.3 of KLEP 2011 is appropriate and well founded and can be supported under the provisions of clause 4.6 of KLEP 2011.

APPENDIX A HEIGHT PLANE DIAGRAM





BRISBANE

Level 7, 123 Albert Street
Brisbane QLD 4000
Australia
T +61 7 3007 3800

MELBOURNE

Level 12, 120 Collins Street
Melbourne VIC 3000
Australia
T +61 3 8663 4888

PERTH

Level 14, The Quadrant
1 William Street
Perth WA 6000
Australia
T +61 8 9346 0500

SYDNEY

Level 23, Darling Park Tower 2
201 Sussex Street
Sydney NSW 2000
Australia
T +61 2 8233 9900