PLANNING
INGENUITY

CLAUSE 4.6 VARIATION STATEMENT

Demolition of existing structures and construction of a part six, part fifteen storey mixed use building comprising a childcare centre, commercial units and shop top housing with four levels of basement parking, landscaping, Torrens title subdivision and land dedication for public laneways.

86-96 Station Street
Wentworthville

Prepared for: Beaini Projects

REF: M220598
DATE: 12 September 2025

CLAUSE 4.6 STATEMENT – CEILING HEIGHT (CLAUSE 148(2)(C) OF SEPP HOUSING 2021)

INTRODUCTION

This Variation Statement has been prepared in accordance with clause 4.6 of the Cumberland Local Environmental Plan 2021 (CLEP 2021). The subject application seeks consent for: *'Demolition of existing structures and construction of a part six, part fifteen storey mixed use building comprising a childcare centre, commercial units and shop top housing with four levels of basement parking, landscaping, Torrens title subdivision and land dedication for public laneways'* at No. 86-96 Station Street, Wentworthville ('the site').

DEVELOPMENT STANDARD

Clause 148 of *State Environmental Planning Policy (Housing) 2021* states:

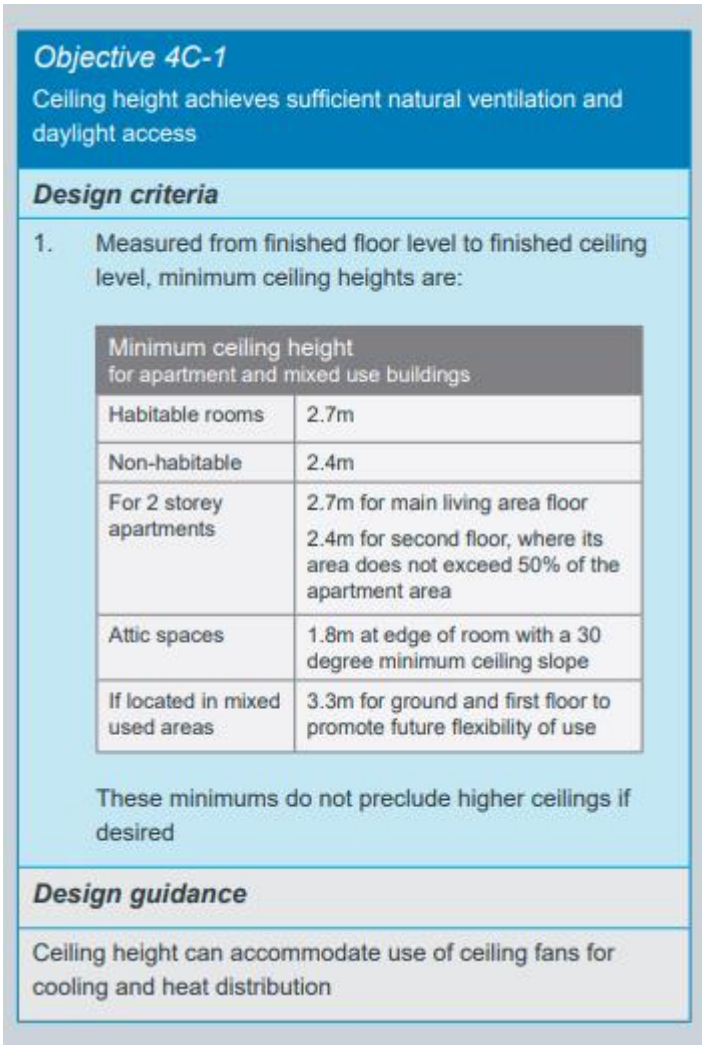
> ***148 Non-discretionary development standards for residential apartment development—the Act, s 4.15***
>
> *(1) The object of this section is to identify development standards for particular matters relating to residential apartment development that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*
>
> ***Note—*** *See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.*
>
> *(2) The following are non-discretionary development standards—*
>
> *(a) the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,*
>
> *(b) the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,*
>
> *(c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.*

The requirement for a minimum ceiling height is a "development standard" to which exceptions can be granted pursuant to clause 4.6 of *CLEP 2021.*

PROPOSED VARIATION

The proposal is required to provide for ceiling heights that are equal to or greater than the recommended minimum specified in the *Apartment Design Guide (ADG)*. For level 1 of the proposed development, the Part 4C of the ADG recommends a minimum of ceiling height of 3.3 metres.

The ADG provides an objective and design criteria regarding ceiling heights of residential development (and mixed use developments including residential apartments). This provision is produced below in Figures 1 and 2.



Objective 4C-1

Ceiling height achieves sufficient natural ventilation and daylight access

Design criteria

1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

Minimum ceiling height for apartment and mixed use buildings	
Habitable rooms	2.7m
Non-habitable	2.4m
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use

These minimums do not preclude higher ceilings if desired

Design guidance

Ceiling height can accommodate use of ceiling fans for cooling and heat distribution

Figure 1 Extract of ADG design criteria

This is graphically indicated in the figure below.

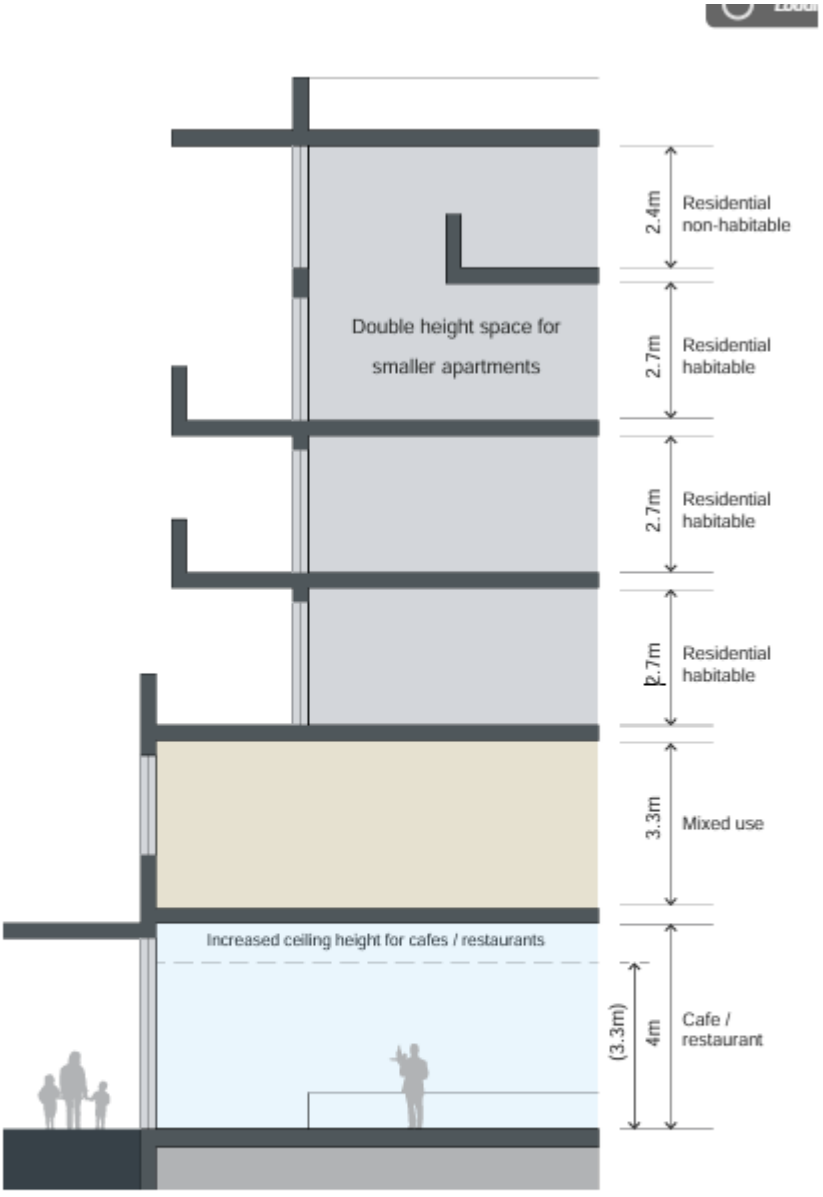


Figure 4C.1 Greater than minimum ceiling heights for retail and commercial floors of mixed use developments are encouraged to promote flexibility of use. Cafe and restaurant uses need greater minimum ceiling heights of 4m to allow for additional servicing needs

Figure 2 Graphical explanation of minimum ceiling height

The proposal involves a floor to floor height of 3.6 metres which would provide a ceiling height on Level 1 of approximately 3.2 metres based on an assumed slab thickness of 0.4 metres. This is a variation of 0.1 metres or expressed as a percentage 3.03%.

The relevant architectural plans for the proposed development showing this detail are in Figure 3 below.

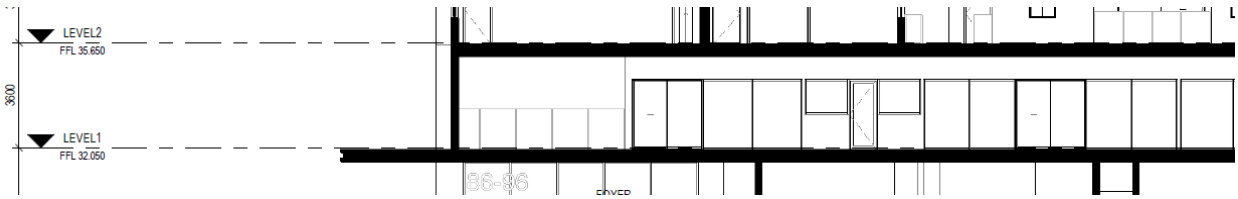


Figure 3 Extract of Building Section showing Level 1

CLAUSE 4.6 to CLEP 2021

The objectives and provisions of clause 4.6 are as follows:

(1) The objectives of this clause are as follows—

(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.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

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

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5.

The development standards in clause 148 of the *State Environmental Planning Policy (Housing) 2021* are not "expressly excluded" from the operation of clause 4.6.

COMPLIANCE IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE

Of relevance to Clause 4.6(3)(a), in *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

> *"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."*

The judgement goes on to state that:

> *"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."*

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- *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 zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to Wehbe and states:

"…Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Subclause 4.6(3)(a) requires that the written request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case.

The proposal seeks to vary clause 148(2)(c) of *State Environmental Planning Policy (Housing) 2021*. With regard to clause 148(2), the relevant objective is as follows:

(1) The object of this section is to identify development standards for particular matters relating to residential apartment development that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

This objective provides reasons why these matters are non-discretionary development standard but not the objectives for the requirements themselves. For this the ADG provides guidance. The ADG objective is:

"Ceiling height achieves sufficient natural ventilation and daylight access"

The proposed development is capable of providing an acceptable level of natural ventilation and daylight access to level 1 despite the minor non-compliance with the ADG requirement through both the availability of openable windows and doors on level 1 and the additional benefit of mechanical ventilation to these habitable areas.

SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

Having regard to clause 4.6(3)(b) the Variation Statement needs to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

The assessment of this numerical non-compliance is also guided by the decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 whereby Justice Pain ratified the decision of Commissioner Pearson. On the above basis, the following environmental planning grounds are submitted to justify contravening the minimum ceiling height:

1. The proposed ceiling height on level 1, being 3.2 metres, would continue to achieve the ADG objective of providing for sufficient natural ventilation and daylight access to the spaces (comprising four large internal play areas) that will have abundant access to natural light and air movement. As indicated below these internal play areas will have levels of amenity for occupants due to their configuration and location close to the building's external perimeter.

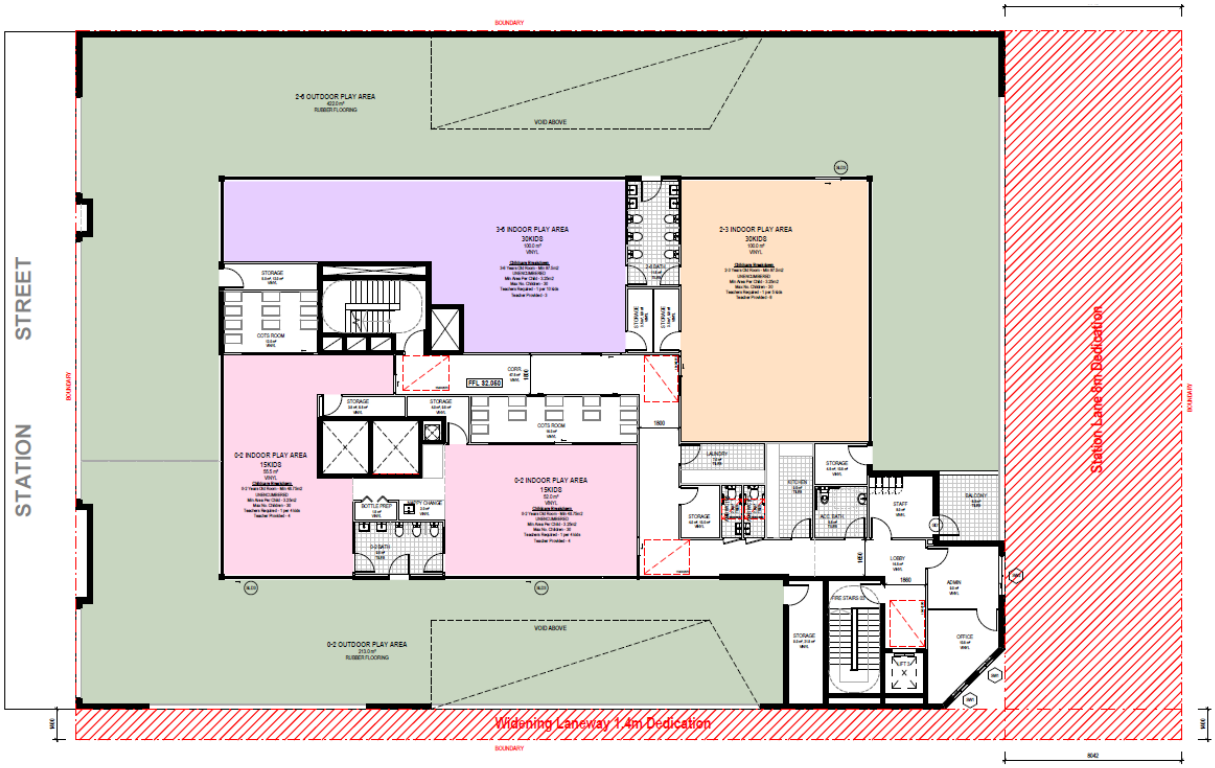


Figure 4 Level 1 Floor Plan

2. The use of level 1 of the building being for the purpose of a child care centre is suitable for a minor reduction in ceiling height. The occupants will not experience any material reduction in amenity due to the very minor non-compliance with the recommended ceiling height.

3. The reduction in ceiling height on level 1 will have no negative impacts external to the site in terms of occupants of adjoining developments or the users of the nearby public domain.

CONCLUSION

This written request has been prepared in relation to the proposed variation to minimum ceiling height development standard in *clause 148 of State Environmental Planning Policy (Housing) 2021*.

Having regard to all of the above, it is our opinion that compliance with the minimum ceiling height development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard. Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.